

May 2012

Over the past two years, several research and advocacy organizations have produced and publicly released a significant body of data documenting the need for federal policies that prohibit discrimination on the basis of sexual orientation and gender identity. These materials follow this memo.

In particular, this research shows why Congress should pass the Employment Non-Discrimination Act (ENDA) and why President Obama should sign an executive order prohibiting federal contractors from discriminating on the basis of sexual orientation and gender identity. It also shows that similar policies have been implemented successfully at the state and local level, and that they are quickly becoming a best practice among leading companies – both large and small.

A main theme of this research is that employment discrimination is a persistent and pervasive problem for LGBT workers. Forty-two percent of LGB workers report experiencing some form of discrimination on the job, as do an astounding 90 percent of transgender workers.

In addition to demonstrating the high rates of workplace discrimination facing the LGBT workforce, this comprehensive body of research also documents:

- How discrimination remains economically unwise for businesses that allow it to go unchecked, as well as how LGBT workplace protections are now considered a best practice among America's top corporations
- Strong public support for the proposed executive order and ENDA, cutting across gender, age, and partisan lines (and strong support from small businesses owners, as well)
- The president's clear legal authority for issuing an LGBT nondiscrimination executive order for federal contractors
- The coverage and scope that the proposed executive order would have on the landscape of workplace protections for LGBT Americans

The existing research is conclusive: LGBT workplace discrimination is a rampant problem that requires immediate action from both Congress and President Obama.



Research and advocacy regarding an LGBT nondiscrimination executive order for federal contractors	
Product Name	Executive Policy Memo: LGBT Equality in Government Contracting
Organization	The Williams Institute and the Center for American Progress
Date	4/18/2012
Employment discrimination and the LGBT workforce	
Product Name	Documented Evidence of Employment Discrimination & Its Effects on LGBT People
Organization	The Williams Institute
Date	7/1/2011
Product Name	Gay and Transgender People Face High Rates of Workplace Discrimination and Harassment
Organization	Center for American Progress
Date	5/1/2011
Product Name	MEMO: LGBT Employment Discrimination Cases Involving Federal Contractor Companies
Organization	ACLU
Date	9/26/2011
Product Name	Degrees of Equality
Organization	Human Rights Campaign Foundation
Date	Undated
Product Name	Injustice at Every Turn
Organization	The National Gay and Lesbian Task Force
Date	7/3/2011
Product Name	National Transgender Discrimination Survey - Preliminary Findings on Employment and Economic Insecurity
Organization	The National Gay and Lesbian Task Force
Date	12/1/2009
Product Name	Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, A Look at Black Respondents
Organization	The National Gay and Lesbian Task Force
Date	9/15/2011
Product Name	Evidence of Employment Discrimination on the Basis of Sexual Orientation in State and Local Government
Organization	The Williams Institute
Date	7/1/2011
Product Name	Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment
Organization	The Williams Institute
Date	9/1/2009
Product Name	Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination
Organization	The Williams Institute
Date	6/1/2007
Product Name	The Gay and Transgender Wage Gap
Organization	Center for American Progress
Date	4/16/2012
Product Name	Fact Sheet: Economic Opportunity
Organization	National Center for Transgender Equality
Date	3/1/2012
The business case for LGBT workplace protections	
Product Name	The Costly Business of Discrimination
Organization	Center for American Progress
Date	3/1/2012
Product Name	Discrimination and Dollars
Organization	Center for American Progress
Date	3/1/2012
Product Name	Corporate Equality Index
Organization	Human Rights Campaign Foundation
Date	7/4/2011
Product Name	Economic Motives for Adopting LGBT-Related Workplace Policies
Organization	The Williams Institute
Date	10/1/2011
Product Name	Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workplace that Includes LGBT People
Organization	Williams Institute
Date	10/1/2011
Product Name	Ensuring Workplace Fairness is Not Expensive
Organization	Center for American Progress
Date	10/12/2011
Product Name	Equal Benefits for Gay Couples Are Inexpensive
Organization	Center for American Progress
Date	10/19/2011
Product Name	Workplace Fairness for Gay and Transgender Workers
Organization	Center for American Progress
Date	1/27/2012
Product Name	Buying for Workplace Equality
Organization	Human Rights Campaign Foundation
Date	7/4/1905
Public opinion and political support for EO	
Product Name	Americans Overwhelmingly Support Executive Action to Ban Anti-LGBT Workplace Discrimination
Organization	Human Rights Campaign Foundation
Date	4/1/2012
Product Name	Polls Show Huge Public Support for Gay and Transgender Workplace Protections

Organization	Center for American Progress
Date	5/1/2011
Product Name	Small Businesses Support Fairness
Organization	Center for American Progress
Date	10/5/2011
Product Name	Poll Shows Strong Support For ENDA
Organization	Freedom to Work
Date	4/1/2012
Product Name	<i>Powerpoint: Taking the Next Step. Survey of Voter Attitudes Toward Discrimination and Marriage</i>
Organization	Greenberg, Quinlan, Rosner Research
Date	4/19/2011
Product Name	<i>Powerpoint: Small Business Survey</i>
Organization	Global Strategy Group
Date	9/13/2011
Impact and legal issues regarding an LGBT nondiscrimination executive order	
Product Name	The Impact of Extending Sexual Orientation and Gender Identity Non-Discrimination Requirements to Federal Contractors
Organization	The Williams Institute
Date	2/1/2012
Product Name	An Evaluation of Local Laws Requiring Government Contractors to Offer Equal Benefits to Domestic Partners
Organization	The Williams Institute
Date	2/1/2012
Product Name	An Evaluation of Local Laws Requiring Government Contractors to Adopt Non-Discrimination and Affirmative Action Policies to Protect LGBT Employees
Organization	The Williams Institute
Date	2/1/2012
Product Name	Report Update: Sexual Orientation and Gender Identity Non-Discrimination Policies of the Top 50 Contractors, FY 2011
Organization	The Williams Institute
Date	4/1/2012
Product Name	The Relationship between EEOC's Decision that Title VII Prohibits Discrimination Based on Gender Identity and the Enforcement of Executive Order 11246
Organization	The Williams Institute
Date	5/1/2012
Product Name	<i>Memo: President's Authority and Other Legal Issues Related to Proposed Executive Order</i>
Organization	The Williams Institute
Date	5/18/2011
Miscellaneous	
Product Name	A One-Two Punch for Worker Protection
Organization	Center for American Progress
Date	4/4/2012
Product Name	FAQ: The Employment Non-Discrimination Act: What You Need To Know
Organization	Center for American Progress
Date	7/19/2011
Product Name	Working in the Shadows: Ending Employment Discrimination for LGBT Americans
Organization	ACLU
Date	9/1/2007
Product Name	The Federal Government as Employer - Blueprint
Organization	Human Rights Campaign Foundation
Date	n/a
Product Name	An Important Step toward Workplace Equality: An Executive Order on Federal Contractors
Organization	Human Rights Campaign Foundation
Date	4/1/2012



To: Interested Parties

From: Center for American Progress and the Williams Institute

Date: April 18, 2012

Re: LGBT Equality in Government Contracting

EXECUTIVE SUMMARY

Lesbian, gay, bisexual and transgender (LGBT) Americans continue to face widespread discrimination in the workplace. While many states, municipalities, and corporations have instituted policies that shield LGBT workers from employment discrimination, LGBT individuals currently lack adequate legal protections from discrimination in employment. The Employment Non-Discrimination Act, or ENDA, would ensure that all Americans are judged in the workplace based on their skills and qualifications, and the quality of their work.

Short of a federal law, however, President Obama can amend Executive Order 11246 (EO 11246) or issue a new executive order that prohibits federal contractors from discriminating at all levels of employment based on sexual orientation and gender identity. Our research and analysis of potential executive action have produced the following main findings:

- **LGBT Americans experience high rates of discrimination and harassment in the workplace, threatening their economic security and businesses' bottom line.**
- **An executive order banning LGBT discrimination in federal contracting would be a strong precedent for Congressional passage of ENDA.**
- **A significant number of contractors have already adopted nondiscrimination policies for sexual orientation and gender identity, and may also offer domestic partner benefits.**
- **Of the top 50 federal government contractors and of the top 50 Fortune 500 companies, the majority specifically link policies that prohibit sexual orientation and gender identity discrimination (and/or offer domestic partner benefits) to improving their bottom line.**
- **A majority of small businesses already prohibit discrimination against LGBT employees at little to no cost to employers.**
- **A majority of small businesses already offer or would offer equal health benefits to same-sex partners, and report that it is inexpensive to do so.**
- **LGBT nondiscrimination and other requirements for government contractors can be implemented with minimal administrative cost and burden.**

- **Likely voters strongly support a presidential executive order that expands existing contractor nondiscrimination requirements to include sexual orientation and gender identity.**
- **An executive order can require federal contractors to adopt some combination of nondiscrimination protections, policies that promote retention and outreach and prevent harassment and discrimination, and domestic partner benefits – or simply nondiscrimination protections.**
- **The president could either amend EO 11246 or issue a new executive order.**
- **The president has the statutory authority to issue an executive order that broadens existing nondiscrimination requirements for federal contractors.**

LGBT Americans experience high rates of discrimination and harassment in the workplace, threatening their economic security and businesses' bottom line.

LGBT employees continue to face widespread discrimination and harassment in the workplace. [Studies](#) show that anywhere from 15 to 43 percent of gay people have experienced some form of discrimination and harassment in the workplace. Specifically, 8 to 17 percent of LGBT workers report being passed over for a job or fired because of their sexual orientation or gender identity; 10 to 28 percent received a negative performance evaluation or were passed over for a promotion because they were LGBT; and 7 to 41 percent of LGBT workers encountered harassment, abuse, or anti-LGBT vandalism on the job.

Rates of discrimination and harassment are significantly higher for transgender individuals. An astonishing 90 percent of transgender people [report](#) some form of harassment or mistreatment on the job. Nearly half of transgender people also report experiencing an adverse job outcome because of their gender identity. This includes being passed over for a job (44 percent); fired (26 percent); and denied a promotion (23 percent).

Anecdotal evidence also points to pervasive discrimination and harassment that LGBT people encounter on the job. Vandy Beth Glenn [lost her job](#) with the Georgia General Assembly after her boss fired her for being transgender. Brook Waits of Dallas, Texas [was immediately let go](#) after her manager saw a picture on Brook's cell phone of Brook and her girlfriend kissing on New Year's Eve. Officer Michael Carney [was denied reinstatement](#) as a police officer in Springfield, Massachusetts because he told his supervisors that he was gay.

Widespread discrimination against LGBT workers has resulted in [economic insecurity and financial hardships](#) that impact many LGBT Americans and their families. Discrimination contributes to job instability and employment turnover, resulting in greater unemployment and higher poverty rates for LGBT people. As a result, 14 percent of LGBT Americans earn less than \$10,000 per year compared to 6 percent of the general population. After a lifetime of discrimination, older gay and lesbian adults [experience](#) higher poverty rates than their heterosexual counterparts, as do lesbian couples and same-sex couples of color.

Transgender individuals in particular face significant economic insecurity due to high levels of workplace discrimination. Compared to the general population, transgender individuals [are](#) twice as likely to be unemployed, are four times as likely to live in poverty, and nearly 20 percent have been or are currently homeless. Unsurprisingly, approximately six in ten transgender people report annual incomes below \$25,000

In addition to inflicting financial pain on individual victims of discrimination, discriminatory practices create inefficiencies and higher costs for businesses. More than 2 million professionals and managers leave their jobs each year due to unfairness in the workplace. Losing and replacing these professionals costs US employers approximately [\\$64 billion annually](#). Specifically, sexual orientation and gender identity-based employment discrimination is economically unwise because it inhibits an employer's ability to recruit qualified employees, and results in a substandard workforce by evaluating employees based on characteristics irrelevant to a job – like sexual orientation and gender identity – rather than their skills, experience, and capacity to contribute. Similar, employment discrimination needlessly forces qualified employees out of job, which consequently introduce a host of costly turnover expenses. Hostile work environments also limit workforce productivity and job performance, close businesses off to consumers and suppliers in the marketplace, and expose companies to potentially costly litigation.

See: “Documented Evidence of Employment Discrimination & Its Effects on LGBT People” for more information¹

An executive order banning LGBT discrimination in federal contracting would be a strong precedent for congressional passage of ENDA.

Currently, a confusing patchwork of state and local laws and regulations offer some legal protections to LGBT workers. Twenty-one states and the District of Columbia prohibit public and private discrimination on the basis of sexual orientation, and 16 of those states and the District of Columbia also prohibit discrimination on the basis of gender identity. At least 240 municipalities have enacted local ordinances prohibiting discrimination on the basis of sexual orientation, with at least 60 of these municipalities including gender identity as a protected characteristic.

In addition to nondiscrimination prohibitions, some state and local governments have implemented requirements on contractors to comply with sexual orientation and gender identity based-nondiscrimination ordinances. Sixty-one municipalities have ordinances that specifically prohibit discrimination on the basis of sexual orientation by local government contractors; thirty-seven also prohibit discrimination based on gender identity.

At least [52 percent](#) of Americans live in a jurisdiction where they are covered by a nondiscrimination policy based on sexual orientation. At least [41 percent](#) of Americans live in a jurisdiction where they are covered by a nondiscrimination policy based on gender identity. *Conversely, this means that as many as 48 percent of LGB Americans and 59 percent of transgender Americans do not have any legal protections against employment discrimination.*

Given the lack of nondiscrimination coverage nationwide for LGBT individuals, a federal law – ENDA, which has been introduced in both houses of Congress – is needed to bring uniform protections to all American workers. Given the current control of the House, however, it is unlikely that ENDA will be enacted soon. In the interim, President Obama can amend Executive Order 11246, or issue a separate executive order, to prohibit discrimination in employment on the basis of sexual orientation and gender identity by federal contractors. According to the [Department of Labor](#):

The Executive Order 11246 (E.O 11246) prohibits federal contractors and subcontractors and federally-assisted construction contractors and subcontractors that generally have contracts that

¹ We have a wide range of supporting research upon which we based the information in this memo. This supporting research is cited throughout the memo, and can be provided if needed.

exceed \$10,000 from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. It also requires covered contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

Extending EO 11246 to include nondiscrimination policies based on sexual orientation and gender identity would give substantive workplace protections to a significant number of LGBT Americans. Currently, 26 million individuals, or approximately 22 percent of the civilian workforce, are employed by a federal contractor that must comply with EO 11246.

Including sexual orientation and gender identity into EO 11246's existing nondiscrimination requirements would give OFCCP important enforcement powers to combat LGBT discrimination. OFCCP generally investigates complaints of discrimination that are filed against federal contractors by a group of employees. OFCCP can then reach a settlement with employers who are found in violation of EO 11246, or they can pursue enforcement action before an administrative law judge or in federal court. In 2009, 22,000 employees filed discrimination complaints with OFCCP, which conducted 4,160 compliance evaluations and obtained 94 settlements totaling more than \$9 million. In 2008, the agency secured more than \$67.5 million in back pay, salary, and benefits for 24,508 employees who had been subject to unlawful employment discrimination under the categories currently included in EO 11246.

EO 11246 is part of a history of executive orders in which past presidents made workplace nondiscrimination compliance a condition of federal contracts in advance of Congress passing federal statutes applying similar requirements more generally. The pattern of executive orders prohibiting forms of discrimination prior to Congressional enactment of a broader statute provides strong precedent for the president requiring sexual orientation and gender identity nondiscrimination compliance prior to the passage of ENDA.

A significant number of contractors have already adopted nondiscrimination policies for sexual orientation and gender identity, and many already offer domestic partner benefits.

The Williams Institute recently analyzed the companies that have nondiscrimination policies that include sexual orientation and gender identity, as well as those that offer benefits to same-sex partners. Their analysis demonstrates that more federal contractors than non-contractors have adopted employment protections for LGBT workers, and that an executive order would not significantly impact many companies that already do business with the federal government.

The high-level findings from this analysis include:

- Among federal contractors, at least 61 percent of employees are already covered by laws or private policies against sexual orientation discrimination; at least 51 percent of non-contractor employees are covered.
- Among federal contractors, at least 41 percent of employees are already covered by laws or private policies against gender identity discrimination; at least 28 percent of non-contractor employees are covered.
- Among federal contractors, at least 45 percent of employees already provide equal benefits, including access to health insurance coverage for a same-sex partner; at least 32 percent of non-contractor employees have similar benefits, including access to health insurance.

- Requiring federal contractors to have policies against sexual orientation discrimination would provide protections to an additional 11 million U.S. workers; for gender identity, 16.5 million more would be protected.
- Requiring federal contractors to provide health insurance benefits to same-sex domestic partners of employees would give 15 million more employees access to coverage (obviously, not all of these employees are gay and/or in a same-sex partnership; companies that offer same-sex domestic partner coverage usually experience a take up rate of approximately one percent of their employees, without any disproportionate cost increases).

See: “Estimates of Current Nondiscrimination and Partner Benefit Coverage” for more information

Further, the largest federal contractors, where most contracting dollars are spent, are even more likely to already prohibit discrimination on the basis of sexual orientation and gender identity, and to offer domestic partner benefits:

- The top 5 federal contractors are all defense contractors – Lockheed Martin, Boeing, Northrop Grumman, Raytheon, and General Dynamics - and together they receive about a quarter of all federal contracting dollars. Five out of five have nondiscrimination policies that include sexual orientation; five out of five have nondiscrimination policies that include gender identity; and the four largest provide domestic partner benefits.
- Looking at the top 25 federal contractors, 24 have nondiscrimination policies that include sexual orientation; 13 have nondiscrimination policies that include gender identity; and 18 provide domestic partner benefits.
- Finally, looking at employees of federal contractors that are in the Fortune 1000, 92 percent are already protected by a company-wide sexual orientation nondiscrimination policy, and 58 percent are already protected by a gender identity nondiscrimination policy. Also, 42 percent of federal contractors in the Fortune 1000 already offer domestic partner benefits, which cover 71 percent of employees of federal contractors in the Fortune 1000.

Of the top 50 federal government contractors and of the top 50 Fortune 500 companies, the majority specifically link policies that prohibit sexual orientation and gender identity discrimination and offer domestic partner benefits to improving their bottom line.

An executive order that expanded nondiscrimination and benefits policies would also strengthen federal contractors from a business perspective. A Williams Institute analysis of corporate statements addressing nondiscrimination policies and domestic partner benefits reveals the clear economic advantages of LGBT-inclusive workplace policies. Of the top 50 federal government contractors and of the top 50 Fortune 500 companies, the majority specifically link policies that prohibit sexual orientation and gender identity discrimination, and/or provide domestic partner benefits, to improving their bottom line. Companies most often cited the following economic benefits garnered from these policies:

- Recruiting and retaining the best talent, giving their company a competitive advantage in the marketplace.
- Generating the best ideas and innovations by drawing on a workforce with a wide range of characteristics and experiences.
- Increasing productivity among employees by making them feel valued and comfortable at work.
- Attracting and better serving a diverse customer base through a diverse workforce.

- Securing business by responding favorably to specific policy requests or requirements from clients.
- Maintaining positive employee morale and relations by responding favorably to specific policy requests from employees and unions.

See: “Corporate Statements Addressing Non-Discrimination Policies and Domestic Partner Benefits” for more information

Moreover, there are few costs associated with implementing nondiscrimination policies, so a nondiscrimination executive order would result in net financial benefits for most contractors, and corresponding benefits for the government, while costing the contractors very little. While domestic partner benefits may result in modest short-term costs, the longer-term benefits described above can also be expected to yield a net gain for both federal contractors and the federal government.

A majority of small businesses already prohibit discrimination against LGBT employees at little to no cost to employers.

In September 2011, CAP fielded a survey of small businesses (defined as having 3-100 employees) that revealed a majority already prohibit discrimination on the basis of sexual orientation and gender identity. Sixty-nine percent of small businesses prohibit discrimination on the basis of sexual orientation, and 62 percent do so on the basis of gender identity.

Further, a majority of those businesses report few to no costs associated with those policies. Looking at the majority of small businesses that already prohibit discrimination against gay employees, 67 percent said there were zero costs associated with the initial inclusion of sexual orientation within their nondiscrimination policies. Of the 25 percent of companies that said there were costs associated with implementation, 65 percent said those costs represented less than 1 percent of annual operating costs.

Even fewer of these small businesses cited costs associated with maintaining their company’s sexual orientation nondiscrimination policy in the medium- and long-term. Eighty percent said there were no costs associated with maintaining their policy prohibiting discrimination against gay workers. Only 12 percent said there were costs associated with its maintenance. Looking at just this 12 percent, 68 percent said those costs represented less than 1 percent of annual operating costs.

Transgender-inclusive policies are similarly inexpensive. Looking at the 62 percent of small businesses that already prohibit discrimination against transgender employees, 68 percent said there were no costs associated with the implementation of this policy. Of the minority of businesses that said there were costs (22 percent), 76 percent said those costs represented less than 1 percent of annual operating costs.

Small business owners also report zero or insignificant costs associated with maintaining their policy against gender identity discrimination. Seventy-six percent said there were no costs associated with maintaining their policy prohibiting discrimination against transgender workers. Only 14 percent said there were costs associated with maintaining this policy. Of that group, 86 percent said the maintenance cost represented less than 1 percent of annual operating costs.

Of those small businesses that do not prohibit discrimination based on sexual orientation, only 2 percent said costs deterred them from offering protections to gay employees. Only 4 percent cited costs as a deterrent to prohibiting discrimination on the basis of gender identity. Most of these businesses said that they simply never thought to adopt these policies or that they did not have gay or transgender employees currently in their workplace. Costs, however, were not a factor.

See: “Small Businesses Support Fairness: CAP Survey on LGBT Equality in Government Contracting” for more information

A majority of small businesses already offer or would offer equal health benefits to same-sex partners, and report that it is inexpensive to do so.

Of small businesses that offer health benefits to straight employees and their dependents, 51 percent also offer equivalent benefits to their gay employees and their family members. Of the remaining businesses that offer these benefits to straight employees, but do not currently offer parity in benefits to gay employees and their families, 51 percent also say that they would extend those benefits if they had an employee with a same-sex partner. This means that three out of four (76 percent) of these small businesses either currently offer or are willing to offer equal benefits to gay employees and their families.

When asked about costs, 49 percent of small-business owners that offer health insurance benefits to gay couples say there are no costs associated with offering equal benefits because nobody had actually enrolled in them. That is, around half of these small businesses offer equal benefits, but do not have a gay employee with a partner or spouse who has enrolled in those benefits. Twenty-one percent said these health benefits represented less than 1 percent of overall health expenditures. These findings comport with other research on domestic partner benefits, which show the take-up rate for these benefits is extremely low, as are the costs themselves.

Of those small businesses that do not offer equal benefits to gay employees and their family members, only 4 percent cite costs as a deterrent to offering parity in benefits. In fact, costs were the least cited reason for not offering equal benefits. Instead, most of these small-business owners said they simply did not have employees in a same-sex partnership.

See: “Small Businesses Support Fairness: CAP Survey on LGBT Equality in Government Contracting” for more information

LGBT nondiscrimination and other requirements for government contractors can be implemented with minimal administrative cost and burden.

A Williams Institute survey of municipal jurisdictions with LGBT nondiscrimination, affirmative action, and benefits requirements for local government contractors shows that such policies can be implemented with minimal administrative cost and burden.

Almost all of the localities surveyed reported almost uniform compliance with the contractor ordinances, with little to no resistance by contractors. Twenty-five of the 29 localities that provided information about their non-discrimination and affirmative action ordinances reported that contractors complied with the sexual orientation and gender identity requirements without resistance. Three of the 29 localities reported just minimal resistance initially but then the contractors agreed to comply when the requirements were explained to them. Similarly, the localities reported very little contractor resistance to ordinances requiring equal benefits for employees’ same-sex partners. To the extent there were a handful of companies that resisted these benefits policies, their main focus was on the requirement that domestic partner benefits be extended to different-sex couples.

Of all the localities that responded to the survey, only two reported individual enforcement investigations or actions for violations of these contractor requirements, and these localities just reported one such instance each. Twenty-eight of the 29 localities reported that no complaints of sexual orientation or

gender identity discrimination had been filed under their non-discrimination ordinances. The remaining locality was unaware if any complaints had been made because discrimination complaints were handled by a state agency, rather than the local agency implementing the contractor requirements. In addition, none of these localities reported that contractors had been barred from bidding on future contracts because they did not comply with these ordinances. Similarly, of the 11 localities with ordinances mandating parity in benefits for employees with same sex partners that responded to the survey, only one, the City of Los Angeles, reported that a single complaint had been filed. None of these localities reported that contractors had been barred from bidding on future contracts because of non-compliance.

The contractor requirements have been adopted, implemented, and enforced with little disruption to government operations or work, administrative burden, cost, or litigation. No locality reported that any of these ordinances made it difficult to find qualified contractors to carry out government work or operations. None of the localities that added sexual orientation and gender identity to non-discrimination or affirmative action ordinances reported that doing so was administratively burdensome or resulted in additional administrative or contractor costs. Similarly, ten of the 11 localities that gave detailed responses to questions about their benefits ordinances reported that their ordinances were not administratively burdensome while the remaining one, San Francisco, declined to answer the question because it had not measured the burden of its ordinance. Further, studies by three of these localities showed that equal benefits ordinances resulted in minimal additional administrative or contractor costs.

See: "An Evaluation of Local Laws Requiring Government Contractors to Adopt LGBT-Related Workplace Policies" for more information

Likely voters strongly support a presidential executive order that expands existing contractor nondiscrimination requirements to include sexual orientation and gender identity.

CAP commissioned Greenberg Quinlan Rosner Research to field a poll of likely 2012 voters in the first and second weeks of April 2011. Nearly three-fourths – 73 percent – of voters support protecting LGBT people from workplace discrimination. This support cuts across political party affiliation, with 81 percent of Democrats, 74 percent of Independents, and 66 percent of Republicans supporting workplace nondiscrimination laws for LGBT people. Looking at key demographic groups, Catholic (74 percent support) and senior (61 percent support) voters solidly favor employment protections for LGBT people. Even among voters who identify themselves as feeling generally unfavorable toward gay people, a full 50 percent support workplace nondiscrimination protections for the LGBT population.

Generally, voters prefer a law like ENDA as the solution to current discrimination against LGBT workers. However, as an interim step, 69 percent of likely 2012 voters also support President Obama issuing an executive order that would require all companies doing business with the federal government to adopt policies that protect LGBT workers from discrimination. A majority of voters across political party affiliation supports such an order: 83 percent of Democrats, 69 percent of Independents, and 53 percent of Republicans would favor this action.

Since at least the early 1980s, [a majority of Americans](#) have supported equal rights and opportunities for gay people in the workplace. Polling questions about transgender workers have only been asked recently. The CAP poll shows that voters support transgender protections at almost the same rate they support gay protections. For example, 75 percent of likely voters say they favor “protecting gay and lesbian people from discrimination in employment,” while 73 percent say they favor these protections for “gay, lesbian, and transgender people.” The responses are essentially statistically identical.

The survey also found that nine of out ten voters erroneously think that a federal law is already in place protecting LGBT people from workplace discrimination. A similar number of voters also did not know whether their state had a LGBT workplace discrimination law. These numbers show the significant disconnect between voter perceptions about workplace protections and the harsh realities that LGBT people face on the job.

Small business owners also express strong support for LGBT nondiscrimination laws and policies. CAP's poll of small business owners and leaders found that 63 percent of small businesses support ENDA's passage. Only 15 percent of small businesses were opposed. Further, a strong majority of small businesses reported that if Congress passed ENDA, the law would have no impact on their business. CAP also asked specifically about an executive order prohibiting federal contractors from discriminating against their LGBT employees. Fifty-six percent said they would support President Obama issuing such an executive order. Interestingly, the same percentage (56 percent) of small business owners also would support President Obama issuing an executive order mandating contractors to provide parity in health benefits for employees with same-sex partners.

See: "Taking the Next Step: Survey of Voter Attitudes Toward Discrimination and Marriage" for more information

See: "Small Businesses Support Fairness: CAP Survey on LGBT Equality in Government Contracting" for more information

An executive order can require federal contractors to adopt some combination of nondiscrimination protections, policies that promote retention and outreach and prevent harassment and discrimination, and domestic partner benefits.

A potential executive order can include a range of policies that support the LGBT workforce. An executive order may require federal contractors to (1) adopt nondiscrimination policies for sexual orientation and gender identity; (2) actively recruit and retain LGBT employees and educate all employees to prevent workplace harassment and discrimination; and (3) extend benefits to domestic partners.

Nondiscrimination protections would build on EO 11246's current nondiscrimination requirements which prohibit employment discrimination on the basis of race, color, religion, sex, or national origin. While it is essential that an executive order for federal contractors include sexual orientation nondiscrimination protections, it is equally essential that an executive order include gender identity nondiscrimination protections as well. While both gay and transgender workers need employment protections, transgender individuals in particular face astonishingly high rates of employment discrimination.

An executive order could require contractors to implement policies to recruit and retain qualified LGBT employees and to educate all employees to help prevent workplace harassment and discrimination. These are the kinds of "soft" affirmative action steps currently required with respect to national origin and religion. Numerical placement goals apply only to race, sex, and ethnicity. Requiring numerical placement goals for sexual orientation and gender identity would communicate a strong commitment to diversity and a belief that LGBT workers should receive the same protection as women and people of color. However, doing so may be logistically, legally and politically problematic. An executive order could instead classify sexual orientation and gender identity with national origin and religion for purposes of affirmative action. Alternatively, the executive order could omit any reference to any form of affirmative action based on sexual orientation or gender identity.

An executive order could also require contractors to provide equal health and other benefits to same-sex partners when those benefits are offered to different-sex spouses. Such an order could require parity in benefits for both employees with a same-sex domestic partner and those with a different-sex domestic partner, or just those with a same-sex partner. The former would broaden the scope of the executive order and apply to more individuals in the workforce than what was described above. It also could raise costs, although such costs could have corresponding positive economic effects, which is particularly important because in order to survive a legal challenge, the proposed executive order must further the federal government's interest in "economy and efficiency." If the order required contractors to provide equal benefits just to employees with a same-sex domestic partner, questions still might arise because the federal government currently does not offer health insurance coverage for its employees' same-sex partners, although it does treat lesbian and gay employees equally with respect to a broad range of other benefits. Requiring private businesses to offer health insurance to employees and their same-sex partners when the federal government does not do so may prompt some resistance from the private sector. However, such a response would be in contrast with the positive assessments given by the employers that already have equalized their health insurance plans, and the government entities with such policies already in place.

See: "President's Authority and Other Legal Issues Related to Proposed Executive Order" for more information

See: "Data collection and affirmative action issues for an Executive Order barring discrimination based on sexual orientation and gender identity by federal contractors" for more information

The president could either amend EO 11246 or issue a new executive order.

To establish the above workplace policies, the president may amend EO 11246 to include sexual orientation and gender identity alongside existing nondiscrimination requirements for federal contractors, or he may issue a new executive order.

Amending EO 11246 rather than issuing a new order would strongly signal that discrimination based on sexual orientation and gender identity warrants a remedy similar to that which is used to reduce discrimination based race, color, religion, sex, or national origin. Including these additional traits within the existing order would likely make it easier for federal contractors to understand and to comply with the proposed executive order, and for the Office of Federal Contract Compliance Programs (OFCCP) at the Department of Labor to enforce it. However, inclusion of these new characteristics could result in a legal challenge that attacks the entirety of EO 11246. It would also likely trigger affirmative action and data collection requirements, which may not be feasible, although they could be specifically exempted. Thus, one option is to amend EO 11246 and specifically exempt those requirements that present the greatest legal or political challenges. Similarly, religion and national origin are both currently in EO 11246 but are exempted from certain affirmative action and data collection requirements.

Issuing a new executive order with similar language to EO 11246 would avoid the potential for a case challenging these new provisions that could possibly undermine the existing order. A new executive order would also make it significantly easier for the administration to not include affirmative action or data collection requirements. To the extent that sexual orientation and gender identity require definitions and other specific provisions, it may be simpler to create a new executive order. However, doing so may attract more political attention than would amending the existing order.

See: "President's Authority and Other Legal Issues Related to Proposed Executive Order" for more information

The president has the statutory authority to issue an executive order that broadens existing nondiscrimination requirements for federal contractors.

It is well within the president's legal authority to issue either an amended or a new executive order to require that federal contractors not discriminate based on sexual orientation and gender identity. Further, courts are generally reluctant to overturn executive orders. The Supreme Court has only overturned two executive orders, and neither involved nondiscrimination requirements. Lower courts have repeatedly upheld executive orders prohibiting discrimination by federal contractors. However, the lack of Supreme Court precedent on the constitutionality of nondiscrimination executive orders, as well as the lack of recent case law affirming the constitutionality of such orders, adds a modicum of uncertainty to the legal analysis. If a contractor were to challenge the proposed executive order, courts would most likely use two tests to determine whether the president had authority to issue it: (1) the "economy and efficiency" test; and (2) the conflicts test.

First, the Federal Property and Administrative Services Act (1949) gives the president broad authority to prescribe policies and directives relating to the federal government's role in the acquisition of goods and services, so long as there is a sufficiently close tie between the executive order and the "economy and efficiency" of the procurement process. Generally, courts leniently apply the economy and efficiency test to executive orders, giving significant deference to the president. However, some courts apply the test more strictly and require a direct link between the terms of an executive order and the goals of economy and efficiency in government procurement. As described in this memo, inclusive nondiscrimination and benefits policies optimize the economy and efficiency of procurement, and an executive order requiring either should withstand legal scrutiny.

Second, courts would determine whether the executive order explicitly or implicitly conflicts with any other federal laws. It might be argued that potential conflicts exist with current ENDA legislation related to disparate impact claims, numerical affirmative action goals, and data collection, all of which are prohibited in ENDA as currently drafted, but could be potentially included in an executive order. However, the president's executive order does not need to include any of these provisions, and even if they are included, conflict issues can be addressed, in part, with changes to future versions of ENDA. If benefits are included in the executive order, it could be argued that this provision may conflict with the Defense of Marriage Act (DOMA), the Employee Retirement Income Security Act (ERISA), and possibly some sections of the Patient Protection and Affordable Care Act of 2010. Legal challenges based on these arguments, however, are not particularly strong because, among other reasons, an employee's life partner can be recognized without reference to marriage (as the president's memoranda on employee benefits have recognized), and the contracting power need not implicate ERISA.

See: "President's Authority and Other Legal Issues Related to Proposed Executive Order" for more information

Political Considerations

Since President Obama's election, the LGBT community has sought an executive order expanding federal contracting nondiscrimination requirements to include sexual orientation and gender identity. LGBT advocacy organizations included such an order in a presidential-transition list of potential executive and regulatory changes that would significantly benefit LGBT people. More recently, a nondiscrimination executive order has received an increasing amount of LGBT media attention following the repeal of "Don't Ask, Don't Tell" and ENDA's reintroduction.

CAP has also informally engaged the business community to gauge potential opposition should the president issue an executive order extending employment protections and benefits policies for LGBT employees of federal contractors. CAP's conversations with companies that do not already have nondiscrimination policies suggest that opposition from the business community would be insignificant, since there are few costs associated with broadening employment protections. Requiring domestic partner benefits, obviously, imposes some short-term costs, unlike nondiscrimination policies, and so could result in pushback from the business sector.

Conclusion

All of our nation's workers deserve a fair chance at earning an honest living and supporting themselves and their families. Ideally, Congress would pass ENDA to make sure that LGBT people across the country have a fairer shot at success in the workplace. But given political realities, the Obama Administration can leverage its executive authority to ensure federal contractors have workplaces that put LGBT workers on equal footing with their peers and colleagues. Policies that create fair workplaces have real, positive impact on people's lives, and reflect the best of our country's ideal of granting people equal treatment under the law.



Employment discrimination and
the LGBT Workforce

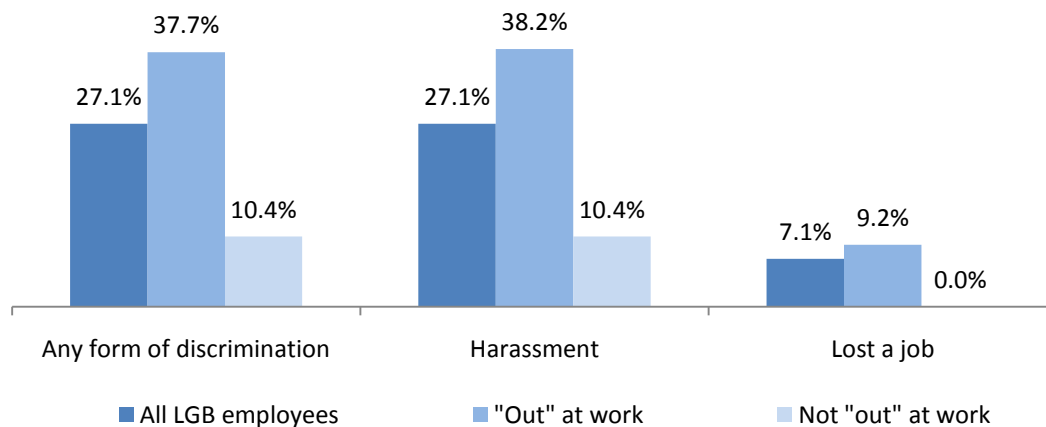


Documented Evidence of Employment Discrimination & Its Effects on LGBT People

Executive Summary

Although sexual orientation and gender identity have no relationship to workplace performance,¹ during the past four decades a large body of research using a variety of methodologies has consistently documented high levels of discrimination against lesbians, gay men, bisexuals and transgender (LGBT) people at work. Evidence of discrimination has been reviewed and summarized in two recent reports by the Williams Institute at UCLA School of Law: a 2009 report focused on discrimination in the public sector² and a 2007 report focused on employment discrimination in the private sector³. This review excerpts key findings from those reports and updates those findings with results from recent studies. In addition, it presents for the first time, data documenting discrimination against LGB employees from the 2008 General Social Survey (GSS), a national probability survey representative of the U.S. population.

Discrimination Based on Sexual Orientation during the Five Years Prior to the Survey, General Social Survey, 2008



The evidence of discrimination in this report has been gathered from a variety of sources, including: scientific field studies of LGBT and non-LGBT employees and controlled experiments; findings by courts and legal scholars; findings by federal, state, and local governments; and complaints of discrimination filed with administrative agencies. This report also summarizes research showing the negative impacts of discrimination against LGBT people in terms of health, wages, job opportunities, productivity in the workplace, and job satisfaction.

In sum, this research shows that widespread and continuing employment discrimination against LGBT people has been documented in scientific field studies, controlled experiments, academic

journals, court cases, state and local administrative complaints, complaints to community-based organizations, and in newspapers, books, and other media. Federal, state, and local courts, legislative bodies, and administrative agencies and have acknowledged that LGBT people have faced widespread discrimination in employment. Research shows that discrimination against LGBT people has negative impact in terms of health, wages, job opportunities, productivity in the workplace, and job satisfaction.

Specific findings include:

LGBT people and their non-LGBT coworkers consistently report having experienced or witnessed discrimination based on sexual orientation or gender identity in the workplace.

- As recently as 2008, the GSS, a national probability survey representative of the U.S. population, found that of LGB respondents, 27% had experienced at least one form of sexual orientation-based discrimination during the five years prior to the survey. More specifically, 27% had experienced workplace harassment and 7% had lost a job.
- The GSS found that among LGB people who are open about their sexual orientation in the workplace, an even larger proportion, 38%, experienced at least one form of discrimination during the five years prior to the survey.
- Not surprisingly, more than one-third of LGB respondents to the GSS reported that they were not out to anyone at work, and only 25% were out to all of their co-workers.
- Consistent with the findings from the GSS, several other national probability surveys and local and national non-probability surveys of LGBT employees and their non-LGBT coworkers indicate widespread and persistent employment discrimination on the basis of sexual orientation and gender identity.


When surveyed separately, transgender respondents report even higher rates of employment discrimination and harassment than LGB people.

- As recently as 2011, 78% of respondents to the largest survey of transgender people to date reported experiencing at least one form of harassment or mistreatment at work because of their gender identity; more specifically, 47% had been discriminated against in hiring, promotion, or job retention.
- Consistently, 70% of transgender respondents to a 2009 California survey and 67% of transgender respondents to a 2010 Utah survey reported experiencing employment discrimination because of their gender identity.

Widespread and continuing employment discrimination against LGBT people has been documented in court cases, state and local administrative complaints, complaints to community-based organizations, academic journals, newspapers, books, and other media. Federal, state, and local administrative agencies and legislative bodies have acknowledged that LGBT people have faced widespread discrimination in employment.

Discrimination and fear of discrimination can have negative effects on LGBT employees in terms of wages, job opportunities, mental and physical health, productivity, and job satisfaction.

- Studies consistently show that gay men earn significantly less than their heterosexual counterparts.
- Census data analyses confirm that in nearly every state, men in same-sex couples earn less than men in heterosexual marriages.

- 
- Several studies show that large percentages of the transgender population are unemployed or have incomes far below the national average.
 - Other studies show that discrimination, fear of discrimination, and concealing one's LGBT identity can negatively impact the well-being of LGBT employees, including their mental and physical health, productivity in the workplace, and job satisfaction.

I. Research Has Documented Widespread and Persistent Workplace Discrimination against LGBT People

A. Surveys of LGBT Employees & Their Non-LGBT Co-Workers

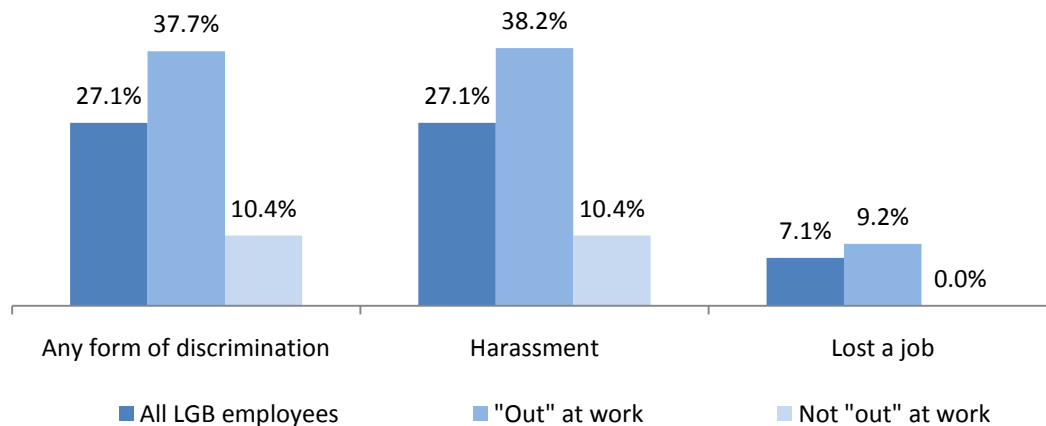
In the last decade, several surveys using probability samples representative of the U.S. population, including the General Social Survey, have shown that a large proportion of LGBT people experience discrimination in the workplace because of their sexual orientation and/or gender identity.

The 2008 General Social Survey (GSS), conducted by the National Opinion Research Center at the University of Chicago, has been a reliable source for monitoring social and demographic changes in the U.S. since 1972. The 2008 GSS marks the first time that survey participants were asked about their sexual orientation, and included a module of questions about the experience of coming out, relationship status and family structure, workplace and housing discrimination, and health insurance coverage.⁴ Eighty sexual minority respondents completed all or some of the module questions, including 57 LGB-identified respondents and 23 respondents who were non-LGB identified, but reported having same-sex sexual partners in the past.⁵ The results presented in this report are based only on the responses provided by LGB-identified individuals.

Results from the 2008 GSS include:

- 42% of the nationally representative sample of LGB-identified people had experienced at least one form of employment discrimination because of their sexual orientation at some point in their lives and 27% had experienced such discrimination during the five years prior to the survey.⁶
- Harassment was the most frequently reported form of sexual orientation-based discrimination by respondents who were open about being LGB in the workplace (35% reported ever having been harassed, 27% had been harassed within the five years prior to the survey), followed by losing a job (16% reported ever having lost a job, 7% had lost a job within the five years prior to the survey).⁷
- One third (33%) of LGB employees are not open about being LGB to anyone in the workplace.⁸
- Only 5.8% of bisexuals are open about their sexual orientation to all of their co-workers.⁹
- Of respondents who reported that they were open in the workplace about being LGB, 56% had experienced at least one form of employment discrimination because of their sexual orientation at some point in their lives, and 38% had experienced employment discrimination within the five years prior to the survey.¹⁰
- In comparison, of LGB respondents who reported that they were *not* open in the workplace about being LGB, 10% had experienced at least one form of sexual orientation-based discrimination within the five years prior to the survey.¹¹
- 25% of LGB-identified respondents who were employed by federal, state, or local government reported having experienced employment discrimination because of their sexual orientation during the five years prior to the survey.¹²

Figure 1: Discrimination Based on Sexual Orientation during the Five Years Prior to the Survey, General Social Survey, 2008



Results from other recent surveys using probability samples representative of the U.S. population include:

- 18% of LGB respondents to a survey conducted in 2000 had experienced employment discrimination in applying for and/or in keeping a job because of their sexual orientation.¹³
- 10% of LGB respondents to a survey conducted in 2007 were fired or denied a promotion because of their sexual orientation.¹⁴
- 58% percent of LGB respondents to a survey conducted in 2009 reported hearing derogatory comments about sexual orientation and gender identity in their workplaces.¹⁵

Because there are few nationally representative surveys that gather data on employment discrimination against LGBT people, it is useful to look at results from national and local non-probability surveys for a more complete picture of the experiences of LGBT employees. Consistent with the nationally representative surveys, recent national and local non-probability surveys reveal a pattern of discrimination against LGBT people. Results from recent non-probability national surveys of LGBT people show the following:

- In 2005, 39% of LGBT respondents to a national survey had experienced employment discrimination at some point during the prior five-year period.¹⁶
- In 2009, 19% of LGBT staff and faculty surveyed at colleges and universities across the country reported that they had “personally experienced exclusionary, intimidating, offensive,” “hostile,” and/or “harassing” behavior on campus—in the year prior to interview alone.¹⁷
- In 2009, 44% of LGBT respondents to a national survey reported having faced some form of discrimination at work.¹⁸
- In 2010, 43% of LGB people surveyed in Utah reported that they have experienced discrimination in employment; 30% had experienced some form of workplace harassment on a weekly basis during the previous year.¹⁹
- In 2010, 27% of LG people surveyed in Colorado reported that they had experienced employment discrimination.²⁰

- In 2010, 30% of LGBT people surveyed in South Carolina reported that they had experienced employment discrimination based on their sexual orientation or gender identity.²¹

Table 1: Results of Recent Non-probability Surveys Measuring Employment Discrimination against LGBT People (2005-2010)

Study	Year(s) Data Collected	Population	Method	% Reporting Discrimination/Harassment
Lambda Legal & Deloitte Financial Advisory Services LLP (2005)	2005	LGBT people in U.S. (n = 1,205)	Non-probability sample	39% five-years period
Rankin, S. <i>et al.</i> (2010)	2009	LGBT faculty and staff in U.S. (n = 1,902)	Non-probability sample	19% one-year period
Out & Equal (2009)	2009	LGBT people in U.S. (n = 238)	Non-probability sample	44% over the lifetime
One Colorado (2010)	2010	LGBT people in Colorado (n = 4,600)	Non-probability sample	27% over the lifetime (LG only)
SC Equality (2010)	2010	LGBT people in South Carolina (n = 1000+)	Non-probability sample	30% over the lifetime
Rosky, C. <i>et al.</i> (2011)	2010	LGB people in Utah (n = 931)	Non-probability sample	43% over the lifetime

LGBT respondents were asked more specific questions about the type of discrimination they had experienced in nine non-probability studies. Results range among the studies indicating that:

- 8% to 17% were fired or denied employment on the basis of their sexual orientation;
- 10% to 28% were denied a promotion or given negative performance evaluations;
- 7% to 41% were verbally/physically abused or had their work space vandalized; and
- 10% to 19% reported receiving unequal pay or benefits.²²

Even higher percentages of transgender people report experiencing employment discrimination or harassment. When transgender respondents were surveyed separately in six non-probability

studies conducted between 1996 and 2006, the percentage reporting employment discrimination based on gender identity ranged from 20% to 57%.²³ Among the studies, rates of discrimination by type were within the following ranges:

- 13% to 56% were fired;
- 13% to 47% were denied employment;
- 22% to 31% were harassed; and
- 19% were denied a promotion based on their gender identity.²⁴

Results from more recent non-probability surveys are consistent with results from the older studies:

- A 2009 survey of transgender individuals in California revealed that 70% of respondents reported having experienced workplace discrimination related to their gender identity.²⁵
- In 2010, 67% of transgender respondents to a survey of LGBT Utahns reported that they had experienced discrimination in employment; 45% had experienced some form of workplace harassment on a weekly basis during the previous year.²⁶
- In 2010, 52% of transgender respondents from Colorado reported that they had experienced discrimination in employment.²⁷
- As recently as 2011, 78% of respondents to the largest survey of transgender people to date reported experiencing at least one form of harassment or mistreatment at work because of their gender identity; more specifically, 47% had been discriminated against in hiring, promotion, or job retention.²⁸
- Of respondents to the 2011 survey (above) from Massachusetts, 76% experienced harassment, mistreatment, or discrimination in employment. More specifically, 20% had lost a job, 39% were not hired for positions they had applied for, and 17% were denied promotions.²⁹

Table 2: Results of Recent Non-probability Surveys Measuring Employment Discrimination against Transgender People (2005-2010)

Study	Year(s) Data Collected	Population	Method	% Reporting Discrimination/Harassment
Transgender Law Center (2009)	2005	Transgender people in California (n = 646)	Non-probability sample	70% over the lifetime
One Colorado (2010)	2010	LGBT people in Colorado (n = 4,600)	Non-probability sample	52% of over the lifetime (transgender only)
Rosky, C. <i>et al.</i> (2011)	2010	Transgender people in Utah (n = 27)	Non-probability sample	67% over the lifetime

Grant, J. <i>et al.</i> (2011)	2008-009	Transgender people in U.S. (n = 6,450)	Non-probability sample	78% had experienced at least one form of harassment or mistreatment 47% discriminated against in hiring, promotion, or job retention
Herman, J. (2011)	2008-2009	Transgender people in Massachusetts	Non-probability sample	76% over the lifetime

These findings are also supported by surveys of the heterosexual co-workers of LGB people who reported witnessing sexual orientation discrimination in the workplace. Across these studies, 12% to 30% of heterosexual respondents in occupations, such as the legal profession, reported having witnessed anti-gay discrimination in employment.³⁰

B. Controlled Experiments

In controlled experiments, researchers change the environment to create scenarios that allow comparisons of the treatment of LGB people with treatment of heterosexuals. For example, these experiments have included sending out matched resumes and job applicants to potential employers with one resume or applicant indicating they are LGB and the other not. Seven out of 8 studies using controlled experiments testing employment or public accommodations settings have found evidence of sexual orientation discrimination.³¹

II. Courts, Legislatures, and Administrative Agencies Have Consistently Found a Continuing Pattern of Discrimination against LGBT People

Evaluating the research summarized above, as well as other evidence and examples of discrimination, courts, legislatures, administrative agencies, and scholars have consistently found a continuing pattern of discrimination against LGBT people.

A. Findings by Courts & Legal Scholars

A number of courts and legal scholars have acknowledged a history and pattern of discrimination against LGBT people. Every state and federal court that has substantively considered whether sexual orientation classifications should be presumed to be suspect for purposes of equal protection analysis – whatever they decided on that ultimate question – has recognized that LGBT people have faced a long history of discrimination.³² For example, in 2010, when declaring that an amendment to the California constitution limiting marriage to opposite-sex couples (Proposition 8) violated the U.S. Constitution, a district court in California found that “[g]ays and lesbians have been victims of a long history of discrimination,” and that “[p]ublic and private discrimination against gays and lesbians occurs in California and in the United States.”³³ In 2009, the California Supreme Court determined that classifications based on sexual orientation, including marriage restrictions, should be subject to heightened scrutiny under the equal protection clause of the California Constitution in part because “sexual orientation is a characteristic...that is associated with a stigma of inferiority and second-class citizenship, manifested by the group’s history of legal and social disabilities.”³⁴ Similarly, in 1995, the Sixth

Circuit concluded, “[h]omosexuals have suffered a history of pervasive irrational and invidious discrimination in government and private employment, in political organization and in all facets of society in general, based on their sexual orientation.”³⁵ In all, 19 state and federal courts have concluded, in 26 judicial opinions, that LGBT people have faced a history of discrimination in determining whether classifications based on sexual orientation should receive heightened scrutiny under equal protection clauses of the federal and state constitutions.³⁶ Dozens of legal scholars have reached the same conclusion.³⁷

Additionally, in July 2011 the Ninth Circuit cited a history of discrimination against gay and lesbian people in its decision to lift its stay of a district court ruling that held the military’s Don’t Ask, Don’t Tell policy unconstitutional under the First Amendment and the due process clause of the U.S. constitution.³⁸

B. Findings by Federal, State, and Local Governments

The federal government, as well as many state and local governments, have concluded that LGBT people have faced widespread discrimination in employment.

The Executive Branch of the federal government has recently acknowledged a history of discrimination against gay and lesbian people. In 2011, U.S. Attorney General Eric H. Holder, Jr. issued a statement that the President had concluded that classifications based on sexual orientation should receive heightened scrutiny for purposes of equal protection analysis, in part, “because of a documented history of discrimination” against LGB people.³⁹ In a letter to Congress accompanying the statement, Holder explained that the Executive Branch would take the position that sexual orientation classifications should receive heightened scrutiny in pending cases considering the constitutionality of the Defense of Marriage Act (DOMA) “[f]irst and most importantly, [because] there is, regrettably, a significant history of purposeful discrimination against gay and lesbian people, by governmental as well as private entities.”⁴⁰ In accordance with this determination, the Department of Justice submitted a brief in July 2011 in a case pending in U.S. District Court, *Golinski v. U.S. Office of Personnel Management*, explaining the Obama Administration’s conclusion that the DOMA unconstitutionally discriminates based on sexual orientation.⁴¹ In its analysis, the DOJ pointed to a “long and significant history of purposeful discrimination” by federal, state, and local governments, and by private parties.⁴²

In at least eight states, an Executive Order, statute, and/or an official document of a law-making body includes a specific finding of employment discrimination based on sexual orientation or gender identity. In at least five other states, government commissions that have undertaken studies of employment discrimination have also issued findings of sexual orientation and gender identity discrimination in their reports.⁴³ For example, the legislative findings in New York’s Sexual Orientation Non-Discrimination Act include the statement, “[M]any residents of this state have encountered prejudice on account of their sexual orientation, and that this prejudice has severely limited or actually prevented access to employment, housing, and other basic necessities of life, leading to deprivation and suffering.”⁴⁴ And, in 2007, the Iowa Civil Rights Commission said in support of an amendment adding sexual orientation and gender identity to the state anti-discrimination statute: “We no longer wish to see our children, neighbors, co-workers, nieces, nephews, parishioners, or classmates leave Iowa so they can work, prosper, live or go out to eat. Our friends who are gay or lesbian know the fear and pain of hurtful remarks,

harassment, attacks, and loss of jobs or housing simply because of their sexual orientation or gender identity.”⁴⁵

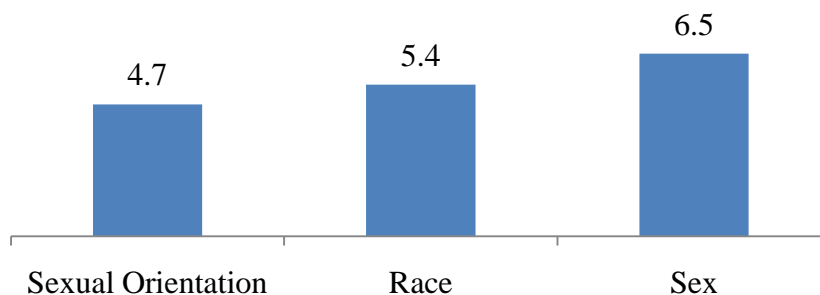
C. Administrative Complaints & Other Documented Examples of Discrimination

i. Administrative Complaints

Data from states that currently prohibit workplace discrimination on the basis of sexual orientation and/or gender identity demonstrate the continuing existence of discrimination against LGBT people and those perceived to be LGBT.⁴⁶ In 2002, the United States Government Accountability Office compiled a record of 4,788 state administrative complaints alleging employment discrimination on the basis of sexual orientation or gender identity filed between 1993 and 2001.⁴⁷ In 2008 and 2009, the Williams Institute conducted two studies of administrative complaints alleging sexual orientation and/or gender identity discrimination filed with state and local enforcement agencies. The 2008 study gathered all complaints of sexual orientation and gender identity employment discrimination filed in the 20 states that then had sexual orientation and/or gender identity non-discrimination laws. The study gathered a total of 6,914 complaints filed from 1999 to 2007.⁴⁸ The 2009 study focused on employment discrimination against public sector workers, and contacted the then 20 states and 203 municipalities with sexual orientation and gender identity non-discrimination laws and ordinances. The responding states and municipalities provided a record of 560 complaints filed with state agencies from 1999 to 2007, and 128 complaints filed with local agencies from as far back as 1982, by state and local government employees.⁴⁹ Because several state and local governments did not respond, or did not have a complete record of the data, this number most likely underrepresents the number of administrative complaints filed during that period on the basis of sexual orientation and/or gender identity by public sector employees.

Two other studies by the Williams Institute demonstrate that when the number of complaints is adjusted for the population size of workers that have a particular minority trait, the rate of complaints filed with state administrative agencies alleging sexual orientation discrimination in employment is comparable to the rate of complaints filed alleging race or sex discrimination.⁵⁰

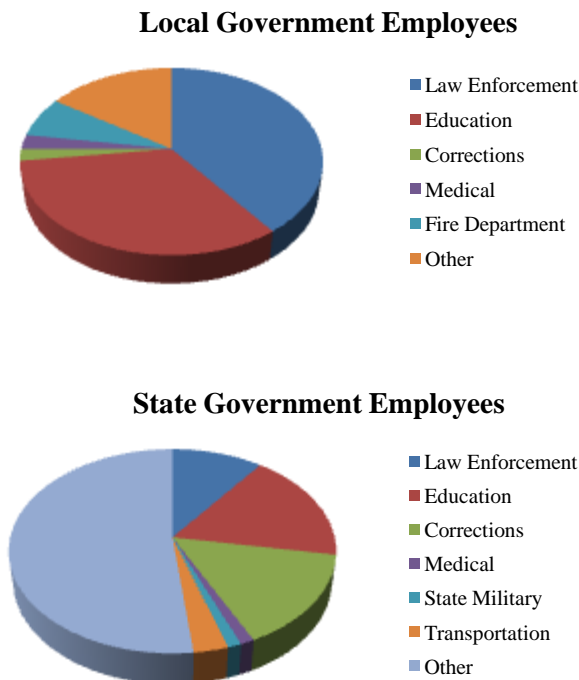
Figure 2: Anti-Discrimination Administrative Complaints for Sexual Orientation, Race, and Sex, United States (Per 10,000)



ii. Other Documented Examples of Discrimination

The 2009 Williams Institute report focused on discrimination in the public sector found more than 380 documented examples of workplace discrimination by state and local employers against LGBT people from 1980 through 2009.⁵¹ These examples had been culled from court opinions, administrative complaints, complaints to community-based organizations, academic journals, newspapers and other media, and books. The examples came from 49 of the 50 states and every branch of state government: legislatures, judiciaries, and the executive branch. Many of the workers in the examples had been subject to verbal harassment. The following is a very limited sample of what LGBT people reported having been called in the workplace: an officer at a state correctional facility in New York, “pervert” and “homo;” a lab technician at a state hospital in Washington, a “dyke;” and an employee of New Mexico’s Juvenile Justice System, a “queer.” There are countless instances of the use of “fag” and “faggot” in the report. The reported incidents frequently also included physical violence. For example, a gay employee of the Connecticut State Maintenance Department was tied up by his hands and feet; a firefighter in California had urine put in her mouthwash; a transgender corrections officer in New Hampshire was slammed into a concrete wall; and a transgender librarian at a college in Oklahoma had a flyer circulated about her declaring that God wanted her to die.⁵² Many employees reported that, when they complained about this kind of harassment and requested help, they were told that it was of their own making, and no action was taken.⁵³

Figure 3: Public Sector Employees Represented in the 380 Documented Examples of Discrimination, by Occupation, United States



iii. Indications of Underreporting

The record of discrimination in court cases, administrative complaints, and other documented examples should not be taken as a complete record of discrimination against LGBT people by state and local governments.⁵⁴ First, not all of the administrative agencies and organizations that enforce anti-discrimination laws responded to the researchers' requests.⁵⁵ Second, several academic studies have shown that state and local administrative agencies often lack the resources, knowledge and willingness to consider sexual orientation and gender identity discrimination complaints.⁵⁶ Similarly, legal scholars have noted that courts and judges have often been unreceptive to LGBT plaintiffs and reluctant to write published opinions about them, reducing the number of court opinions and administrative complaints.⁵⁷ Third, many cases settle before an administrative complaint or court case is filed. Unless the parties want the settlement to be public, and the settlement is for a large amount, it is likely to go unreported in the media or academic journals.⁵⁸ Fourth, LGBT employees are often reluctant to pursue claims for fear of retaliation or of “outing” themselves further in their workplace. For example, in a study published in 2009 by the Transgender Law Center, only 15% of those who reported that they had experienced some form of discrimination had filed a complaint.⁵⁹ Finally, numerous studies have documented that many LGBT people are not “out” in the workplace (see section II.A. *infra* for a review of research showing that many LGBT people are not out in the workplace).

III. Discrimination Has a Negative Impact on LGBT People

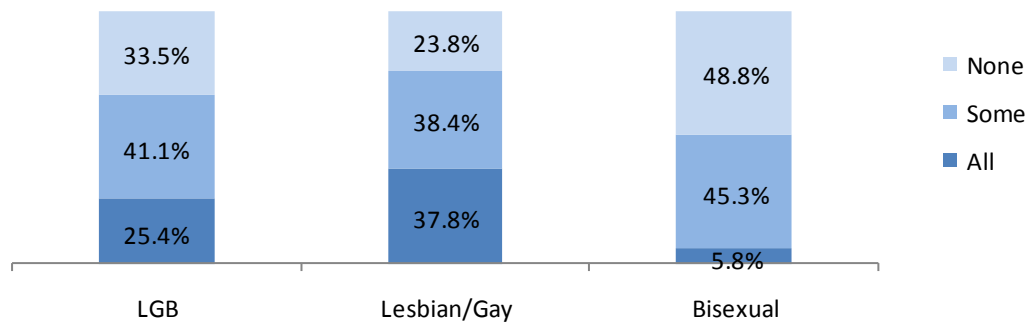
Research has documented not only the pervasiveness of sexual orientation and gender identity discrimination but also the negative impacts of discrimination on LGBT people. Because of discrimination, and fear of discrimination, many LGBT employees hide their identities, are paid less and have fewer employment opportunities than non-LGBT employees. Research has also documented that such discrimination, as the expression of stigma and prejudice, also exposes LGBT people to increased risk for poorer physical and mental health.

A. Concealing LGBT Identity in the Workplace

Numerous studies have documented that many LGBT people conceal their sexual orientation and/or gender identity in the workplace. Results from recent studies include:

- More than one-third of LGB respondents to the GSS reported that they were not out to anyone at work, and only 25% were out to all of their co-workers.⁶⁰
- Bisexual respondents to the GSS were much less likely to be out to all of their co-workers than gay and lesbian respondents (6% vs. 38% respectively).
- A 2009 non-probability survey conducted across the U.S. found that 51% of LGB employees did not reveal their LGBT identity to most of their co-workers.⁶¹
- A 2011 study found that 48% of LGBT white-collar employees were not open about their LGB identity at work.⁶²

Figure 4: How Many Co-Workers Know That You are Gay, Lesbian, or Bisexual, General Social Survey, 2008



Surveys have found that fear of discrimination is the reason many LGB employees choose to hide their LGB identity at work. Results from recent studies include:

- A 2005 national survey found that of LGB respondents who were not out at work, 70% reported that they concealed their sexual orientation because they feared risk to employment security or harassment in the workplace.⁶³
- A national probability survey conducted in 2009 found that 28% of closeted LGB employees who were not out in the workplace concealed their sexual identity because they felt that it may be an obstacle to career advancement and 17% believed they might be fired. Thirteen percent of closeted LGB respondents and 40% of transgender respondents were not open about their sexual orientation or gender identity in the workplace because they feared for their personal safety.⁶⁴
- Over 26% of LGB respondents, and 37% of transgender respondents, to a 2010 survey of LGBT people in Utah reported that they fear discrimination by their current employer.⁶⁵

The fear these respondents reported of being exposed to discrimination is in line with data showing that people who are out in the workplace are more likely to be discriminated against than people who conceal their sexual identity in the workplace (see section I.A. *supra*).

Studies have found that even in the absence of actual discrimination, staying closeted at work for fear of discrimination can have negative effects on LGBT employees. Results from recent studies include:

- A 2007 study of LGB employees found that those who most feared that they would be discriminated against if they revealed their sexual orientation in the workplace had less positive job and career attitudes, received fewer promotions, and reported more physical stress-related symptoms than those who were less fearful of discrimination.⁶⁶
- A 2011 survey of 2,800 LGBT white-collar employees showed that only one-third of those employees who were not open about their LGBT identity at work were happy in their careers. Of those employees who were open about their LGBT identity, two-thirds reported being content in the workplace.⁶⁷
- The 2011 study of white-collar employees also found that compared with employees who were out at work, employees who were not out at work were more likely to feel isolated and uncomfortable “being themselves,” were 40% less likely to trust their

- employer, and were less likely to achieve senior management status (28% who were not out had achieved senior management status, compared with 71% who were out).⁶⁸
- Among the white-collar employees who felt isolated at work, closeted employees were 73% more likely to say they planned to leave their companies within three years.⁶⁹
 - Further, closeted respondents were more likely to feel stalled in their careers and unhappy with their rate of promotion. Those LGBT employees who were frustrated with their career advancement were three times more likely to say they planned to leave their company within the next year.⁷⁰
 - Additionally, the white-collar employee respondents who were out were more likely to think that LGBT people are treated unfairly because of their LGBT identity than those who were not out (20% of those not out, compared with 5% of those who were out).⁷¹

B. Wage and Employment Disparities

Twelve studies conducted over the last decade show that gay male workers are paid less on average than their heterosexual male co-workers with the same productivity characteristics, leading researchers to attribute the disparity to different treatment of workers by sexual orientation.⁷² All of these studies show a significant pay gap for gay men when compared to heterosexual men who have the same productive characteristics.⁷³ The wage gap identified in these studies varies between 10%-32% of the heterosexual men's earnings.⁷⁴

Census data analyses show that men in same-sex couples earn less than married men in 47 states and the District of Columbia.⁷⁵ Women in same-sex couples generally earn the same as or more than women in opposite-sex marriages, but less than either coupled gay men or men in opposite-sex marriages.⁷⁶

While no detailed wage and income analyses of the transgender population have been conducted to date, six non-probability surveys of the transgender population conducted between 1999 and 2005 found that 6%-60% of respondents reported being unemployed, and 22%-64% of the employed population earned less than \$25,000 per year.⁷⁷ Transgender respondents to a 2011 national survey were unemployed at twice the rate of the general population, and 15% reported a household income of under \$10,000 per year.⁷⁸ The unemployment rate for transgender people of color was nearly four times the national unemployment rate.⁷⁹ In response to a 2010 survey, 25% of transgender respondents in Colorado reported a yearly income of less than \$10,000.⁸⁰

C. Impact on Mental and Physical Health

Research shows that experiencing discrimination can affect an individual's mental and physical health.⁸¹ The *minority stress model* suggests that prejudice, stigma, and discrimination create a social environment characterized by excess exposure to stress, which, in turn, results in health disparities for sexual minorities compared with heterosexuals.⁸²

In considering experiences both in and outside of the workplace, studies of LGB populations show that LGB people suffer psychological and physical harm from the prejudice, stigma, and discrimination that they experience. Research demonstrating the ill effects of a homophobic social environment has been recognized by public health authorities including the U.S. Department of Health and Human Services in *Healthy People 2010* and *Healthy People 2020*,

which set goals and objectives designed to improve the health of people in the United States, through health promotion and disease prevention.⁸³ Healthy People 2010 identified the gay and lesbian population, among groups targeted to reduce health disparities in the United States.⁸⁴ In explaining the reason for the inclusion of the gay and lesbian population as one of the groups requiring special public health attention, the Department of Health and Human Services noted, “The issues surrounding personal, family, and social acceptance of sexual orientation can place a significant burden on mental health and personal safety.” This conclusion was reiterated by the Institute of Medicine of the National Academies, an independent body of scientists that advises the federal government on health and health policy matters, in its recent report on *The Health of Lesbian, Gay, Bisexual and Transgender People*, where it said “LGBT people . . . face a profound and poorly understood set of . . . health risks due largely to social stigma.”⁸⁵

Research about mental and physical health outcomes of LGBT people support the minority stress model.⁸⁶ For example, a 2009 survey conducted by the Massachusetts Department of Public Health of state residents found that 83% of heterosexual respondents indicated they were in excellent or very good health compared to 78% of gay men or lesbians, 74% of bisexual respondents, and 67% of transgender respondents.⁸⁷ A number of studies have demonstrated links between minority stress factors and physical health outcomes, such as immune function, AIDS progression, and perceived physical well-being.⁸⁸ For example, studies examined the impact of concealing one’s sexual orientation as a stressor. Thus, HIV-positive but healthy gay men were followed up for 9 years to assess factors that contribute to progression of HIV (e.g., moving from asymptomatic HIV infection to a diagnosis with an AIDS defining disease, such as pneumonia). The researchers showed that HIV progressed more rapidly among men who concealed their gay identity than those who disclosed it. This was true even after the investigators controlled for the effects of other potentially confounding factors, like health practices, sexual behaviors, and medication use.⁸⁹ More recent studies, conducted in the context of availability of more effective HIV medications than were available to the men in the 1996 study, found, similarly, that concealment of gay identity was associated with lower CD4 count, a measure of HIV progression.⁹⁰

High levels of perceived discrimination or fear of discrimination among LGBT people have been linked to higher prevalence of psychiatric disorders, psychological distress,⁹¹ depression,⁹² loneliness, and low self-esteem.⁹³ And experiences of anti-gay verbal harassment, discrimination, and violence have been associated with lower self-esteem, higher rates of suicidal intention,⁹⁴ anxiety, anger, post-traumatic stress, other symptoms of depression,⁹⁵ psychological distress,⁹⁶ mental disorder, and deliberate self-harm.⁹⁷

Discrimination in the employment context specifically has been found to negatively affect the well-being of LGBT people. Results from studies focused on discrimination in the workplace include:

- LGB employees who had experienced discrimination had higher levels of psychological distress and health related-problems.⁹⁸ They also were less satisfied with their jobs and were more likely to contemplate quitting and to have higher rates of absenteeism.⁹⁹
- A 2010 study indicated that, although generally there are no differences between LGBT workers and non-LGBT workers in job performance,¹⁰⁰ if LGBT employees are afraid of discrimination or preoccupied with hiding their LGBT identity, their cognitive functioning may be impaired.¹⁰¹

- A 2009 national survey found that many LGBT employees reported feeling depressed, distracted, and exhausted, and avoided people and work-related social events as a result of working in an environment that was not accepting of LGBT people. Some employees reported that the lack of acceptance in their workplace had caused them to look for other jobs or to stay home from work.¹⁰²
- Conversely, a 2008 study found that supervisor, coworker, and organizational support for LGB employees had a positive impact on employees in terms of job satisfaction, life satisfaction, and outness at work.¹⁰³

III. Conclusion

Despite the variations in methodology, context, and time period in the studies reviewed in this report, the evidence demonstrates a consistent pattern: sexual orientation and gender identity-based discrimination are common in many workplaces across the country and in both the public and private sectors. Further, an emerging body of research shows that discrimination has negative impacts on LGBT employees both in terms of physical and emotional health, wages and opportunities, job satisfaction, and productivity.

Endnotes

¹ More than 15 federal and state courts and a number of legal scholars have concluded that sexual orientation is not related to an individual's ability to contribute to society or perform in the workplace. THE BRAD SEARS, NAN HUNTER, & CHRISTY MALLORY, WILLIAMS INST., DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION & GENDER IDENTITY IN STATE EMPLOYMENT 4-1 (2009) [hereinafter THE WILLIAMS INST., DOCUMENTING DISCRIMINATION]. Indeed, every court that has considered this criteria when determining whether sexual orientation is a suspect class has reached the same conclusion. *Id.*, at 2. For example, in 2008, the Connecticut Supreme Court found that "the characteristic that defines the members of this group—attraction to persons of the same sex—bears no logical relationship to their ability to perform in society, either in familial relations or otherwise as productive citizens. *Kerrigan v. Comm'r of Pub. Health*, 957 A.2d 407, 432 (2008) (holding that the Connecticut Constitution protects the right of same sex couples to marry). Similarly, in 2004, a justice on the Montana Supreme Court, found that "there is no evidence that gays and lesbians do not function as effectively in the workplace or that they contribute any less to society than do their heterosexual counterparts." *Snetsinger v. Mont. Univ. Sys.*, 325 Mont. 148, 162 (2004) (Nelson, J., concurring).

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Gay and Transgender People Face High Rates of Workplace Discrimination and Harassment

Data Demonstrate Need for Federal Law

Crosby Burns and Jeff Krehely | May 2011

Gay and transgender individuals continue to face widespread discrimination in the workplace.* Studies show that anywhere from 15 percent to 43 percent of gay people have experienced some form of discrimination and harassment at the workplace. Moreover, a staggering 90 percent of transgender workers report some form of harassment or mistreatment on the job. These workplace abuses pose a real and immediate threat to the economic security of gay and transgender workers.

Congress should work quickly to pass the Employment Non-Discrimination Act, or ENDA, to ensure that all Americans are judged in the workplace based on their skills, qualifications, and the quality of their work. Right now, too many of our country's gay and transgender workers are being judged on their sexual orientation and gender identity—factors that have no impact on how well a person performs their job.

The numbers

The Williams Institute on Sexual Orientation Law and Public Policy aggregated a number of surveys to determine the extent to which gay and transgender workers experience discrimination and harassment in the workplace. Their findings illustrate that discrimination and harassment are pervasive:

- **Fifteen percent to 43 percent of gay and transgender workers have experienced some form of discrimination on the job.**
- Eight percent to 17 percent of gay and transgender workers report being passed over for a job or fired because of their sexual orientation or gender identity.
- Ten percent to 28 percent received a negative performance evaluation or were passed over for a promotion because they were gay or transgender.
- Seven percent to 41 percent of gay and transgender workers were verbally or physically abused or had their workplace vandalized.

* In this column, the term gay is used as an umbrella term for people who identify as lesbian, gay, or bisexual.

Straight coworkers also attest to the presence of discrimination and harassment against LGBT workers. The Williams Institute's report found that 12 percent to 30 percent of straight workers witnessed discrimination in the workforce based on sexual orientation.

Controlled experiments have found consistent evidence of workplace discrimination as well. When researchers send two sets of matched resumes to major employers, and one indicates the applicant is gay, employers warmly receive "gay" resumes far less often than "straight" resumes. Seven out of eight of these studies confirmed the existence of antigay employment discrimination.

Transgender individuals encounter workplace discrimination and harassment at even higher rates than gays and lesbians. Earlier this year, the National Center for Transgender Equality and the National Gay and Lesbian Task Force [released](#) a comprehensive study on transgender discrimination that revealed near universal problems at the workplace:

- **Ninety percent of transgender individuals have encountered some form of harassment or mistreatment on the job.**
- Forty-seven percent of workers have experienced an adverse job outcome because they are transgender. This includes:
 - Forty-four percent who were passed over for a job
 - Twenty-three percent who were denied a promotion
 - And 26 percent who were fired because they were transgender

The stories behind the numbers

Behind these statistics are the heartbreaking stories of everyday Americans losing their jobs based on characteristics that have nothing to do with their job performance.

Vandy Beth Glenn [lost her job](#) with the Georgia General Assembly when her boss fired her because she was transgender:

[My boss] told me I would make other people uncomfortable, just by being myself. He told me that my transition was unacceptable. And over and over, he told me it was inappropriate. Then he fired me. I was escorted back to my desk, told to clean it out, then marched out of the building... I was devastated.

Brook Waits was gainfully employed in Dallas, Texas until her manager [fired her](#) immediately after she saw a picture on Brook's cell phone of Brook and her girlfriend kissing on New Year's Eve:

I didn't lose my job because I was lazy, incompetent, or unprofessional. Quite the contrary, I worked hard and did my job very well. However that was all discarded when my boss discovered I am a lesbian. In a single afternoon, I went from being a highly praised employee, to out of a job.

And officer Michael Carney was denied reinstatement as a police officer in Springfield, Massachusetts because he told his supervisors that he was gay:

I'm a good cop. But I've lost two and a half years of employment fighting to get that job back because I'm gay... I'm proud to be Irish-American. I'm proud to be gay, and I'm proud to be a cop in Springfield, MA.

The economic consequences of discrimination

Gay and transgender individuals suffer from socioeconomic inequalities in large part due to pervasive discrimination in the workplace. Discrimination directly causes job instability and high turnover, resulting in greater unemployment and poverty rates for gay and transgender people, as well as the wage gap between gay and straight workers.

Consider that gay men earn 10 percent to 32 percent less than similarly qualified heterosexual males. Older gay and lesbian adults experience higher poverty rates than their heterosexual counterparts. And transgender individuals are twice as likely to be unemployed and are four times as likely to live in poverty. Nearly 20 percent have been or are currently homeless.

Companies should care about these numbers if they are in the business of boosting profits. Time and again, researchers have demonstrated that discrimination diminishes productivity, job satisfaction, and the mental and physical health of all employees.

Enacting legislation that provides real protection

Gay and transgender individuals' legal and social standing is improving despite their unfair and unequal treatment in the workplace. An increasing number of states, municipalities, and businesses have adopted nondiscrimination protections that prohibit discrimination based on sexual orientation and gender identity.

The public, too, has increasingly voiced support for employment protections and workplace fairness for gay and transgender workers. And more and more gay workers are coming out at the workplace, a sign that workplace climates have become more accepting or at least tolerant overall.

Nevertheless, gay and transgender people continue to lack full workplace protections afforded to women, people of color, veterans, seniors, and the disabled. Under federal law it is still legal to fire someone for being gay or transgender. Where state or local laws exist, gay and transgender workers file discrimination complaints at comparable rates and in some case higher rates than other protected classes such as gender and race. But Congress has thus far failed to incorporate gay and transgender workers into employment laws that shield these and other groups from workplace discrimination nationwide.

Lawmakers in both chambers of the 112th Congress recently introduced ENDA, which would finally bring full workplace protections to nearly all of our nation's workforce. If passed, gay and transgender workers would have similar protections that were afforded to other minority groups with the passage of the Civil Rights Act of 1964 and the Americans with Disabilities Act. And while comprehensive in scope, ENDA explicitly exempts religious organizations and small businesses with less than 15 employees, prohibits preferential treatment for gay and transgender workers, and does not require employers to offer domestic partner benefits to employees' same-sex partners.

ENDA's premise is simple: All Americans deserve equal treatment in the workplace regardless of sexual orientation or gender identity. Lawmakers should swiftly enact ENDA to level the playing field for all American workers, gay or straight, transgender or not.

Gay and transgender individuals comprise a significant part of the American labor force. Every day, they go to work to make an honest living to support themselves and their families, and help our economy grow along the way. But far too many go to work with the fear that they will lose their job based on factors that have nothing to do with their job performance and ability.

Discrimination has no place in our society or in our workplaces. Our nation can and should do better for all our workers.

Crosby Burns is a Special Assistant and Jeff Krehely is Director of the LGBT Research and Communications Project at the Center for American Progress.



Memo

To: Interested Staff at the Departments of Justice and Labor
From: ACLU Washington Legislative Office and LGBT Project Staff
Date: September 26, 2011
Re: LGBT Employment Discrimination Cases Involving Federal Contractor Companies

*NOTE – This list is not intended to be exhaustive, but rather to highlight several notable examples of cases (listed in chronological order) in which courts denied defendant motions for summary judgment or otherwise allowed claims of LGBT employment discrimination to go forward against companies that are federal contractors. These examples likely represent a fraction of what is actually going on, as many decisions are unreported, cases settle prior to decisions being issued, and many acts of discrimination may have occurred in states that do not have employment discrimination laws covering LGBT people, so no one would have sued.

Rentos v. Oce-Office Sys., 95 CIV. 7908 LAP, 1996 WL 737215 (S.D.N.Y. Dec. 24, 1996)

- Defendant – Oce-Office Systems
- Facts in Plaintiff Brief – Plaintiff Rentos was hired after she started but had not yet completed her transition. Defendant-employer first became aware of her sex change procedure when she requested that the company's group health insurance plan cover ongoing medical expenses related to her transition. Rentos was subsequently subjected to ongoing verbal harassment at work and other forms of abuse (e.g., the company attempted to fire her assistant; she was reassigned to another location; and she was assigned an inexperienced team). When plaintiff took three weeks off for her procedure, defendant terminated her employment. Plaintiff filed suit in state court alleging sexual harassment and sexual discrimination.
- Known Outcome – Court held that transgender individuals are covered under New York State and New York City human rights law and that plaintiff had alleged viable claims.

Bogdahn v. Hamilton Standard Space Sys. Int'l Inc., 46 Conn. Supp. 153, 741 A.2d 1003 (Conn. Super. Ct. 1999)

- Defendant – Hamilton Standard Space Systems International, Inc.
- Facts in Plaintiff Brief – Co-workers harassed Pelletier on basis of his sexual orientation. Co-workers called him "faggot," and men's restrooms at work were defaced with homophobic epithets. Pelletier filed complaint with state human rights commission and subsequently

committed suicide. Estate of Pelletier brought suit against Hamilton, alleging that Hamilton failed to protect Pelletier from sexual orientation discrimination in violation of state law.

- Known Outcome – Hamilton and individual defendants moved to strike certain counts from the plaintiff’s suit, on the grounds that the plaintiff failed to allege certain claims under state law, that state law did not grant plaintiff private cause of action, and that one party was not a proper defendant. The court denied the motion.
- Company Update – In 1999, Hamilton Standard and Sunstrand Corp. merged forming Hamilton Sunstrand. On the company’s logo (found on its website) says, “A United Technologies Company.” UTC is the fifth largest government contractor.

Erdmann v. Tranquility Inc., 155 F. Supp. 2d 1152 (N.D. Cal. 2001)

- Defendant – Tranquility, Inc.
- Facts in Plaintiff Brief – Supervisor allegedly told plaintiff, a gay man, that his sexual orientation was sinful on multiple occasions. Plaintiff resigned and filed suit alleging discrimination on the basis of sexual orientation, in violation of the California Fair Employment and Housing Act.
- Known Outcome – Court denied motion for summary judgment on the ground that genuine issues of material fact existed about whether supervisor’s comments created a hostile work environment.

Tenney v. Gen. Elec. Co., 2002-Ohio-2975, 89 Fair Empl. Prac. Cas. (BNA) 249 (Ohio Ct. App. 2002)

- Defendant – General Electric Co.
- Facts in Plaintiff Brief – Plaintiff, a gay man, alleged that co-workers made disparaging remarks about his sexual orientation, threatened him, and implied that he had HIV/AIDS. Plaintiff filed suit alleging intentional infliction of emotional distress and illegal discrimination on the basis of sexual orientation.
- Known Outcome – Court held that Ohio law did not prohibit discrimination on the basis of sexual orientation but that plaintiff alleged viable claim of intentional infliction of emotional distress.

Lederer v. BP Products N. Am., 04 CIV. 9664, 2006 WL 3486787 (S.D.N.Y. Nov. 20, 2006)

- Defendant – BP Products North America
- Facts in Plaintiff Brief – Plaintiff, an HIV-positive gay man, alleged that supervisor at a gas-station convenience store made disparaging remarks about gay men. On one occasion, supervisor demanded a doctor’s note explaining plaintiff’s absence, leading plaintiff to reveal his HIV-positive status and prompting supervisor to make more disparaging remarks. Plaintiff was terminated and filed suit against employer, alleging wrongful termination in violation of, among others, state law and the Americans with Disabilities Act.
- Known Outcome – Court denied defendant’s motion for summary judgment.
- Company Update – “BP PLC” is a federal government contractor

Rux v. Starbucks Corp., 2:05CV02299MCEEFB, 2007 WL 1470134 (E.D. Cal. May 18, 2007)

- Defendant – Starbucks Corp.
- Facts in Plaintiff Brief – Plaintiff alleged that supervisor at Starbucks made disparaging remarks about her sexual orientation; without cause, refused to write her a letter of recommendation for a promotion within the company; and issued disciplinary action against plaintiff without justification. Plaintiff complained repeatedly to management. Management later found out that plaintiff and co-worker had been in committed, same-sex relationship. Management informed plaintiff that the relationship was in violation of company policy against romantic involvement between two close co-workers. Plaintiff was subsequently let go from company, and she filed suit alleging discrimination on the basis of sexual orientation, in violation of the California Fair Employment and Housing Act.
- Known Outcome – Court denied in part defendant’s motion for summary judgment, holding that plaintiff had established prima facie case of discrimination on the basis of sexual orientation. (The court awarded summary judgment to defendant on claim of negligent infliction of emotional distress.)

Patino v. Birken Mfg. Co., CV054016120S, 2009 WL 1624365 (Conn. Super. Ct. May 15, 2009)

- Defendant - Birken Manufacturing Co.
- Facts in Plaintiff Brief – Co-workers often taunted plaintiff, a gay man, with epithets about his sexual orientation. Plaintiff notified management, but management only relocated some of the offending co-workers. Plaintiff filed complaint with state human rights commission on several counts and proceeded to jury trial on one of those counts. Jury awarded plaintiff economic and noneconomic damages.
- Known Outcome – Court held that employer could be held liable for failing to prevent employees from creating a hostile work environment. Court denied employer’s motion for remittitur, holding that jury’s award for noneconomic damages did not shock the conscience.

Prowel v. Wise Bus. Forms, Inc., 579 F.3d 285 (3d Cir. 2009)

- Defendant – Wise Business Forms, Inc.
- Facts in Plaintiff Brief – Co-workers taunted plaintiff Prowel for his effeminate mannerisms and later, after finding out that he was gay, taunted him about his sexual orientation. Prowel attempted to meet with supervisors but harassment was not resolved. Prowel subsequently exhausted remedies through state equal employment opportunity commission and sued employer under Title VII and state human rights law.
- Known Outcome – Court vacated in part district court ruling awarding employer summary judgment. Court remanded to district court, holding that there were genuine issues of material fact regarding whether or not harassment was motivated by plaintiff’s sexual orientation or plaintiff’s effeminate mannerisms.

E.E.O.C. v. BOH Bros. Const. Co., LLC, 768 F. Supp. 2d 883 (E.D. La. 2011)

- Defendant – BOH Bros. Const. Co., LLC
- Facts in Plaintiff Brief – Male employee Woods filed Title VII claim with the Equal Employment Opportunity Commission (EEOC) alleging that a supervisor harassed him. Supervisor allegedly called Woods names, including “faggot,” “pussy,” and “princess,” and joking that Woods was gay and feminine. Woods alleged supervisor exposed himself to Woods several times, while urinating in public. EEOC filed sexual harassment and retaliation suit on Woods’ behalf. Woods was subsequently let go. (Note that Woods’ actual sexual orientation is not mentioned in the opinion.)
- Known Outcome – Court denied defendant’s motion to dismiss plaintiff’s claims, holding that genuine issues of material fact existed about whether harassment was “because of” sex (i.e., sex stereotyping).

Swift v. Countrywide Home Loans, Inc., 770 F. Supp. 2d 483 (E.D.N.Y. 2011)

- Defendant – Countrywide Home Loans, Inc.
- Facts in Plaintiff Brief – Plaintiff alleged that supervisor made disparaging remarks about his sexual orientation on numerous occasions. Although he reported the incidents to management, the company took no corrective action. Company-wide layoffs became necessary, and plaintiff’s employment was terminated. Plaintiff filed sued alleging discrimination on the basis of sex stereotyping and illegal retaliation under Title VII.
- Known Outcome – Court held that, while plaintiff could not allege sex stereotyping claim as a “bootstrap” to allege discrimination on basis of sexual orientation, plaintiff alleged viable claim of illegal retaliation.
- Company Update – “Countrywide Home Loans, Inc.” is not a federal contractor, however, “Countrywide Home Loans Servicing LP” is a federal contractor.



DEGREES OF EQUALITY

A NATIONAL
STUDY
EXAMINING
WORKPLACE
CLIMATE
FOR LGBT
EMPLOYEES



HUMAN
RIGHTS
CAMPAIGN
FOUNDATION

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The Human Rights Campaign Foundation believes that all Americans should have the opportunity to care for their families, earn a living, serve their country and live open, honest and safe lives at home, at work and in their community.

Through pioneering research, advocacy and education, the HRC Foundation pursues practices and policies that support and protect lesbian, gay, bisexual and transgender individuals and their families in education, healthcare, corporate, public and private organizations across the country.

The HRC Foundation also provides accurate, timely research and information vital to the LGBT community, straight allies and policymakers on a wide range of issues, including: family law, senior health and housing, parenting, schools, workplace policies and law, religion, civil unions, marriage, adoption, financial planning and healthcare.

Our programs, which include the Workplace Project, the Religion and Faith Program, the Coming Out Project, the Family Project and Youth and Campus Outreach, are possible through the generous gifts of individual donors and corporate and private philanthropic foundations. Contributions to the HRC Foundation are tax-deductible to the fullest extent of the law. See www.hrc.org/foundation for more.

The Human Rights Campaign Foundation encourages LGBT Americans to live their lives openly and seeks to change the hearts and minds of Americans to the side of equality. The HRC Foundation is a nonprofit, tax-exempt 501(c)(3) organization.

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DEGREES OF EQUALITY

**A NATIONAL
STUDY
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CLIMATE
FOR LGBT
EMPLOYEES**

A HUMAN RIGHTS CAMPAIGN FOUNDATION REPORT

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EXECUTIVE SUMMARY

In recent years, businesses have engaged in sustained efforts to implement policies aimed at creating safe and productive workplaces for lesbian, gay, bisexual and transgender employees. The majority of Fortune 500 companies have prohibited discrimination based on sexual orientation since 1995 and have offered partner benefits since 2006. More than one-third prohibit discrimination based on gender identity. The number of companies that receive top ratings on the Human Rights Campaign Foundation's Corporate Equality Index, the pre-eminent benchmark on LGBT policy, rose from just 13 in 2002 to 305 in the 2010 report. These policies have had a positive impact on productivity, recruitment and retention of a diverse and motivated work force.

Nevertheless, significant numbers of LGBT employees continue to experience a negative workplace climate that appears to be unaffected by organizational policies and which varies by location, manager and work team. **The majority of LGBT workers (51 percent) hide their LGBT identity to most at work**, the simplest indication that more work needs to be done to translate inclusive policies into an inclusive climate. Hiding one's LGBT identity is even more pronounced among younger workers. **Only 5 percent of LGBT employees ages 18 to 24 say they are totally open at work**, compared to more than 20 percent in older age cohorts.

Employees who are not open at work experience more negative outcomes from their workplace environment that affect productivity, retention and professional relationships. For example, **54 percent of LGBT employees who are not open to anyone at work report lying about their personal lives**, compared to 21 percent of employees open about their LGBT identity. LGBT workers' inability to participate honestly in everyday conversations hinders trust and cohesion with their co-workers and superiors.

An employee's sexual orientation or gender identity are often unavoidable in casual, non-work-related conversations among co-workers. **A total of 89 percent of LGBT employees say conversations about social lives come up at least once a week; 80 percent confront conversations involving spouses, relationships and dating at least once per week**; and, 50 percent say the topic of sex arises at least once a week. These frequent conversations are the most likely to make LGBT employees feel uncomfortable: Fewer than half feel very comfortable talking about any of these topics.

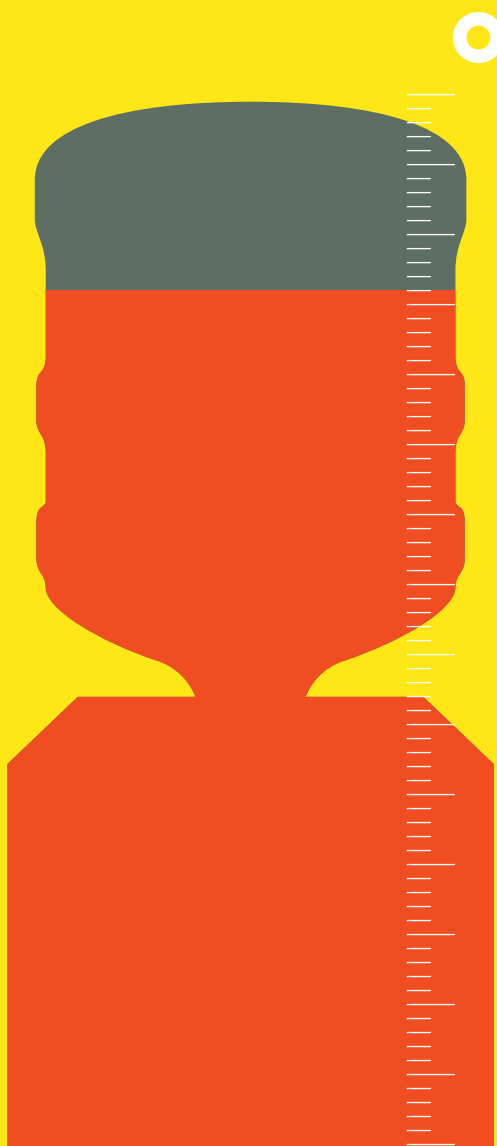
Derogatory comments and jokes still happen at work and are a major indicator that it is unsafe to be open about their sexual orientation or gender identity at work. A total of **58 percent of LGBT workers say someone at work makes a joke or derogatory comment about LGBT people at least once in a while**. Similarly, jokes and derogatory comments about other minority groups are equally indicative of a negative climate. About **two-thirds (62 percent) of LGBT employees say negative comments about minority groups are made at least once in a while at work**.

Many LGBT workers also view their employer’s use of the words “spouse” or “partner” as an indication of whether or not a climate is open and accepting. **More than half of LGBT employees (51 percent) say their employer rarely (13 percent) or never (38 percent) uses terms such as “partner” or “significant other”** instead of or alongside “spouse” in communications.

While non-discrimination policies that include sexual orientation and gender identity are fundamental to establishing a productive workplace climate, their presence alone is not an indicator of employee experience. Even with inclusive employment policies, significant numbers of employees report negative consequences of an unwelcoming environment for LGBT employees. Moreover, **the vast majority of LGBT workers do not report instances when they hear an anti-LGBT remark to human resources or management. On average, 67 percent ignore it or let it go, 9 percent raise the issue with a supervisor and only 5 percent go to human resources**

While these issues can have a costly impact on LGBT employees, most workplaces can improve with targeted assessments and teachings around everyday opportunities to signal an inclusive workplace. Providing an anonymous and confidential method for employees to identify as LGBT, along with other demographic information, allows businesses to gauge success and target areas for improvement. **Seven in 10 (72 percent) LGBT employees say they would self-disclose their sexual orientation or gender identity along with other demographic information in an anonymous human resources survey.**

The HRC Foundation has devised and piloted the first-ever LGBT workplace climate assessment tool to assist organizations in identifying LGBT employees and improving their work environments. In addition, the HRC Foundation is developing a series of toolkits that focus on three core tiers of influence in an organization — senior leadership, human resources and diversity and inclusion professionals; middle managers and supervisors; and individual employees — designed to help improve workplace climate for LGBT employees.



INTRODUCTION



To understand and bridge the gap between policy and real-life experience, the HRC Foundation embarked on an ambitious research plan to study how LGBT identity surfaces and unfolds in the workplace, how environment can affect the retention and productivity of all employees and how organizations can identify and address opportunities to improve climate.

In collaboration with Lake Research Partners, the HRC Foundation conducted 14 focus groups to examine current LGBT workplace experiences and identify key elements of workplace climate. Since there is no uniform LGBT experience, focus groups were constructed around the diversity of the community, from union workers to people of color to transgender and other sub-groups of the LGBT population.¹ In addition, the HRC Foundation commissioned the largest national survey of LGBT workplace experiences to date, administered to 761 LGBT workers from across the country. Finally, in-depth interviews supplemented the research.

The results highlighted in this report show a patchwork of experiences, ranging from overt harassment, to subtle cues of exclusion, to positive experiences as LGBT workers. The ultimate goal of the research effort is to identify methods to improve workplace environment. This research lays the groundwork for creating an effective data collection tool designed to assess workplace climate and generate resources to improve it.

¹ For a full description, please see the Methodology section.

**WORKPLACE
CLIMATE
AND LGBT
OPENNESS**

When asked, LGBT workers describe a positive climate as one in which they feel free to be themselves, voice their opinions and engage openly in non-work-related conversations, they feel safe from discrimination and believe they are valued, accepted and part of a team.

They describe a negative climate as one in which it is unsafe to be open, they are vulnerable to harassment and hostility, their family and relationships are not recognized, they experience alienating situations and they fear that their sexual orientation or gender identity will overshadow their performance.

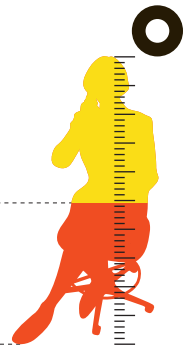
The majority of LGBT workers (51 percent) hide their LGBT identity to most at work, the simplest indication that more work needs to be done to translate inclusive policies into an inclusive climate. A total of 23 percent are open to a few people and 28 percent are not open to anyone with whom they work. A total of 27 percent are open to everyone and 22 percent are open to half or most people with whom they work.

DEGREES OF OPENNESS AT WORK

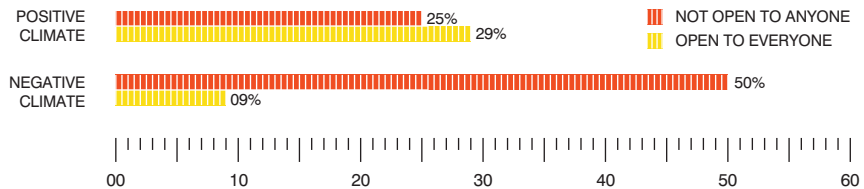
Which of the following best describes how open you are about being LGBT at work?

**51% NOT OPEN TO ANYONE/
OPEN TO JUST A FEW**

**49% OPEN TO EVERYONE/
OPEN TO HALF OR MOST**



RELATIONSHIP BETWEEN PERCEIVED CLIMATE AND BEING OPEN



DIFFERENCES IN OPENNESS AMONG SUB-GROUPS

The degree to which LGBT employees are open about their identity at work varies widely among sub-groups.

AGE

Surprisingly, given the level of acceptance among generational peers, only 5 percent of LGBT employees ages 18 to 24 say they are totally open at work, compared to more than 20 percent in older age cohorts. A majority of this cohort has been with their current employer less than two years. They say they are not open to everyone at work because they are worried about adversely affecting relationships with new coworkers, many of whom are older and might be perceived as less accepting. The top reason 18 to 24 year olds are not open at work is they do not want to make people feel uncomfortable (65 percent).

GENDER

Gay men are more likely to be closeted at work — only 12 percent of lesbians say they are completely closeted, compared to 24 percent of gay men. On the other hand, lesbians are less likely to feel accepted by certain coworkers. For example, 59 percent of lesbians feel very accepted by their direct supervisors, versus 69 percent of gay men. Forty-three percent of lesbians feel very accepted by subordinates, versus 56 percent of gay men.

RELATIONSHIP STATUS

Survey participants who have a significant other are more likely to be open about their identities because they can simply insert their partner's name or pronoun into a conversation. Fifty-six percent of employees in a relationship were open to everyone at work, compared to 32 percent of single people.

RACE

Racial and ethnic minorities are less likely to be open to everyone at work. Only 18 percent of Latinos/as are open to everyone at work, compared to 25 percent of African Americans and 29 percent of whites.

EMPLOYER SIZE

Of the LGBT employees in large businesses 63 percent are men and 37 percent are women. LGBT employees in large businesses are less likely to be open to everyone at work (20 percent) than those in smaller businesses (32 percent).



THE BUSINESS CASE FOR OPENNESS

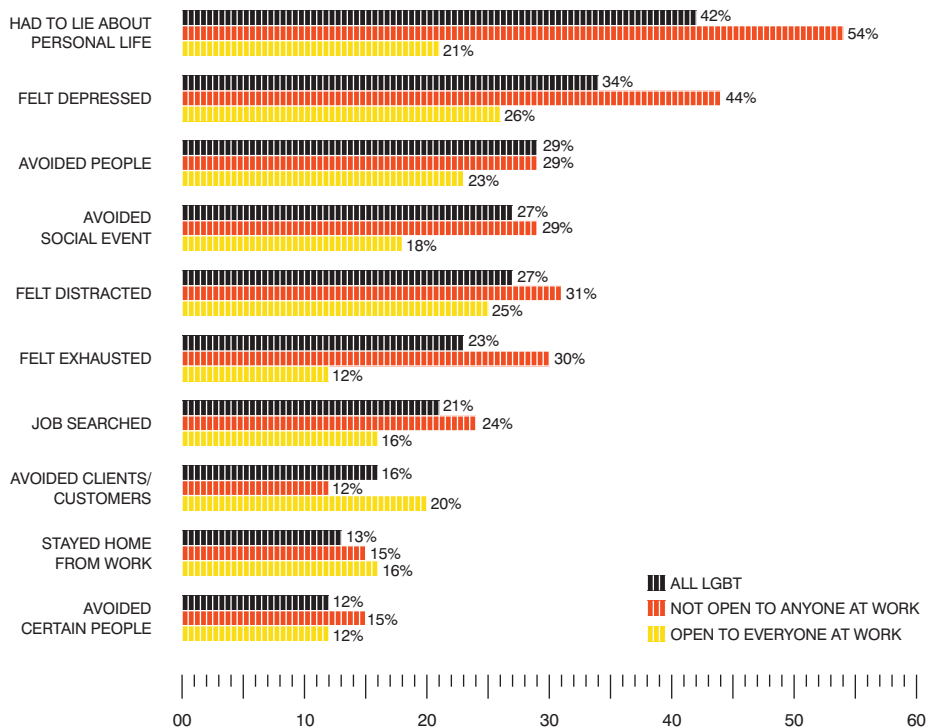
Employees who are more open at work experience fewer negative outcomes from their workplace environment. These negative outcomes affect productivity, retention and professional relationships.

For example, 54 percent of LGBT employees who are not open to anyone at work report lying about their personal lives, compared to 21 percent of employees open to everyone about their LGBT identity. LGBT workers' inability to participate honestly in everyday conversations hinders trust and cohesion with their co-workers and superiors. Open LGBT employees are also less likely to feel depressed, avoid people or events and search for another job.

Being open at work does not eliminate the negative outcomes of working in an unwelcoming environment. For example, one in five (21 percent) LGBT respondents had searched for a new job within the past 12 months and more than one in four (27 percent) felt distracted from their jobs, whether they were open or not.

EFFECTS OF WORKPLACE CLIMATE THAT IS NOT ALWAYS ACCEPTING OF LGBT PEOPLE WITHIN THE PAST 12 MONTHS

Thinking about the past 12 months, about how many times has the following happened as a result of working in an environment that is not always accepting of LGBT people? (Percentage reporting occurrence at least once in the last year.)



LGBT EMPLOYEES:**CLIENT-FOCUSED WORK**

LGBT employees whose work is client-focused, such as consultants or lawyers, face the additional variable of switching among multiple client and work team relationships. Some client-based LGBT participants shared hostile experiences with anti-LGBT clients that were difficult and often occurred without managerial support. Most client-focused LGBT workers say it is unnecessary to come out to clients. However, when non-work related conversations arise, LGBT workers in these fields are more likely to be open.

CUSTOMER-FACING WORK

Customer-facing workers, such as those in retail, service or other industries, feel less compelled to be open in their interactions with customers, as they tend to be brief.

HOW EMPLOYEES REVEAL THEIR LGBT IDENTITY

For many lesbian, gay, bisexual and transgender employees, being open at work about sexual orientation or gender identity is a continual process done at the person-to-person level, one co-worker at a time. A common way in which LGBT workers disclose their sexual orientation is by mentioning a current or former same-sex spouse, partner or significant other by name or pronoun in everyday conversations at work. This often happens in response to a specific question about relationships asked by a co-worker, which requires LGBT employees to choose whether to answer honestly, lie or evade the question.

Gender identity is sometimes revealed when an employee transitions “in place” – by changing gender presentation while staying with the same employer, but other transgender workers may live in “stealth” – by not disclosing their former gender presentation to their new colleagues. It may become public, however, because of complications with legal documentation, being identified by personal characteristics or other circumstances. In either case, the way in which management and Human resources engage in this process directly affects workplace climate for transgender employees and sets the tone for acceptance or discrimination throughout the organization. Without thoughtful guidance and consistency, the process can breach a transgender employee’s privacy, causing embarrassing or stressful situations and affecting all employees’ morale.

A major issue among many transgender workers, particularly those who have not or do not plan on undergoing sex reassignment surgery, is the degree to which their employer acknowledges the employee’s stated gender identity. Some say their employer will not acknowledge an employee’s gender identity unless or until the transgender employee undergoes surgery and changes legal documents to correspond with identity. Employers should use the individual’s preferred name on company materials and directories, maintain gender-neutral standards for attire and allow the use of gender-appropriate restrooms that comport with the employee’s full-time gender presentation.

I participate in conversations just like anyone else, talking about their kids, husbands or wife. I talk about my partner. I can feel and see people tense up at times. People get quiet at times. People give me a double take at times.

LESBIAN, WHITE, 50, CINCINNATI,
TEAM LEADER/SUPERVISOR
AT SMALL EMPLOYER



Where I work, all my co-workers are very accepting and fully support me. Management gives lip service toward that end; although, like I said, they do insist that I dress in male clothing for work and use my male name, which is [name redacted], so if you’re ever at my bank, that’s what you’ll see on my name tag. At any rate, I don’t think promotion is an option.

TRANSGENDER WOMAN, IDENTIFIES AS
“OTHER” SEXUAL ORIENTATION, WHITE, 59,
CONN., ADMINISTRATIVE WORKER
AT LARGE EMPLOYER

I think it’s much easier to be out at work if you’re in a relationship. Then you can talk about your partner. You’re not talking about what your sexual preferences are. You can say, ‘I have a male partner.’

GAY, WHITE, SOUTH MIAMI, FLA., 56,
EXECUTIVE AT MIDSIZED EMPLOYER

REASONS TRANSGENDER WORKERS DO NOT SELF-DISCLOSE

Transgender workers are much more likely than other groups to report “fear for personal safety” as a reason for not being open about their gender identity, with 40 percent citing this as a reason. The next-highest group was gay men at 20 percent. Similarly, 42 percent of transgender workers fear getting fired for disclosing who they are, compared to 22 percent of gay men, the next-highest group citing this reason. About three-quarters (76 percent) of transgender workers raise the possibility of being stereotyped, compared to 41 percent of gay men, the next-highest group.

WHY EMPLOYEES HIDE THEIR LGBT IDENTITY

Many participants in the qualitative research who are not open to everyone at work say that they will not deny their sexual orientation or gender identity if asked directly but that they choose not to self-disclose for a variety of reasons.

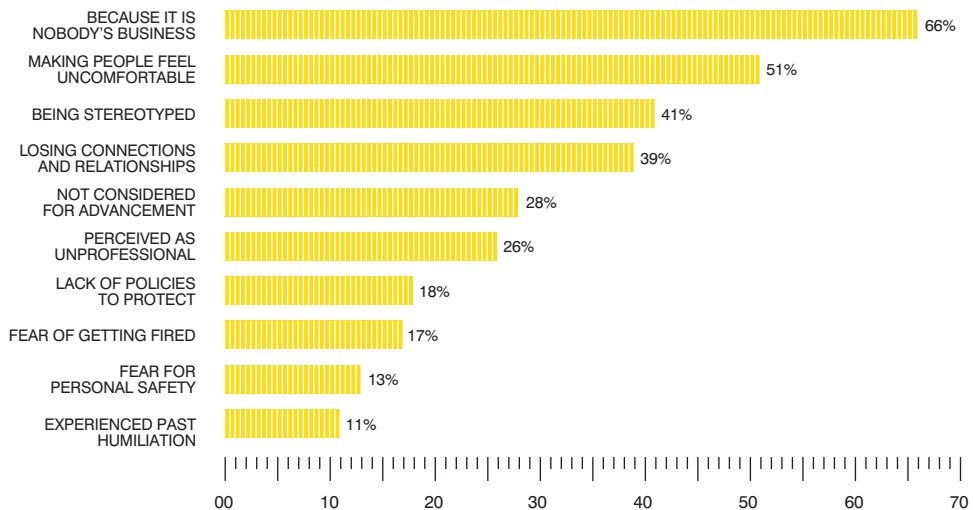
Half (51 percent) of all LGBT employees say one reason they are not open is because disclosing their sexual orientation or gender identity may make co-workers feel uncomfortable, and 39 percent do not want to risk losing connections with co-workers. Four in 10 (41 percent) say the possibility of being stereotyped is a reason for not being open. Nearly three in 10 (28 percent) decide not to be open because they feel it may be an obstacle to career advancement or development opportunities. Slightly more than one in 10 (13 percent) LGBT employees would fear for their personal safety.

IS LGBT IDENTITY NOBODY’S BUSINESS?

Two-thirds (66 percent) of LGBT employees say one reason they are not open to everyone at work is because “it’s nobody’s business.” However, further analysis of survey results reveals that this feeling is strongly tied to reported incidence of negative climate. These employees were most likely to feel not accepted by co-workers and tend to exhibit signs of distress from a negative climate, such as staying home from work, feeling distracted from work, feeling exhausted from hiding, and avoiding certain clients or customers. While being open is a personal decision, this sentiment may be a defensive response brought about by previous negative experiences from employees whom, under better circumstances, would be open about their LGBT identities.

REASONS EMPLOYEES ARE NOT OPEN TO EVERYONE AT WORK

Are any of the following reasons why you personally are not out to anyone at work?



BEING OPEN IS FALSELY PERCEIVED AS UNPROFESSIONAL

The qualitative research found that an underlying component of workplace climate relates to perceptions about what is professional and appropriate in the workplace. While both LGBT and non-LGBT workers emphasized that everyone at work needs to maintain professionalism, the term “professional” is often used by non-LGBT workers for their rationale that LGBT co-workers should not “flaunt their lifestyle”: They insist that they do not talk about their sex lives at work — contrary to what the data show — so neither should LGBT employees. Nearly three in 10 closeted LGBT employees (26 percent) say a reason they are not open at work is because co-workers or managers will think talking about sexual orientation or gender identity is unprofessional.

This dynamic presents an important challenge for fostering an inclusive work environment. Non-LGBT employees directly link sexual orientation or gender identity to sex, whereas LGBT employees see discussions about their own relationships, spouses and personal lives as a natural part of their environment. Gender identity is even more often misunderstood and linked to sexual orientation.

Destigmatizing the innate characteristics of sexual orientation or gender identity remains an important theme to address because conversations about personal lives comprise such a large, unavoidable part of workplace climate for all employees.

It doesn't make me feel uncomfortable as long as they don't make any advances at me or sit and talk about what they do in a loud voice because to me that's very unprofessional, talking about that kind of stuff at work. I don't have a problem with people who are gay as long as they keep it to themselves. That's just my feelings.

NON-LGBT, WHITE, FEMALE, 49,
MADISON, WISC., SALES AT LARGE EMPLOYER



I think straight people would be more comfortable if gay people didn't talk about their sexual preferences or anybody really. I don't think that's something that should be discussed at work anyway.

NON-LGBT, LAS VEGAS,
SERVICE INDUSTRY WORKER



Everybody has a good common sense of what to say and what not to say at work, but what I find is that it can be when you're at work and straight people or gay people or whatever are talking about dating, going out on a date. It's a very common topic when you have a lot of people who work together, and I think it's harder as an LGBT.

BISEXUAL, WHITE, FEMALE, 31,
FOOD PREP FRONTLINE WORKER
AT LARGE EMPLOYER



FACTORS THAT CONTRIBUTE TO WORKPLACE CLIMATE

What causes an LGBT worker to worry about being open with certain employees? LGBT workers report common clues, ranging from overt negative comments to nuanced interactions with people — from co-workers to executives — that have an impact on their personal assessment of workplace climate and whether or not it is safe to be open.

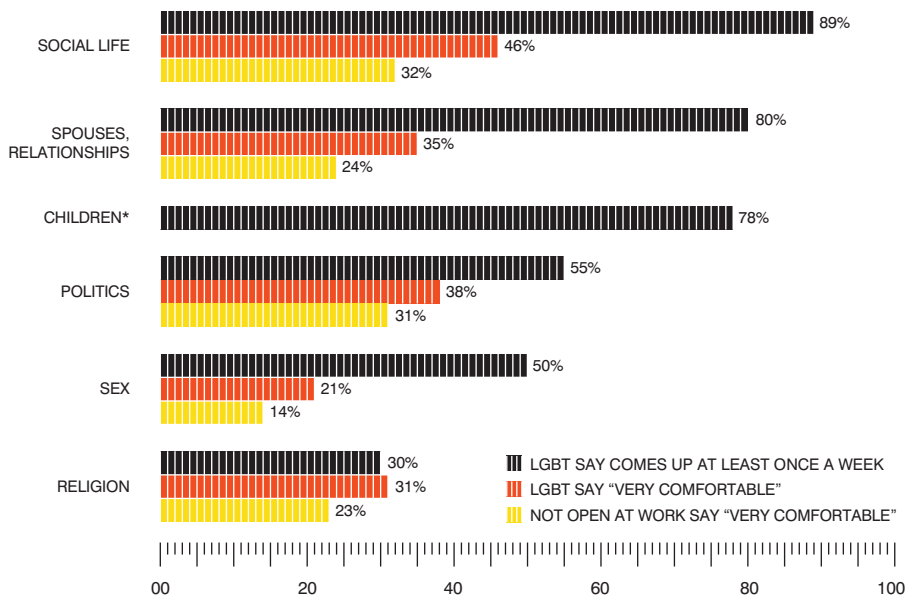
WATER COOLER CONVERSATIONS

An employee’s sexual orientation or gender identity are often unavoidable in casual, non-work-related conversations among co-workers — particularly those related to spouses, partners, relationships, children, social lives and even sex. Issues related to sexual orientation or gender identity arise on nearly a daily basis at work for most employees. In these conversations, LGBT employees must decide whether and how they will engage and respond. Will they be caught off guard when someone asks if they are married? When asked what they did over the weekend, will they say they saw a movie with their partner? Or will they evade the question to avoid risking work relationships?

LGBT employees do not insist on bringing their sexual orientation or gender identity into the workplace; rather, the workplace itself demands it. While these conversations are important to building working relationships, they can often make LGBT employees feel uncomfortable. Fewer than half of LGBT employees feel very comfortable talking about any of these topics, particularly those that are not open at work. Some LGBT workers say they spend a lot of energy trying to dodge these conversations and the questions they evoke.

FREQUENCY AND COMFORT WITH CONVERSATION TOPICS AT WORK

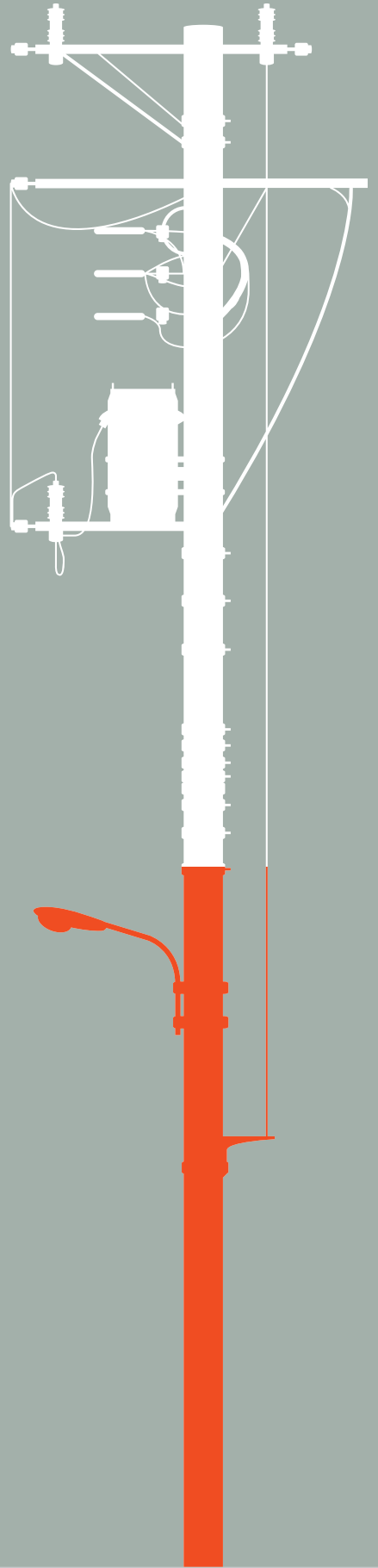
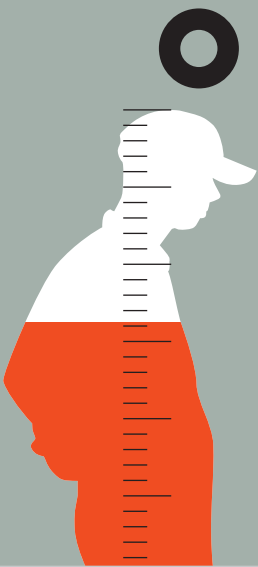
In some workplaces, conversations come up that are not work-related. How often do you hear the following topics come up at your workplace? Thinking about these topics, how comfortable are you talking with co-workers about these?



*Sample size of LGBT respondents who have children under age 18 at home too small to compare.

NON-OFFICE ENVIRONMENTS

LGBT employees in non-office environments tend to be exposed more often to hostile, harassing climates. Seven in 10 LGBT employees in non-office locations (69 percent) hear anti-LGBT jokes or derogatory comments at least once in a while — compared to 59 percent in office environments. And 38 percent hear these comments frequently or sometimes, compared to 26 percent of those in office workspaces. Additionally, 72 percent of those in non-office environments hear jokes and comments at least once in a while about other minority groups, compared to 60 percent of employees in offices.



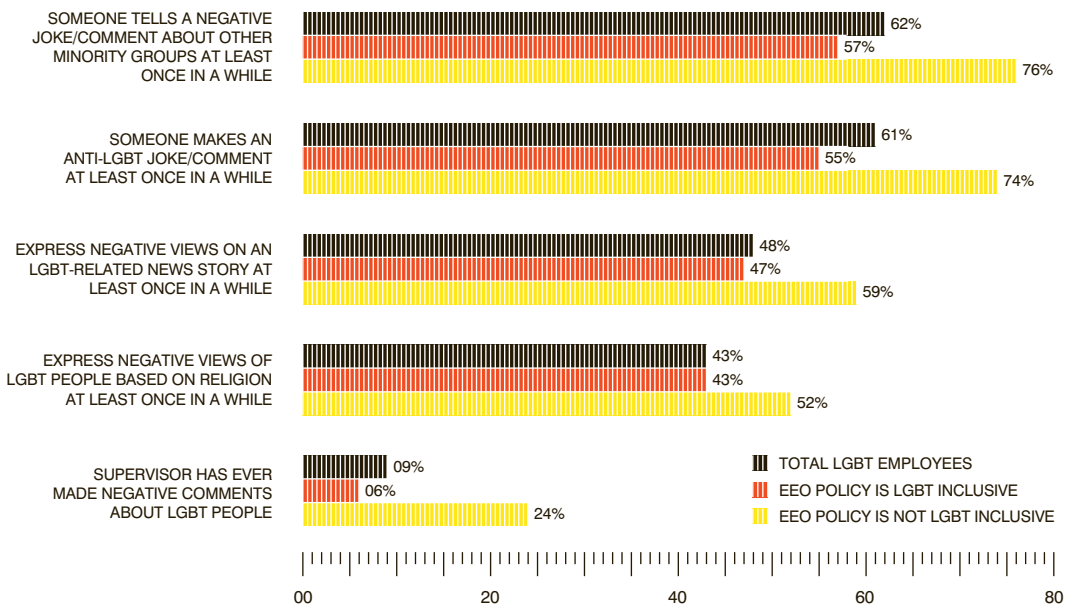
OVERT EXPRESSIONS OF BIAS

LGBT workers say derogatory comments and jokes still happen at work and are a major indicator that it is unsafe to be open about their sexual orientation or gender identity at work. A majority of LGBT employees in organizations with an inclusive Equal Employment Opportunity policy — one that includes both sexual orientation and gender identity — say someone at work makes a joke or derogatory comment about LGBT people at least once in a while (58 percent). One in 10 LGBT employees (9 percent) has heard a direct supervisor make an anti-LGBT comment.

Similarly, jokes and derogatory comments about other minority groups are equally indicative of a negative climate. Focus group participants feel that a co-worker who expresses bigotry toward other minority groups is likely to feel the same about LGBT people. About two-thirds (62 percent) of LGBT employees say negative comments about minority groups are made at least once in a while at work.

FREQUENCY OF JOKES AND NEGATIVE COMMENTS LGBT PEOPLE HEARD AT WORK

How often does the following happen at work? How often do people at work do the following? Has your supervisor ever made negative comments about LGBT people?

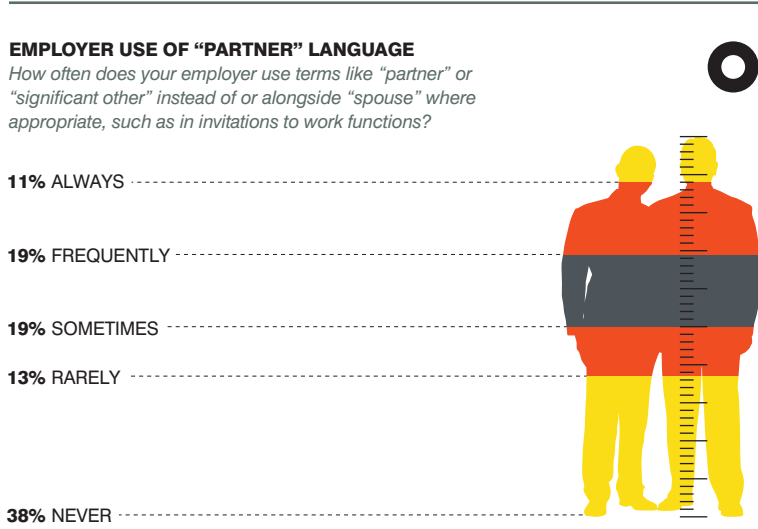


LGBT workers also mention break-room conversations that include discussing LGBT people or making specific comments about the sexual orientation of public figures. Significant events like Ellen DeGeneres getting married and the success of the movie *Brokeback Mountain* became water-cooler topics. (In a similar vein, although not a part of this research, Proposition 8 in California became a topic of conversation for many workplaces in the 2008 elections.) These conversations, particularly when closeted LGBT employees are present, can be uncomfortable and sometimes become outright hostile. Half of LGBT employees (48 percent) say at least once in a while they hear people at work expressing negative views of LGBT people as they relate to a news story, such as same-sex marriage. These events occur regardless of inclusive EEO policies.

LANGUAGE IN COMPANY COMMUNICATIONS

Many LGBT workers view their employer’s use of the words “spouse” or “partner” as an indication of whether or not a climate is open and accepting. Additionally, half of LGBT employees (51 percent) say their employer rarely (13 percent) or never (38 percent) uses terms such as “partner” or “significant other” instead of or alongside “spouse” in communications.

When LGBT employees encounter something as simple as “partner” language, they definitely notice it. No survey respondent answered “Don’t Know/Refuse” to this question. LGBT employees not only recognize these gestures — they are loyal because of them. Small gestures have a large impact.

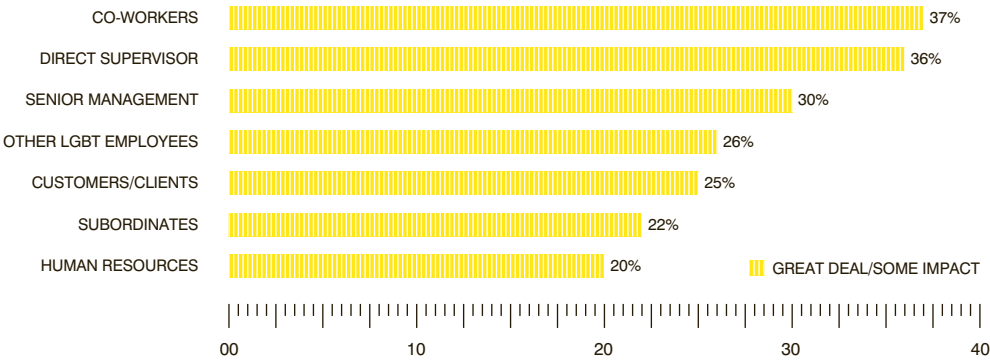


EMPLOYEES WITH INFLUENCE

The three groups of individuals with the greatest impact on workplace climate for LGBT employees include co-workers, direct supervisors and senior management. Only 20 percent of LGBT workers say human resources has a great deal or some impact.

TYPES OF EMPLOYEES WITH GREATEST IMPACT ON WORK ENVIRONMENT FOR LGBT EMPLOYEES

How much impact does the following have on your work environment as an LGBT employee?



I have actually been told when I have come out to people, “Well, you do not look gay” or “I would never know you were gay. You seem so normal.”

LESBIAN, WHITE, 50, CINCINNATI, EXECUTIVE, TEAM LEADER AT SMALL EMPLOYER

One time I took my laptop into the office and one of my managers used my laptop and she went so far as to print out e-mails that were in there. The next day, she showed the e-mails to people in the office. I was let go and they said it was because of cutbacks or whatnot, but I was pretty sure that was what it was. I was outed to my colleagues. Some of them I had gone to college with. It was mortifying. My mother doesn't know. So I am the type of person where I don't feel I have to walk around with my sexuality out. I don't consider myself gay or bi or whatever. So my personal life was brought into work, and it tarnished a lot of things.

MALE, AFRICAN-AMERICAN, 24, ATLANTA, SUPPORT STAFF AT LARGE EMPLOYER



WHERE RUMORS CIRCULATE

Employees of businesses with more than 1,000 workers are more likely to hear rumors at work about someone's sexual orientation or gender identity. More than three in five (63 percent) of those in large companies say rumors go around about someone's sexual orientation at least once in a while, compared to 50 percent of those in small companies. LGBT employees in large companies are twice as likely to hear rumors about someone's gender identity (53 percent versus 25 percent).

LGBT employees in the South and Midwest are also more likely to hear rumors about someone's sexual orientation. Six in 10 (62 percent Midwest, 60 percent South) say this happens at least once in a while, compared to 48 percent in the West and 51 percent in the Northeast.



NUANCED SIGNALS

LGBT employees report numerous nuanced signals that play an important role in their perception of the workplace environment.

VISIBLE DISCOMFORT. Among LGBT employees who are open at work, 40 percent say that when they mention their partner or something else related to being LGBT, co-workers appear visibly uncomfortable at least once in a while.

DISASSOCIATION. LGBT employees describe experiences in which co-workers tend to ignore them or even refuse to work in the same space, directly affecting feelings of acceptance, productivity, job satisfaction and team cohesiveness.

STEREOTYPES. Expressions of LGBT stereotypes in appearance, mannerisms and other categories are an important indicator of whether it is safe to be open. Bisexual participants say that they are often not understood and face stereotypes that their sexual orientation is simply a phase or a fad.

RUMORS ABOUT AN EMPLOYEE'S LGBT IDENTITY. More than half of LGBT employees (55 percent) say rumors have spread about someone's sexual orientation at least once in a while at work. In addition, 37 percent say the same is true for rumors about someone's gender identity.

The only way I know I can tell is if I'd say, by the way, ... my boyfriend the other day, and if the person gets wide-eyed or looks away or, you know, starts to make, like, really uncomfortable gestures like they're trying to get away, that's my indication of whether or not they're uncomfortable or not with, you know, my sexuality.

GAY, LATINO, 25, FAIRFAX, VA.,
PROFESSIONAL STAFF AT
LARGE EMPLOYER



I know that basically this is a woman that since she had discovered I was gay had stopped talking directly to me. I would say "good morning" to her every morning and she would just look the other direction.

GAY, WHITE, 51 GA., OFFICE AND ADMINISTRATIVE
WORKER AT LARGE EMPLOYER



I was in a position that had a lot to do with the public. I have a tendency to dress very plainly. I have short hair. I wear comfortable shoes. That was a round-about way to get to the fact that I was looking a little bit too butch for this particular event. They told me I needed to accessorize better. Find some jewelry. Add a scarf or earrings. ... I just said that I did not really own accessories. It got left at that.

LESBIAN, WHITE, 44, EMERADO, N.D.,
SENIOR MANAGER AT LARGE EMPLOYER

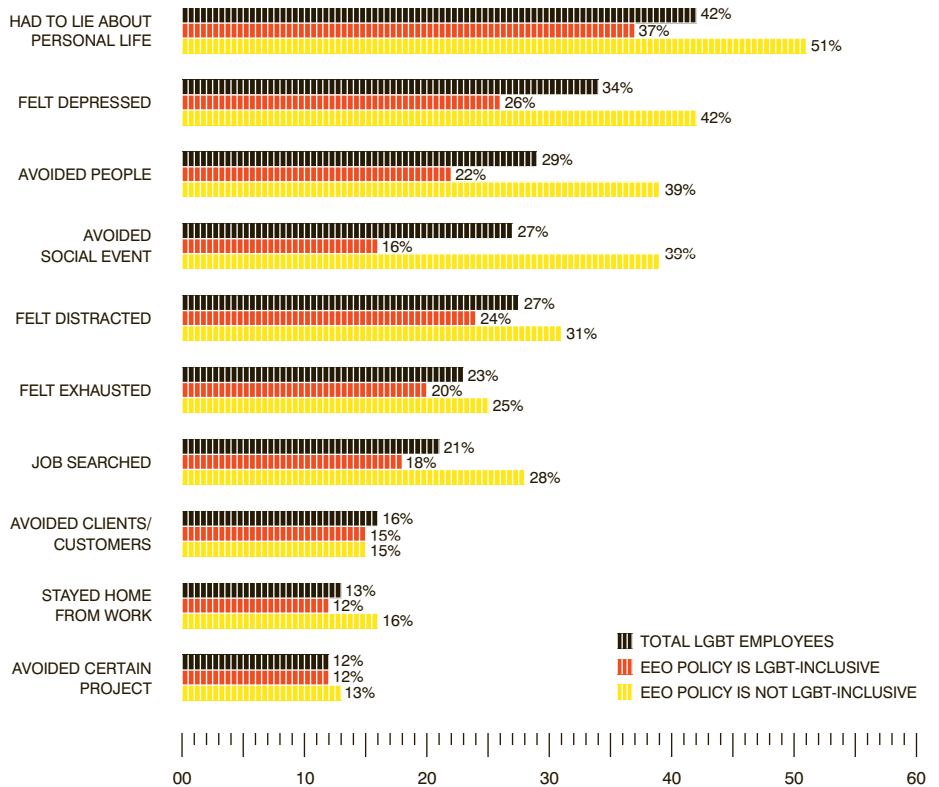
LIMITATIONS OF CURRENT PRACTICES

EXISTING POLICIES HAVE LIMITED REACH

While non-discrimination policies that include sexual orientation and gender identity are fundamental to establishing a productive workplace climate, their presence alone is not an indicator of employee experience. Even with inclusive employment policies, significant numbers of LGBT employees report negative consequences of an unwelcoming environment. In particular, the presence of EEO policies does not significantly diminish the incidence of the most severe impacts of negative climate, such as staying home from work or feeling exhausted or distracted.

EFFECTS OF WORKPLACE CLIMATE THAT IS NOT ALWAYS ACCEPTING OF LGBT PEOPLE OVERLAID BY PRESENCE OF INCLUSIVE EEO POLICY

Thinking about the past 12 months, about how many times have the following happened as a result of working in an environment that is not always accepting of LGBT people? Does your employer have an Equal Employment Opportunity or non-discrimination policy that includes sexual orientation? Gender identity? (Percentage reporting occurrence at least once in the last year.)



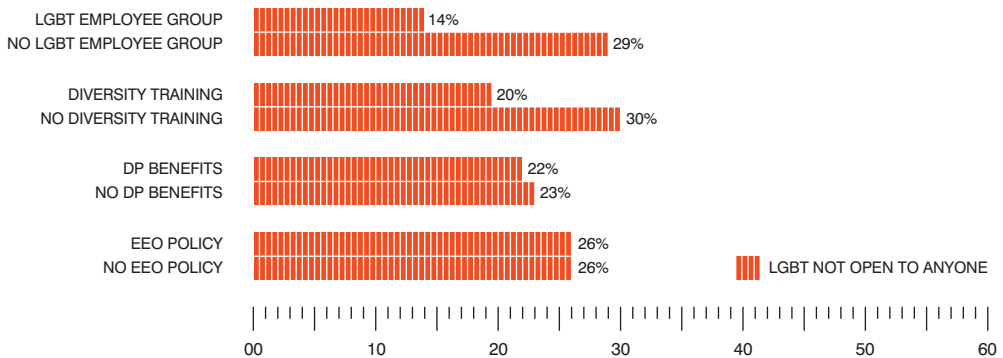
PERCEPTIONS OF WHETHER POLICIES ARE FOLLOWED

Latinos/as are more likely to say employees follow their organization's non-discrimination policy. Ninety-three percent of Latinos/as whose employer has an inclusive EEO policy agree that employees follow the policy (57 percent strongly agree) — compared to 79 percent of African Americans (10 percent strongly) and 87 percent of whites (47 percent strongly). However, more than half of Latinos/as (59 percent) agree that enforcement of these policies depends on supervisors' personal views of LGBT people. Slightly less than half of African Americans and whites agree (47 percent and 43 percent, respectively).

The existence of inclusive employment policies, benefits and other practices affect the degree to which LGBT employees are open at work, though their individual impact varies significantly. Among common LGBT diversity initiatives, the existence of an LGBT employee resource group makes the biggest difference in whether or not employees are open about their identity. The presence of an employee group reduces in half the percentage of employees who are not open to anyone from 29 percent to 14 percent. Similarly, when a company has LGBT-inclusive diversity training, only 20 percent of its employees are not open to anyone, compared to 30 percent at companies that do not.

On the other hand, domestic partner benefits have little effect on the number of employees who remain closeted. A total of 23 percent of employees at companies without equal benefits are not open to anyone, compared to 22 percent of employees at companies with the benefits. And whether a company has an EEO policy inclusive of sexual orientation and gender identity does not change the number of employees who are not open to anyone (26 percent in both cases).

RELATIONSHIP BETWEEN POLICY AND BEING OPEN



STANDARD ENGAGEMENT SURVEYS FAIL TO CAPTURE LGBT EXPERIENCE

Standard survey questions used by Fortune 1000 companies to measure employee attitudes toward workplace environment may not accurately capture LGBT perceptions and effects of climate or even consider sexual orientation and gender identity at all.

Prior to any questions about sexual orientation or gender identity, our national survey included two attitudinal questions common to employee engagement surveys. Survey participants were asked how much they agreed or disagreed with the following statements:

- “We have a work environment that is open and accepts individual differences.”
- “This organization values differences in age, gender, sexual orientation, gender identity or expression, and race or ethnicity.”

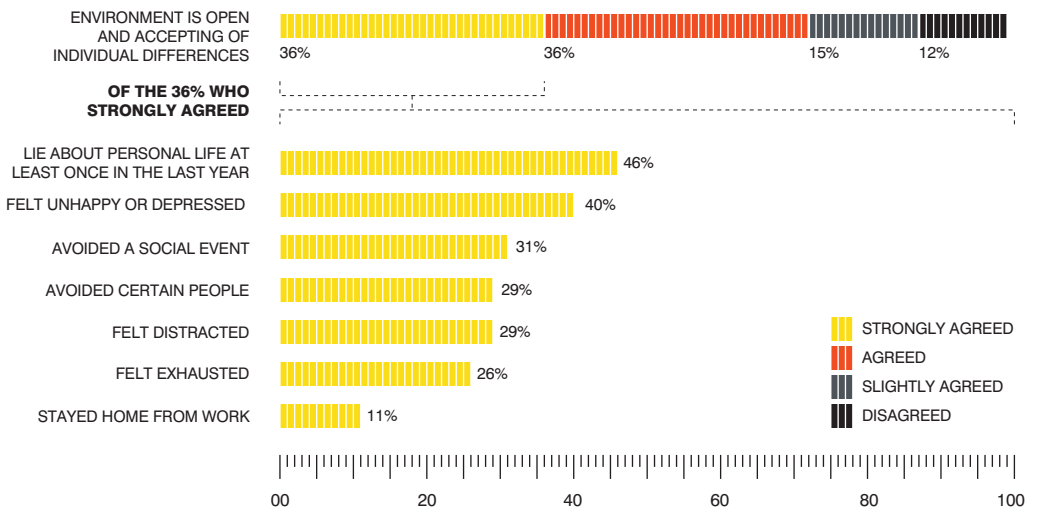
Most LGBT employees (88 percent) agree that their work environment is open and accepting of individual differences. A similar proportion (84 percent) agrees that their organization values differences in age, gender, sexual orientation, gender identity or expression, and race or ethnicity.

However, further analysis suggests that these broad attitudinal measures may neither fully nor accurately assess climate as it relates to LGBT employees or their own perception of climate. Neither of these measures strongly correlates with specific experiences related to climate for LGBT employees nor the negative outcomes of climate (on productivity, retention and relationships).

For example, LGBT respondents who strongly agreed with the initial statement that their environment is open and accepting of individual differences (36 percent) nonetheless report negative effects from working in an environment not always accepting of LGBT people.

LGBT AGREEMENT WITH STANDARD EMPLOYEE ENGAGEMENT QUESTIONS

Thinking about your workplace and employer, do you agree or disagree with the following statements?



One in four (24 percent) of those who agree with the initial statement that their environment is open and accepting of individual differences experiences one or more of these outcomes frequently.

The qualitative research sheds some insight into why these measures may not fully assess climate for LGBT employees. When focus group moderators first raised the issue of climate in the discussions, the initial reaction among many was positive. However, it was clear that some participants did not initially grasp what the moderator meant by “climate,” “environment” or “culture” (the terms were used interchangeably). The topic required the moderator to ask specific experience-based questions to probe beneath the initial responses. The most valuable qualitative data emerged as discussions evolved into sharing specific experiences and perceptions at work relating to climate for LGBT employees.

Finally, the topic of “workplace climate” may not be one that workers have spent a great deal of time considering, defining or otherwise analyzing. Attitudes on issues that have not been part of the public dialogue — issues about which respondents have not spent time thinking or forming opinions — may vary a great deal when respondents engage more on the topic. The same phenomenon may be occurring with these measures.

I think what [management] assumes is if you have a problem you will bring it up to them, but I don't think they will come to you and say, “Are you being harassed? Are you doing OK? How do you feel working here?” That might be nice. Maybe there are a few people who are feeling harassed and, like, they can't bring it up.

BISEXUAL, WHITE, FEMALE, 31, FOOD PREP FRONTLINE WORKER AT LARGE EMPLOYER



In our situation, the local managers handle a lot of things with guidance from human resources and labor relations, and just so far, I guess, we've been extremely fortunate in that if anybody does want to let people know what their lifestyle is or is wanting to change something about how they are perceived, they just really haven't had any problems.

NON-LGBT, WHITE, FEMALE, 57, LITTLE ROCK, ARK., HUMAN RESOURCE PROFESSIONAL AT LARGE EMPLOYER



LGBT WORKERS DO NOT REPORT ANTI-LGBT COMMENTS AND BEHAVIOR

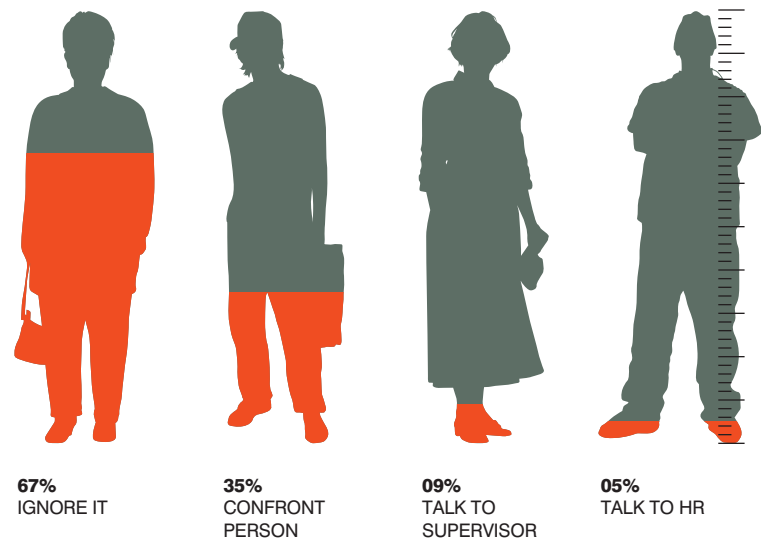
The vast majority of LGBT workers do not report instances when they hear an anti-LGBT remark to human resources or management. Most LGBT participants of the focus groups handle issues that come up at work on their own, tending to approach a supervisor or human resources representative only in the most extreme cases that threaten their job. In most other cases, such as hearing derogatory comments or jokes and being confronted by co-workers' sexual innuendos, LGBT employees deal with these situations without institutional support.

Employees who have an LGBT employee group available to them are five times as likely than those without an LGBT employee group to bring an issue to human resources (15 percent versus 3 percent). They are also more than twice as likely to report an issue to a supervisor (16 percent versus 7 percent). Yet a majority of these employees still tend not to do so.

Employees who work in non-office environments are less likely to raise LGBT-related climate issues with supervisors or human resources. Most (57 percent) say they typically deal with anti-LGBT jokes or comments by ignoring them, compared to 48 percent of employees in office environments. Of those in non-office workplaces, 6 percent raise the issue with a supervisor and 3 percent turn to human resources. In the qualitative research, human resources seems less accessible or present for union and blue-collar employees who work in the field.

HOW LGBT EMPLOYEES DEAL WITH ANTI-LGBT COMMENTS AT WORK

When you hear someone make an anti-LGBT comment at work, how do you typically deal with it?



IMPROVING WORKPLACE CLIMATE

BISEXUAL INVISIBILITY

Bisexuals are less likely to self-report their sexual orientation in an anonymous, confidential human resource survey than their gay and lesbian peers — 59 percent versus 79 percent of gay men and 77 percent of lesbians. The primary reason they offer is that it is none of their employer’s business. They are also less comfortable providing feedback on LGBT climate issues in an exit interview — 53 percent of bisexuals say they are comfortable, compared to eight in 10 gay men (83 percent) and lesbians (80 percent).

Bisexuals are also less likely to have someone at work acknowledge their orientation in a positive way. Only 7 percent says this happens frequently, compared to 27 percent of gay men and 31 percent of lesbians.

SELF-DISCLOSING SEXUAL ORIENTATION AND GENDER IDENTITY

Anecdotal evidence supports that LGBT inclusion efforts improve recruitment, development and retention tools; however, little empirical data exists to support this. Evaluating the success of policies and practices that promote inclusion is difficult because most employers do not have a sense of how many LGBT employees they have or where in their businesses LGBT employees actually work. Having business metrics of LGBT employees to quantitatively evaluate these programs is critical to a viable, fully inclusive diversity program.

Some employers use LGBT employee group membership numbers to generate estimates, but this method is limited by the scope of such self-selected groups over a highly dispersed work force. More recently, employers have gathered statistics through anonymous employee engagement or satisfaction surveys and confidential and secure employee records. In both cases, whether employees disclose their gender identity or sexual orientation is optional and voluntary and any reporting or direct access to the data is designed to ensure confidentiality of employee information.

Seven in 10 (72 percent) LGBT employees say they would self-disclose their sexual orientation or gender identity along with other demographic information in an anonymous human resources survey, while 18 percent say they would not self-disclose and 10 percent say they are not sure whether they would or not. Of the combined 28 percent that would either not self-disclose or are unsure, 59 percent indicate they “don’t trust that the survey is confidential” and 40 percent indicate they are “not sure how the information would be used.” LGBT employees not open to anyone at work are least likely to answer a human resources survey honestly (49 percent would do so).

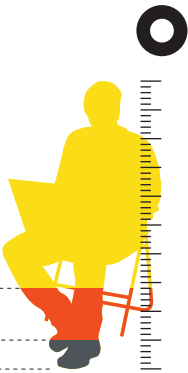
Employers need to proactively communicate the purpose for the questions and the confidentiality of survey answers to address these concerns and maximize the response rate among LGBT employees over time — particularly since those who may experience the most negative outcomes at work (those who are completely closeted) are most likely not to self-disclose.

Additionally, seven in 10 (72 percent) LGBT employees say they would feel very or somewhat comfortable talking about their work environment in an exit interview (44 percent very, 28 percent somewhat). One in four (26 percent) LGBT employees say they would be uncomfortable.

COMFORT WITH SELF-DISCLOSING SEXUAL ORIENTATION AND/OR GENDER IDENTITY IN A HUMAN RESOURCES SURVEY

If human resources sent an anonymous survey to all employees and included a question that asked about your sexual orientation or gender identity along with other demographic questions, would you feel comfortable answering honestly?

72% YES
18% NO
10% DON'T KNOW/REFUSE



THE HRC CLIMATE ASSESSMENT TOOL AND CLIMATE IMPROVEMENT TOOLKIT

In conjunction with Hewitt Associates, the HRC Foundation has devised and piloted the first-ever LGBT workplace climate assessment tool to assist organizations in identifying LGBT employees and improving their work environments. Designed to be adapted by organizations or working groups within an organization, the tool measures the perception of climate from both an LGBT and non-LGBT perspective. This is critical, because organizational change rests on assessing differences in perceptions between these two groups of workers, not just on understanding the perceptions of one group.

Fundamentally, the assessment tool addresses three core questions for a businesses or work group:

- Is our organization an LGBT-friendly and inclusive workplace?
- How does our current environment have an impact on our business?
- Where should we focus to improve and/or maintain our current environment?

The assessment tool covers three key aspects of workplace climate:

- Organizational and Leadership Support
- Manager/Supervisor Support
- Work Team Support

The assessment tool also highlights salient data by providing indices on:

- Awareness of LGBT Policy
- Degree of Openness
- Business Impact of a Negative Climate

Some of the issues the assessment tool considers include:

- Level of acceptance from supervisors and co-workers
- Frequency of jokes or derogatory comments about LGBT people or other minority groups
- Extent to which “partner” language is used in company communications
- Presence of openly LGBT management
- The extent that enforcement of EEO policy depends on supervisors’ personal feelings toward LGBT people
- The extent that people at work acknowledge sexual orientation or gender identity in a positive way
- Degree to which LGBT employees are open at work
- Frequency of expressing negative views of LGBT people based on stories in the news, pop culture or religion
- Experiences of negative outcomes on productivity, satisfaction and relationships due to a climate not always accepting of LGBT people

The final results and analysis will provide focal areas for the company or work group to improve elements of their climate; for example, around senior leadership communications or the prevalence of jokes and other negative behavior that can have an impact on LGBT workers.

In conjunction with Hewitt Associates, the HRC Foundation is also developing toolkits and training modules aimed at the three tiers of organizational change agents identified in the research: senior leadership, human resources and diversity professionals; midlevel managers and supervisors; and individual employees. The assessment tool will point to specific components of the toolkit for concentration. For each of the following groups, toolkits will provide guidance to:

SENIOR LEADERSHIP, HUMAN RESOURCES AND DIVERSITY PROFESSIONALS

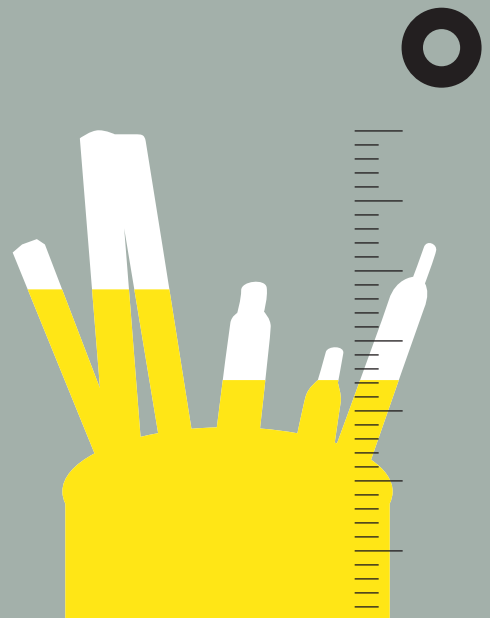
- Gain a more complete understanding of climate through the use of the workplace climate assessment tool. The tool contains a set of core integration-ready questions for existing engagement work force surveys, along with a more robust, extended set of questions. Both can be administered organization-wide or among targeted intact working groups (e.g., specific departments, geographic locations, etc.).
- Integrate optional LGBT self-identification questions in existing engagement work force surveys and forms (e.g., alongside questions on race, age, sex, etc.).
- Assess C-Suite and other organizational communications (e.g., inclusive language in invitations, LGBT recruitment strategies and communiqués, etc).

MIDLEVEL MANAGERS AND SUPERVISORS

- Recognize opportunities to promote LGBT inclusion — from formal leadership in communications to everyday leadership that more subtly gives cues that the workplace is welcoming of LGBT employees.
- Utilize diversity training modules and other proactive steps to assess working groups and their needs around LGBT inclusion.

INDIVIDUAL EMPLOYEES

- Assess their own workplace climate and evaluate avenues for reaching out to allies and human resources and diversity departments for help.
- Be open at work, by utilizing step-by-step individual-level self-empowerment tips and addressing uncomfortable situations at work.



POSITIVE ACTIONS ORGANIZATIONS CAN TAKE

Through the qualitative and quantitative phases of the research, numerous ideas were shared for ways to improve workplace climate. What follows is a review of common themes and options put forth by LGBT employees to help their employers address LGBT climate effectively. They are grouped according to which key influencer of climate — organizational leaders, direct supervisors or co-workers — might have the primary role in implementing or understanding each issue.

ORGANIZATIONAL LEADERS

Openly LGBT employees in senior and top-tier management.

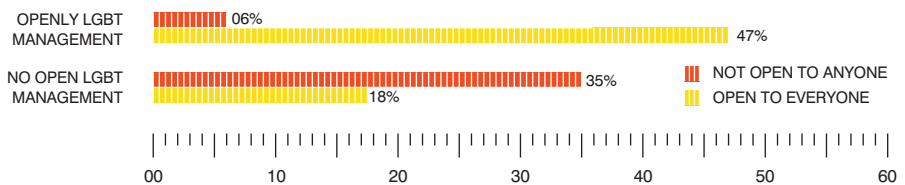
The presence of visible LGBT employees in management communicates to LGBT employees that their company is open and accepting and enables LGBT employees to be open at work. Those with visibly open LGBT management are more than twice as likely as those without to be open to everyone at work (47 percent versus 18 percent).

LGBT employee groups. Employee groups are important resources for LGBT employees and a cue of an accepting environment. However, only 11 percent of all LGBT employees say their organization has an employee group. About one in five (22 percent) is not sure. In organizations with more than 1,000 employees, 20 percent report having an employee group and 31 percent do not know whether one exists. Diverse groups that function across operational sectors are most effective.

Acknowledging LGBT partners and families. The simple act of acknowledging an LGBT employee’s partner and family — in the same ways non-LGBT families are acknowledged — has a significant impact. Participants in the qualitative research repeatedly stress the importance of these gestures. LGBT employees who say their environment is open and accepting are twice as likely as others to be acknowledged as LGBT frequently at work (24 percent versus 12 percent).

Recognizing LGBT partners and families can happen through a number of vehicles, such as including “partner” or “significant other” in written communications in which “spouse” is mentioned.

RELATIONSHIP BETWEEN PRESENCE OF OUT SENIOR MANAGEMENT AND BEING OPEN



Supporting LGBT client base. Several participants in the qualitative research say that their company has expanded its market base to LGBT clients or customers. Vocal support of these clients communicates acceptance of LGBT people generally and has a positive impact both on LGBT employees and climate. It is one cue that an LGBT employee can safely be open at work. Additionally, working on projects that include LGBT clients and marketing is a way in which LGBT employees feel they can contribute unique insights and expertise.

DIRECT SUPERVISORS

Setting the tone for workplace climate. One of the most profound ways to affect workplace climate for LGBT employees is for management and supervisors to clearly set the tone. Supervisors have a great deal of impact — in more direct ways than policies, company communications and co-workers. They can positively influence climate by:

- **Communicating zero-tolerance policy for inappropriate jokes and comments.** Jokes and comments — both anti-LGBT and derogatory remarks about other minority groups — are primary and frequent influences on workplace climate. Participants’ supervisors who have set clear expectations that these types of comments will not be tolerated have a direct impact on the frequency of these comments. It is also a signal to LGBT applicants and new LGBT employees that their work environment will be open and accepting.
- **Consistent enforcement of EEO policy.** While communicating that a zero-tolerance policy is important, even more critical is enforcing the policy. Half of LGBT employees (49 percent) feel that the enforcement of an EEO policy depends on a supervisor’s own personal feelings toward LGBT people. Additionally, many participants in the qualitative research describe the critical importance of “walking the walk” and following through on violations of policy. How a supervisor responds to a situation determines for LGBT employees how supported, respected, accepted and valued they are in the workplace. Non-LGBT participants who describe an accepting workplace climate for LGBT employees also quickly point to enforcement of strict policies.
- **Anticipating and proactively dealing with situations that may negatively affect LGBT employees.** When a supervisor proactively handles a situation that could be uncomfortable for an LGBT employee, research participants say this is a major sign that they are supported and accepted and work in a positive environment. An example is when a supervisor anticipates a client or project that may be uncomfortable for an LGBT employee and provides an option for switching projects. This was rare in the research, because most LGBT employees negotiate these situations on their own. The effect for those who had supervisors proactively step in is profound — increasing loyalty, trust and job satisfaction.

[My boss] got a call from a client who had made some sort of a comment about the — forgive my cursing— the f*ing faggot at the front desk. And she not only told them off over the phone, she pulled me into her office later and she told me, “If someone ever treats you badly or makes sort of an off comment, I give you permission and authority to put them in their place because I never want to have any sort of dealings with any sort of people like that in my office.” I just felt so good about that and I was so proud and, I just, I gave her my life after that and here I am 11 years later and I haven’t left.**

LESBIAN, LATINO, 33, FLORIDA,
MIDLEVEL ADMINISTRATIVE STAFF
MANAGER AT SMALL EMPLOYER



- **Clearly stating criteria for advancement and development.**

Several participants in the qualitative research say one sign of a positive climate is explicit, verbal reassurance that advancement and development opportunities are based strictly on performance.

- **Asking about partner or family.** Direct supervisors who mention or ask about an LGBT employee's partner — just as they would of a non-LGBT married employee — clearly communicates inclusion and acceptance.

CO-WORKERS

Asking open LGBT employees about their partner, dating and family.

In these ubiquitous conversations about personal lives at work, co-workers who proactively ask about an LGBT employee's partner or social life or acknowledges sexual orientation or gender identity in another positive way also facilitates inclusion and feelings of acceptance.

Reacting positively when an LGBT employee first discloses his or her sexual orientation or gender identity.

LGBT workers are very aware of verbal and nonverbal reactions, and many say the most positive reaction is a “non-reaction.” That is, the conversation continues uninterrupted, without pause or signs of discomfort. In a few cases, participants say a co-worker has thanked the LGBT employee for trusting him or her and for sharing the information. Transgender participants in the research are particularly likely to say that this kind of response has a tremendous effect on feelings of acceptance and being valued.

Sharing individual comfort with LGBT people. Another strong cue of potential acceptance is the degree and type of exposure to LGBT people. Co-workers who talk about friends or family members who are LGBT— either neutrally (i.e., just matter-of-factly mention them) or positively — signal to LGBT employees that they are accepting of LGBT people. Other neutral or positive mentions that suggest exposure to LGBT people, such as going to an LGBT community event or activity, are included in these cues of acceptance.

Supporting climate advocates. A segment of LGBT employees are very proactive at work and naturally act as educators and sometimes enforcers of policy. When hearing an anti-LGBT comment or joke, these employees directly confront the offending person, explaining why the comment is not appropriate.

I have a new manager. I'm very much out at work. Pretty much everybody in my department is aware that [partner's name redacted] and I have been together for a number of years, but my new manager hasn't really broached that subject yet. Neither have I. I probably should, but we have very much a business relationship. We talk strictly about work. We don't really talk about personal lives. It just hasn't come up. I'd like to see him ask, "How was your weekend?" You know, "What did you guys do?"

GAY, WHITE, 45, CHARLOTTE, N.C., SENIOR/
EXECUTIVE LEADER AT LARGE EMPLOYER



CONCLUSION



The state of workplace climate for LGBT workers across the nation varies greatly. The good news is that our research shows that simple efforts can profoundly improve climate and mitigate microinequities.

The central issues faced by LGBT workers revolve around misunderstandings and a lack of leadership or skills for managers and executives to proactively address climate issues. While these issues can have a costly impact on LGBT employees, most workplaces can improve with targeted assessments and teachings around everyday opportunities to signal an inclusive workplace — from the morning chat at the coffee machine to simply starting a conversation within a work team about LGBT issues.

While equality in the workplace is improving and more LGBT employees are feeling safe to be open at work, this research suggests that organizations still seem to be reactive rather than proactive when it comes to LGBT-related climate issues. There are few proactive organizational-based signs of understanding and acceptance in the workplace. By engaging more deliberately with the three core tiers of influence in an organization — senior leadership, human resources and diversity professionals; middle managers and supervisors; and individual employees — workplace climate for LGBT employees can be effectively improved.

METHODOLOGY

The HRC Foundation contracted with Lake Research Partners to understand the lived experiences of lesbian, gay, bisexual and transgender people in large U.S. workplaces. The research, conducted from March through August of 2008, consisted of online and in-person focus groups and a series of one-on-one telephone interviews, followed by a national survey of LGBT employees.

QUALITATIVE RESEARCH

FOCUS GROUPS

The qualitative research explored issues, experiences and attitudes toward workplace climate among more than 70 diverse employees recruited from YouGov/Polimetrix's panel of people in the United States. A total of 14 focus groups — 11 online and three in-person — were conducted from March through May 2008. To recruit hard-to-reach LGBT employees with varied professional experience, geographic location and economic sector, 11 of the 14 groups were conducted online.

Focus group participants were screened to meet the specifications of each group and to ensure diversity of participants within each group with respect to sexual orientation, gender identity, age, race/ethnicity, region, industry, union membership and employer size. While the focus of this research is on large employers with 1,000 or more employees, the findings include participants from businesses of all sizes.

Non-LGBT workers were also screened using an additional metric of “temperatures” to gauge attitudes on social groups and hot button political subjects in order to better understand their varying perspectives on working with LGBT people; workers were rated on a continuum from hostile (0) to strong (100), and those rated within 30 to 70 were selected to participate.

All 14 focus groups lasted approximately 90 minutes and were facilitated by professionally trained moderators. In-person focus group participants received financial stipends, and online focus group participants received YouGov/Polimetrix points redeemable for rewards for their time. Some attributions to the quotes selected from focus group participants that appear in this report lack certain identifying information because it was not provided to the HRC Foundation.

COMPOSITION OF SURVEY RESPONDENTS

Male	54%
Female	46%
Gay	40%
Lesbian	26%
Bisexual	33%
Transgender	03%
18-24	11%
25-34	23%
35-44	31%
45-54	23%
55 & over	12%
White	63%
African American	12%
Latino	16%
Other	09%
High school or less	23%
Some college	35%
Bachelor's degree or higher	37%
<\$25K	11%
\$25K-\$49K	28%
\$50K-\$74K	26%
\$75K+	34%
<1000 employees	55%
1000+ employees	44%
Northeast	24%
Midwest	21%
South	31%
West	24%

- Online Focus Groups** Online focus groups were conducted for each of the following segments of LGBT employees: lesbian and gay executives; lesbian and bisexual women; LGBT workers under 30; transgender workers; client-based LGBT workers; LGBT union workers; mixed LGBT and non-LGBT workers, human resources and diversity professionals, non-LGBT workers, LGBT pink- and blue-collar² workers and service-sector employees; and bisexual workers.

Separate online focus groups were also conducted for each of the following groups of non-LGBT employees: workers with favorable, moderate or slightly unfavorable views on LGBT people³; and human resources and diversity professionals.

- In-Person Focus Groups** Three in-person focus groups were conducted: LGB people of color in Atlanta, LGBT workers in Dallas and non-LGBT pink- and blue-collar workers in Las Vegas.

INDIVIDUAL INTERVIEWS

The final phase of the qualitative research included three informal one-on-one interviews conducted by telephone that provided more detailed insight into individual experiences among transgender, client-based and Asian-American LGBT workers. These interviews lasted approximately 30 to 45 minutes each.

FOCUS GROUP MEDIUM AND COMPOSITION

DATE	FORMAT	PARTICIPANTS
March 3	Online	Lesbian & Gay Executives
March 4	Online	Lesbian & Bisexual Women
March 4	Online	LGBT Workers Under Age 30
March 5	Online	Client-Based LGBT Workers
April 17	Online	LGBT Union Employees
April 17	Online	LGBT Pink & Blue Collar
April 23	Online	Mixed, LGBT and non-LGBT
April 23	Online	HR & Diversity Professionals
April 24	Online	Non-LGBT Workers
April 24	Online	Bisexual Workers
April 28	Online	Transgender Workers
April 30	In-Person	LGB People of Color in Atlanta
April 30	In-Person	LGBT Workers in Dallas
May 1	In-Person	Non-LGBT Pink & Blue Collar in Las Vegas

² “Pink collar” refers to occupations traditionally held by women, such as teaching, nursing, administration, child care and clerical and secretarial work. “Blue collar” refers to occupations requiring physical labor and traditionally held by men, such as manufacturing, building and construction trades, mechanical work, repair and operations maintenance or technical installations.

³ Screening questions were used to ascertain the level of favorability toward non-LGBT people.

QUANTITATIVE RESEARCH

Lake Research Partners conducted a nationally representative survey of 761 LGBT employees from July 25 through August 11, 2008, administered by Knowledge Networks, an Internet-based survey research company featuring a unique probability-based panel of Americans recruited through random digit dialing telephone sampling. Knowledge Networks provides hardware similar to WebTV and Internet access for those who do not have a computer at home.

Because the panel is probability-based and not volunteer-based or opt-in, results can be reliably projected to the LGBT workers in the United States.

Because transgender people have not traditionally been a focus of national surveys, no national panel adequately represented and accounted for this community. Knowledge Networks screened its lesbian, gay and bisexual panel members, excluding all unemployed or self-employed members, and then rescreened for sexual orientation or gender identity. The final sample included only 23 transgender employees who also identify as lesbian, gay or bisexual. No transgender employees identified as straight. While the sample is not statistically significant to be representative of transgender employees, the qualitative aspect of the research helps to provide a more complete picture of this population. Through continued work with some of the nation's major polling firms, the HRC Foundation hopes to build awareness of the need and demand for data on the entire LGBT community through more standardized questions about sexual orientation, gender identity and expression.

To augment a total of 440 completed interviews among Knowledge Networks' LGBT panel, a total of 321 LGBT interviews were conducted using an online panel maintained by Survey Sampling Inc.; data from these interviews were weighted to Knowledge Networks benchmarks for the LGBT employed population. The margin of error is +/- 4.9 percentage points.

ANALYSIS

Lake Research Partners observed and/or moderated the 14 focus groups and analyzed data from each transcript. For the survey analyses, Lake Research Partners conducted a number of statistical analyses, including cross-tabulation analysis, bivariate correlations, regression and factor analysis.

APPENDIX
WORKPLACE
CLIMATE
QUESTIONNAIRE

1. **Thinking about your workplace and employer, do you agree or disagree with the following statements: (strongly agree, agree, slightly agree, slightly disagree, disagree, strongly disagree)**
 - I would not hesitate to recommend this company to a friend seeking employment.
 - This organization values differences in age, gender, sexual orientation, gender identity or expression, and race or ethnicity.
 - We have a work environment that is open and accepts individual differences.
2. **Do you consider yourself to be:**
 - Heterosexual or straight
 - Gay
 - Lesbian
 - Bisexual
 - Other (*SPECIFY*)
3. **IF BISEXUAL IN Q2: Which of the following best describes your sexual orientation:**
 - Bisexual, mostly attracted to the same sex
 - Bisexual, equally attracted to men and women
 - Bisexual, mostly attracted to the opposite sex
4. **What gender do you identify with:**
 - Male
 - Female
5. **Do you consider yourself to be transgender:**
 - Yes [*DROP DOWN MENU IF SELECTED - Do you identify as: Male-to-Female Transgender, Female-to-Male Transgender, Genderqueer, Transgender, Other (SPECIFY)*]
 - No [*TERMINATE IF HETEROSEXUAL IN Q2*]
6. **What is your current relationship status?**
 - Single
 - Legally married, in a civil union or registered domestic partnership
 - Dating someone
 - Divorced or separated
 - In a committed relationship
 - Other (*SPECIFY*)
7. **IF MARRIED, IN RELATIONSHIP OR DATING IN Q6: Is your current relationship with someone of:**
 - the same gender
 - another gender
8. **Which of the following best describes how open you are about being LGBT at work:**
 - Not open to anyone I work with
 - Open to a few people I work with
 - Open to about half of the people I work with
 - Open to most people I work with
 - Open to everyone I work with
9. **As an LGBT person, how accepted do you feel by the following? (very accepted, somewhat accepted, not too accepted, not at all accepted, not applicable)**
 - Customers or clients
 - Subordinates
 - Co-workers
 - Your direct supervisor
 - Top-tier or senior management
 - Human resources
 - Other LGBT employees
10. **EXCLUDE "OPEN TO EVERYONE" IN Q8: Here are reasons why some LGBT employees choose not to be open with everyone at work about their sexual orientation [IF YES IN Q5: and/or gender identity]. Are any of the following reasons why you personally are not out to anyone at work? Check all that apply.**
 - Possibility of being stereotyped
 - Possibility of losing connections or relationships with coworkers
 - Coworkers or management will think talking about my sexual orientation [IF YES IN Q5: and/or gender identity] is not professional
 - Lack of policies to protect LGBT workers
 - I or someone I know has been humiliated at work for being LGBT
 - Possibly making people feel uncomfortable
 - Fear for my personal safety
 - May not be considered for advancement or development opportunities
 - Fear of getting fired
 - Because it is nobody's business
 - Other (*SPECIFY*)
 - None of the above

11. Thinking about the past 12 months, about how many times have the following happened as a result of working in an environment that is not always accepting of LGBT people? (almost every day, at least once a week, once or twice a month, at least once in the past year, never in the past year) (RANDOMIZE)

- Stayed home from work
- Searched for a different job
- Felt distracted from work
- Avoided working on a certain project, team or client
- Avoided a social event at work such as lunch, happy hour or a holiday party
- Had to lie about my personal life
- Felt exhausted from spending time and energy hiding my sexual orientation
- Felt unhappy or depressed at work
- Avoided certain people at work

12. Have you ever left a job because the environment was not very accepting of LGBT people? (Yes, No)

13. In some workplaces, conversations come up that are not work-related. How often do you hear the following topics come up at your workplace: (almost every day, at least once a week, once or twice a month, a few times a year, never).

- | | |
|------------------------------------------------------|--------------------|
| ○ Children | ○ Politics |
| ○ Spouses, relationships or dating | ○ Religion |
| ○ Social life, such as what you did over the weekend | ○ Sex |
| | ○ Workplace gossip |

14. Thinking about these topics, how comfortable are you talking with coworkers about: (very comfortable, somewhat comfortable, not too comfortable, not at all comfortable, not applicable) (RANDOMIZE)

- | | |
|-----------------------------------------------------------|--------------------------|
| ○ Your children | ○ Your political views |
| ○ Your spouse, partner or dating | ○ Your religious beliefs |
| ○ Your social life, such as what you did over the weekend | ○ Sex |
| | ○ Workplace gossip |

15. How often does the following happen at work? (frequently, sometimes, only once in a while, never) (RANDOMIZE)

- Someone tells an anti-LGBT joke or makes a negative comment about LGBT people
- Rumors go around about your own or someone else's sexual orientation
[IF YES IN Q5: and/or gender identity]
- Someone tells a joke or makes a negative comment about African Americans, Latinos/as, women, people with disabilities or other minorities

16. How many people at work have you heard: (a lot, some, few, none)

- Mention a LGBT person close to them, such as a friend or family member, in a positive way?

17. How often do people at work do the following? (frequently, sometimes, only once in a while, never) (RANDOMIZE)

- Express negative views of LGBT people based on their religious beliefs
- Express positive views of LGBT people based on their religious beliefs
- Acknowledge that you are LGBT in a positive way, like asking about your spouse, partner or dating
- Express negative views about a news story that relates to LGBT issues
- Express positive views about a news story that relates to LGBT issues
- Appear visibly uncomfortable when you mention something about your partner, spouse or something else related to your sexual orientation

18. When you hear someone make an anti-LGBT comment at work, how do you typically deal with it? (ALLOW MULTIPLE RESPONSE)

- Just ignore it or let it go
- Confront the person who made the comment
- Talk to a supervisor about it
- Talk to human resources about it
- Other (SPECIFY)
- Not applicable – No one makes anti-LGBT comments at work

19. Has your supervisor ever made negative comments about LGBT people? (yes, no, DN/DK)

- 20. How often does your employer use terms like “partner” or “significant other” instead of, or alongside “spouse” where appropriate, such as in invitations to work functions? (Always, frequently, sometimes, rarely, never)**
- 21. Are the following present in your workplace? (yes, no, don't know)**
- Diversity trainings and communications that address sexual orientation and gender identity?
 - An Employee Resource Group for LGBT employees?
 - Openly LGBT employees in top-tier or senior management?
- 22. Does your employer have an Equal Employment Opportunity or Non-discrimination policy that includes: (yes, no, don't know)**
- sexual orientation
 - gender identity
- 23. IF YES TO Q22A: Do you agree or disagree with the following statements: (strongly agree, somewhat agree, somewhat disagree, strongly disagree):**
- Employees at my workplace follow the non-discrimination policy.
 - Enforcement of the non-discrimination policy depends on the supervisor's own feelings toward LGBT people.
- 24. Does your employer offer health insurance to same-sex partners of employees? (yes, no, don't know)**
- 25. How comfortable would you feel enrolling a partner in health benefits [IF NO/DK IN Q24: if your employer had them]? (very comfortable, somewhat comfortable, not too comfortable, not at all comfortable)**
- 26. Do you feel your employer has done enough to create an environment where LGBT people are comfortable being open about their sexual orientation [IF YES IN Q5: and gender identity]? (yes, no)**
- 27. How much impact does the following have on your work environment as an LGBT employee? (a great deal of impact, some impact, not much impact, no impact, not applicable)**
- Customers or clients
 - Subordinates
 - Coworkers
 - Your direct supervisor
 - Top-tier or senior management
 - Human resources
 - Other LGBT employees
- 28. If human resources sent an anonymous survey to all employees and included a question that asked about your sexual orientation [IF YES IN Q5: and gender identity] along with other demographic questions, would you feel comfortable answering honestly? (yes, no, don't know)**
- 29. IF NO OR DON'T KNOW IN Q28: What would concern you about answering honestly? (MULTIPLE RESPONSE)**
- Don't trust that survey is confidential
 - None of their business
 - Not sure how the information would be used
 - Other (SPECIFY)
- 30. If you left your job and had an exit interview, how comfortable would you feel talking about anything in your work environment that was difficult for you as a LGBT employee? (very comfortable, somewhat comfortable, not too comfortable, not at all comfortable)**
- 31. Which category best describes your role at work:**
- Executive (CEO, president or managing director & his/her direct reports)
 - Senior Management (VPs, directors who report to execs)
 - Middle Management (includes general manager, division, branch or plant manager)
 - Team Leader/Supervisor (manages the work of team members)
 - Professional Employee (not on frontline and no management responsibilities)
 - Team Member/Front-line Employee (contributor with no management responsibilities)

32. How long have you been employed at your current workplace?

- Less than 6 months
- More than 6 months but less than 1 year
- More than 1 year but less than 2 years
- 2 to 5 years
- 6 to 10 years
- 11 to 15 years
- 16 to 20 years
- 21 to 25 years
- 26 years or longer

33. Are there any other comments you would like to add about how workplaces can be improved for LGBT employees?**34. Which statement best describes your current employment status?**

- Working – as a paid employee
- Working – self-employed
- Not working – on temporary layoff from a job
- Not working – looking for work
- Not working – retired
- Not working – disabled
- Not working – other

35. IF WORKING – AS A PAID EMPLOYEE, SELF-EMPLOYED, OR NA: Altogether, how many jobs do you have?

- One
- Two
- Three
- Four or more

36. IF ONE OR NA: How many hours per week do you USUALLY work at your job? IF TWO, THREE OR FOUR OR MORE CHECKED IN Q36, USE ALTERNATIVE WORDING: How many hours per week do you USUALLY work at your main job? By main job we mean the one at which you usually work the most hours.

- 35 hours a week or more
- Less than 35 hours a week

37. In your current job, what kind of work do you do?

- Administrative support such as clerk, secretary, stenography
- Mechanic, repairer
- Tradesperson - baker, butcher, machinist, printer, tailor
- Other craft and repair
- Executive and Managerial
- Laborer – Handler, equipment cleaner, helper, machine ops
- Medical doctor – Surgeon, physician, dentist, ophthalmologist
- Other healthcare professional – Nurse, chiropractor, optometrist
- Health service worker – Dental assistant, health aide, nurse
- Health technician – X-ray technician, lab technician
- Engineer, architect, surveyor
- Lawyer, judge
- Scientist, researcher, analyst, statistician
- Social, recreation, religious worker
- Teacher, except college and university
- Teacher, college and university
- Other professional
- Sales representative in finance and business services
- Retail and personal services sales worker
- Other sales
- Food service – bartender, waiter, cook, food preparation
- Cleaning and building service – maid, houseman, janitor
- Personal service – hairdresser, cosmetologist, guide, usher
- Other service
- Engineering and science technician
- Other technician
- Transportation and material moving such as bus driver, truck driver
- Other

38. Counting all locations where your employer operates, what is the total number of persons who work for your employer?

- Under 10
- 10-24
- 25-99
- 100-499
- 500-999
- 1000+

39. What is the total number of employees at your primary work location?

- Under 10
- 10-24
- 25-99
- 100-499
- 500-999
- 1000+

40. Which of the following best describes your primary work location?

- Office environment (outside the home)
- Non-office environment (e.g., classroom, hospital, sales floor, manufacturing plant, outdoor location)
- Mobile (e.g., on the road, client sites)
- Home office
- Other (Please specify)

The following demographic information was provided by Knowledge Networks for all poll participants:

- Age
- Education
- Race
- Income
- Household number
- Children
- Party ID
- Political affiliation

ABOUT THE HRC FOUNDATION'S WORKPLACE PROJECT

The Human Rights Campaign Foundation's Workplace Project is a nationally recognized source of expert information and advice on lesbian, gay, bisexual and transgender workplace issues. It provides decision makers with cutting-edge research, expert counsel, online resources, best practices information and on-site training and education. Project staff serves as trusted consultants to diversity professionals and other executives seeking to position their business as welcoming workplaces that respect all employees, regardless of sexual orientation and gender identity or expression. The Project also makes available the expertise of the HRC Business Council for invaluable peer-to-peer advice.

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Since 1998, Daryl Herrschaft has overseen the Workplace Project of the Human Rights Campaign Foundation. In this capacity, he monitors and evaluates corporate policies surrounding lesbian, gay, bisexual and transgender employees, consumers and investors. He is the editor of the HRC Foundation's annual Corporate Equality Index and The State of the Workplace for Lesbian, Gay, Bisexual and Transgender Americans.

Herrschaft has consulted with dozens of major corporations on the full range of LGBT-related workplace policies. He has presented HRC findings to diverse audiences, including Fortune company executives, the Society for Human Resource Management and the New York City Council. He is frequently called upon by national and local media, including *Time* and *The Wall Street Journal* as well as CNN, National Public Radio and Voice of America. Before joining HRC, Herrschaft was a research associate at the Urban Institute. He holds a bachelor's degree from the George Washington University.

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Eric Bloem has directly consulted with dozens of major corporations on lesbian, gay, bisexual and transgender-related workplace policies. Before joining the Human Rights Campaign Foundation's Workplace Project in 2005, he spent six years as a manager with Accenture, where he provided change management consulting services to many Fortune 500 companies, including Best Buy, Fidelity, Walgreens and Citigroup. Bloem brings with him notable experience helping companies adapt to strategic change. Bloem developed the HRC Foundation Corporate Equality Series, a group of workshops designed to help human resources and diversity professionals better understand LGBT workplace issues. He conducts these workshops in strategic locations across the country. Bloem holds a bachelor's degree in business administration from Bucknell University.

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HRC BUSINESS COUNCIL

The Human Rights Campaign Business Council was founded in 1997. Members provide expert advice and counsel to the HRC Workplace Project on lesbian, gay, bisexual and transgender workplace issues based on their business experience and knowledge.

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Injustice at Every Turn

A Report of the National Transgender Discrimination Survey

Lead authors in alphabetical order:

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About the National Center for Transgender Equality

The National Center for Transgender Equality is a national social justice organization devoted to ending discrimination and violence against transgender people through education and advocacy on national issues of importance to transgender people. By empowering transgender people and our allies to educate and influence policymakers and others, NCTE facilitates a strong and clear voice for transgender equality in our nation's capital and around the country.

About the National Gay and Lesbian Task Force

The mission of the National Gay and Lesbian Task Force is to build the grassroots power of the lesbian, gay, bisexual and transgender (LGBT) community. We do this by training activists, equipping state and local organizations with the skills needed to organize broad-based campaigns to defeat anti-LGBT referenda and advance pro-LGBT legislation, and building the organizational capacity of our movement. Our Policy Institute, the movement's premier think tank, provides research and policy analysis to support the struggle for complete equality and to counter right-wing lies. As part of a broader social justice movement, we work to create a nation that respects the diversity of human expression and identity and creates opportunity for all.

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INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY

Introduction

Every day, transgender and gender non-conforming people bear the brunt of social and economic marginalization due to discrimination based on their gender identity or expression. Advocates confront this reality regularly working with transgender people who have lost housing, been fired from jobs, experienced mistreatment and violence, or been unable to access the health care they need. Too often, policymakers, service providers, the media and society at large have dismissed or discounted the needs of transgender and gender non-conforming people, and a lack of hard data on the scope of anti-transgender discrimination has hampered the work to make substantive policy changes to address these needs.

In 2008, The National Center for Transgender Equality and the National Gay and Lesbian Task Force formed a ground-breaking research partnership to address this problem, launching the first comprehensive national transgender discrimination study. The data collected brings into clear focus the pervasiveness and overwhelming collective weight of discrimination that transgender and gender non-conforming people endure.

This report provides information on discrimination in every major area of life — including housing, employment, health and health care, education, public accommodation, family life, criminal justice and government identity documents. In virtually every setting, the data underscores the urgent need for policymakers and community leaders to change their business-as-usual approach and confront the devastating consequences of anti-transgender bias.

Sixty-three percent (63%) of our participants experienced a serious act of discrimination—events that would have a major impact on a person’s quality of life and ability to sustain themselves financially or emotionally. Participants reported that they had faced:

- Loss of job due to bias
- Eviction due to bias
- School bullying/harassment so bad the respondent had to drop out
- Teacher bullying
- Physical assault due to bias
- Sexual assault due to bias
- Homelessness because of gender identity/expression
- Loss of relationship with partner or children due to gender identity/expression
- Denial of medical service due to bias
- Incarceration due to gender identity/expression

Each of these can be devastating and have long-term consequences, as we will see in this report.

Almost a quarter (23%) of our respondents experienced a catastrophic level of discrimination, having been impacted by at least three of the above major life-disrupting events due to bias. Imagine losing your home, your job and your children, or being bullied by a teacher, incarcerated because of your gender identity and sexually assaulted. These compounding acts of discrimination—due to the prejudice of others or unjust laws—exponentially increase the difficulty of bouncing back and re-establishing a stable economic and home life.

While these statistics are often devastating, it is our hope that they motivate people to take action, rather than simply despair. The gravity of these findings compels each of us to confront anti-transgender bias in our communities and rebuild a foundation of health, social and economic security for transgender and gender non-conforming people in our communities. We do believe that the situation is improving and look forward to future studies that will enable us to look at discrimination over time.

All of us — whether we are human resources professionals, nurses or doctors, police officers or judges, insurance company managers, landlords or restaurant managers, clerks or EMTs, teachers or principals, friends or community advocates — must take responsibility for the pervasive civil rights violations and callous disregard for basic humanity recorded and analyzed here. It is through the choices that each of us make, and the institutional policies we reject or uphold that either recreate or confront the outrageous discrimination study participants endure.

We present our findings, having just scratched the surface of this extensive data source. We encourage advocates and researchers to consider our findings with an eye toward much-needed future research. We expect these data to answer many questions about the lives of transgender people and the needs of this community and to provoke additional inquiry in years to come. To this end, we plan to provide the data set to additional researchers to perform deeper or different analysis.

Roadmap for this Report

Immediately after this chapter is Methodology, then we provide chapters based on major areas of life:

- Education
- Employment
- Health
- Family Life
- Housing and Homelessness
- Public Accommodations
- Identity Documents
- Police and Incarceration

Following these, we have shorter sections on two subjects: the particular experiences of cross-dressers and the policy priorities as defined by our respondents. We end with a Conclusion chapter.

There are three Appendices: Appendix A is a glossary of terms used in this report, Appendix B contains recommendations for future researchers who seek to do similar studies or ask similar questions of respondents, and Appendix C is the original survey instrument (paper version). We plan to provide the dataset to additional researchers to perform deeper or different analysis.

“I was kicked out of my house and out of college when I was 18. I became a street hooker, thief, drug abuser, and drug dealer. When I reflect back, it’s a miracle that I survived. I had so many close calls. I could have been murdered, committed suicide, contracted AIDS, or fatally overdosed.”

METHODOLOGY

The National Transgender Discrimination Survey is the most extensive survey of transgender discrimination ever undertaken. Over eight months, a team of community-based advocates, transgender leaders, researchers, lawyers and LGBT policy experts came together to create an original survey instrument. In the end, over 7,500 people responded to the 70-question survey. Over four months, our research team fielded its 70-question online survey through direct contacts with more than 800 transgender-led or transgender-serving community-based organizations in the U.S. We also contacted possible participants through 150 active online community listserves. The vast majority of respondents took the survey online, through a URL established at Pennsylvania State University.

Additionally, we distributed 2,000 paper surveys to organizations serving hard-to-reach populations — including rural, homeless, and low-income transgender and gender non-conforming people, conducting phone follow-up for three months. With only \$3,000 in funding for outreach provided by the Network for LGBT Health Equity, formerly the Network for LGBT Tobacco Control, we decided to pay stipends to workers in homeless shelters, legal aid clinics, mobile health clinics and other service settings to host “survey parties” to encourage respondents whose economic vulnerability, housing insecurity, or literacy level might pose particular barriers to participation. This effort resulted in the inclusion of approximately 500 paper surveys in the final sample.

Both the paper and online surveys were available in both English and Spanish. For additional information about the questionnaire itself, please see the Survey Instrument chapter.

The final study sample includes 6,456 valid respondents from all 50 states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands. Our geographic distribution generally mirrors that of the general U.S. population. For more information, see the tables at the end of this chapter or the Portrait chapter.

Our Respondents

At the outset, we had to determine if the population we sought for the survey was transgender people only, or transgender and gender non-conforming people. We ultimately chose to include both.

Both of our organizations define “transgender” broadly to include those who transition from one gender to another (transsexuals), *and* those who may not, including genderqueer people, cross-dressers, the androgynous, and those whose gender non-conformity is a part of their identity. Because the term “transgender” is understood in various ways that may or may not include these groups of people, we chose to use broader gender non-conforming language to ensure broad participation in the survey.

Furthermore, gender non-conforming people, especially those who are also lesbian, gay or bisexual, found themselves at the heart of the debate over the inclusion of transgender people and “gender identity” in the Employment Non-Discrimination Act in 2007. Information about their experiences of discrimination could better shape debates like these and shed light on the relationship between gender identity/expression and discrimination.

Consequently, we decided to invite the broader range of people to respond to the survey, and then, during cleaning, eliminate those who were neither transgender nor gender non-conforming; this process is described further in the “Cleaning the Data” section.

In the Portrait chapter, and in our discussion of Questions 3 and 4 in Appendix B, we describe more about the results of the choice to survey both transgender and gender non-conforming people (75% of our sample fell into the transgender category), as well as how we developed the categories of “transgender” and “gender non-conforming.” Throughout this report, we attempted to give both transgender and gender non-conforming results separately so that those who are interested in one of the groups could use more specific data.

Developing the Survey Instrument

Over eight months, a team of highly trained social science and health researchers, grassroots and national transgender rights advocates, expert lawyers, statisticians, and LGBT movement leaders worked together to craft this questionnaire. The mix of trained researchers, movement advocates and end-users at the forefront of policy change was powerful.

We based survey questions — their inclusion, their framing, relevant terms, and literacy level — on the experiences of transgender and gender non-conforming people in the room, and others in our lives, our families and our communities. By mining the stories of discrimination we had already encountered as advocates, researchers, family members and grassroots organizers, we helped design an instrument that was relevant and user-friendly, and ultimately yielded the largest sample of transgender experience ever gathered.

There were a few places where wording of questions could have been improved, which we realized during the data analysis phase of this project. Please see Appendix B, Survey Instrument—Issues and Analysis, for guidance for future researchers who seek to inquire about similar topics.

Length

The survey contained 70 questions, although often a single “question” was in reality a combination of many questions (for example, Question 4 asks for responses to 15 different terms). Reports from the field varied widely about the time it took to complete the survey. Some reported taking the survey in 20 minutes on a personal computer; while others who accessed the survey through health or homeless services settings and took it with the assistance of outreach workers often took an hour or longer. Before the survey data collection was started, some experts expressed concern that respondents who had a high school diploma or less would be unable to complete such a lengthy questionnaire, but our final sample included 806 respondents at that educational level.

The team believes that the period in which we fielded the survey — about a year after the 2007 removal of gender identity from proposed federal legislation that would have prohibited discrimination based on sexual orientation in the workplace — was a factor in the depth and breadth of our sample. This was a historic moment when gender non-conforming and transgender people felt a particular urgency to tell their stories, and to have their experiences accounted for in the national conversation on workplace discrimination and employment.

Many questions we wanted to ask were deleted in the end so that we could keep the survey at 70 questions. We understood length to be a risk.¹ We were hopeful that our two national organizations maintained a level of credibility in the community that would generate a strong response and that our affiliation with an academic institution, Pennsylvania State University, would also boost completion rates.

Distribution of Online and Paper Surveys

Before starting survey field work, we developed a list of about 800 active, transgender-specific or trans-related organizations and about 150 listserves in the United States. We attempted to reach every one by phone or e-mail, asking the organizations to e-mail their constituents or members directly with the URL for the questionnaire upon release and to run articles and free ads about the survey in their newsletters.

During our first two weeks of field work, study team members called hundreds of colleagues in LGBT organizations to ask for their help in spreading the word about the survey, and encouraging appropriate contacts to take the survey. We made a sustained effort to focus on LGBT people of color, rural and homeless/health service organizations so that our study would not neglect the respondents most often left out of critical research on our communities.

During our six-month data gathering effort, we dedicated a half-time staff person to do direct outreach to rural-focused organizations and listserves and those serving transgender people who access community resources via housing, health and legal programs. In some cases, volunteers, some of whom were given a modest stipend, acted as survey assistants at clinics or small “survey parties” through local programs, delivering and collecting paper surveys. We did not use incentives for respondents to complete the survey, although food was served at some group gatherings.

Our final sample consisted of approximately 6,000 online surveys and 500 paper surveys. More research or analysis would need to be done on the sample to determine whether we may have avoided the typical online bias by collecting paper questionnaires in addition to online data collection.²

While we did our best to make the sample as representative as possible of transgender and gender non-conforming people in the U.S., it is not appropriate to generalize the findings in this study to all transgender and gender non-conforming people because it not a random sample. A truly random sample of transgender

and gender non-conforming people is not currently possible, as government actors that have the resources for random sampling have failed to include questions on transgender identity in their population-based research.

Language and Translation

We attempted to make the language of the survey questionnaire accessible to as many participants as possible by maintaining an appropriately accessible literacy level without compromising the meaning of our questions. For example, we often omitted medical terminology that is not commonly understood while putting technical terms in parentheses for those who were familiar with them.

Often, we also had to choose between words that were clearer versus those that matched the sensitivities of the various communities the survey was intended to speak to. For example, we avoided using the terms “illegal,” “criminal,” and “prostitution” in Question 29 because of implicit value judgments in those terms. Instead we opted for “street economy” and “sex work,” which may have reassured some respondents but puzzled others. We found striking the right balance on language use to be a challenge.

Trained volunteers, including a company providing pro bono services, translated the survey into Spanish; we did not have funding to translate into additional languages.³ Gendered terms posed a major challenge since they are often linguistically and culturally specific and don’t always translate easily or precisely.

Hosting and Institutional Review

The questionnaire was hosted online by Pennsylvania State University through our partnership with Professor Susan (Sue) Rankin. The technological aspects of administering the online survey were handled by Pennsylvania State University IT professionals and her graduate students, who did an excellent job programming and safeguarding our data. Paper surveys were hand-entered into the system after the online survey closed.

It was important to us that our data go through a university-based Institutional Review Board (IRB) process, which ensures confidentiality and humane treatment of survey participants, so that our data could be published in and cited in peer-reviewed journals. Although this did add extra steps and time to our process, we believe it was well worth it.⁴

Going through institutional review also required that we start the questionnaire with an instruction sheet that told participants their rights and recourses as participants, as well as a variety of other information. The language in the instruction sheet met Pennsylvania State’s standards for IRB instructions and was at a

higher literacy level than the remainder of the survey. Accordingly, we worried that this would prove to be an intimidating first hurdle for some respondents. That instruction sheet is available in full in Appendix C: Survey Instrument.

Cleaning the Data

The next step was to clean the data, which is the process of eliminating those questionnaires that did not belong in the sample, as well as recoding written responses into categories when appropriate.

First, we eliminated respondents whose answers indicated that they were not taking the survey in earnest or were answering questions illogically, such as by strongly agreeing with each term in Question 4.

Second, we eliminated from our data set those respondents who indicated through their answers to Questions 1-4 that they were not actually transgender or gender non-conforming. There were a small group of people who were eliminated according to the following rubric: If they were born as one gender (Question 2), and still identified as that gender today (Question 3), we looked to see if they identified with the terms in Question 4. If they did not identify with these terms and reported that people did not know they were gender non-conforming (Question 5) and they did not tell people (Question 6), we removed them from the sample.

Third, throughout the survey there were open-ended questions, often “other, please specify _____,” to which respondents were given the opportunity to write their own answer.⁵ Part of our cleaning process involved examining these written responses. In some instances we were able to place more specific responses into the listed answer choices.

Fourth, we dealt with incompletes, duplicates, and those that did not consent. There were 31 duplicates that we removed from the sample. We removed records if the respondent stopped before answering Question 5, and we removed those who did not consent.

Taken together, our cleaning process reduced our sample size from an initial set of 7,521 respondents to 6,456 respondents.

Data Analysis and Presentation of Findings

After being cleaned, these data were analyzed to tabulate the sample's responses to each question presented in the survey instrument. Answers to individual survey questions were then broken down by various demographic characteristics to explore differences that may exist in the experiences of survey respondents based on such factors as race, income, gender and educational attainment. Further analysis was completed to see how some subgroups differed based on their answers to non-demographic questions, such as questions about drug use, suicide attempts and HIV status.

Not all respondents answered each question presented in the survey, either because they skipped the question or because the question did not apply to them. Tabulations of data were completed for those who completed the question being analyzed, with the further limitation that generally only those respondents for whom the question was applicable were included in the tabulation. For instance, when analyzing respondents' experiences while in jail or prison, the analysis was limited to those who answered the questions and also reported they had been sent to jail or prison.

Our findings are generally presented in the form of percentages, with frequencies presented where relevant. Throughout this report, we have rounded these percentages to whole numbers. We did not round HIV rates, which are provided in two decimals for more exact comparisons with existing research on the general population, and did not round in a few other places where greater precision was necessary due to small size.

When the respondents were segmented, occasionally the sample size became either too small to report on or too small for reliable analysis. When the n is under 15, we do not report the data and when the n is over 15 but under 30, we report the data enclosed in parentheses and make a note of it.

General population data are provided in the report as a way to roughly gauge how our sample differs from the U.S. population in terms of demographics and a variety of outcomes our survey sought to measure.

We did not employ the use of statistical testing to establish the statistical significance of the differences we found between various respondent subsets or between our sample and the general population. Though our sample was not randomly selected, future researchers may wish to conduct tests with this sample as a way to crudely measure the statistical significance of differences and relationships among subsets in the sample.

Throughout this report, we occasionally use terms such as “correlate,” “significant,” and “compare” that trained researchers might interpret to mean that we ran statistical tests; we did not, as explained above, and are using these terms in the way that a lay person uses such terminology.

Throughout the report, we include quotes from respondents who wrote about their experiences of acceptance and discrimination in response to an open-ended question. We have edited these responses for grammar, spelling, brevity, and clarity, as well as to preserve their confidentiality.

Demographic Composition of the Sample

(Some readers may be more interested in these data as it is presented in the next chapter:
A Portrait of Transgender and Gender Non-Conforming People.)

Question	Response	#	%
Q1. Identify as Transgender	Yes	6436	100
	No	0	0
	Total	6436	100
Q2. Sex Assigned at Birth	Male	3870	60
	Female	2566	40
	Total	6436	100
Q3. Primary Gender Identity Today	Male/Man	1687	26
	Female/Woman	2608	41
	Part time as one gender, part time as another	1275	20
	A gender not listed here, please specify	864	13
	Total	6434	100
Q4. Identify with the Word Transgender	Not at all	618	10
	Somewhat	1601	26
	Strongly	4039	65
	Total	6258	100
Q10. Region (see Portrait chapter for the composition of the regions)	New England	540	9
	Mid-Atlantic	1314	21
	South	1120	18
	Mid-West	1292	21
	West (Not California)	1035	17
	California	906	15
	Total	6207	100
Q47. Disability	Yes	1972	31
	No	4401	69
	Total	6373	100
Q49. HIV Status	HIV negative	5667	89
	HIV positive	168	3
	Don't know	536	8
	Total	6371	100

Question	Response	#	%	
Q11. Race (Multiple Answers Permitted)	White	5372	83	
	Latino/a	402	6	
	Black	389	6	
	American Indian	368	6	
	Asian	213	3	
	Arab or Middle Eastern	45	1	
	Total			Multiple responses were permitted so % add to >100%
Q11. Race recoded	American Indian only	75	1	
	Asian only	137	2	
	Black only	290	5	
	Hispanic only	294	5	
	White only	4872	76	
	Multiracial and other	736	11	
	Total	6404	100	
Q12. Education	Less than high school	53	1	
	Some high school	213	3	
	High school graduate	540	8	
	Some college <1 year	506	8	
	Technical school	310	5	
	>1 years of college, no degree	1263	20	
	Associate degree	506	8	
	Bachelor's degree	1745	27	
	Master's degree	859	13	
	Professional degree (e.g. MD, JD)	191	3	
	Doctorate degree	231	4	
	Total	6417	100	
	Q38. Did You Ever Attend School as a Trans or GNC Person	Yes	3114	49
No		3262	51	
Total		6376	100	
Q25. Work Status	Full-time	2970	46	
	Part-time	1012	16	
	Multiple Jobs	490	8	
	Self-employed/Owner	541	8	
	Self-employed/ Contractor	282	4	
	Unemployed/Looking	700	11	
	Unemployed/Not looking	210	3	
	Disability	502	8	
	Student	1292	20	
	Retired	450	7	
	Homemaker	111	2	
	Other, specify	434	7	
	Total			Multiple responses were permitted so % add to >100%

Question	Response	#	%
Q13. Household Income	Less than \$10,000	944	15
	\$10,000 to \$19,999	754	12
	\$20,000 to \$29,999	731	12
	\$30,000 to \$39,999	712	11
	\$40,000 to \$49,999	539	9
	\$50,000 to \$59,999	485	8
	\$60,000 to \$69,999	394	6
	\$70,000 to \$79,999	353	6
	\$80,000 to \$89,999	252	4
	\$90,000 to \$99,999	234	4
	\$100K to \$149,999	539	9
	\$150K to \$ 199,999	163	3
	\$200K to \$250,000	74	1
More than \$250,000	84	1	
	Total	6258	100
Q16. Relationship Status	Single	2286	36
	Partnered	1706	27
	Civil union	72	1
	Married	1394	22
	Separated	185	3
	Divorced	690	11
	Widowed	94	1
		Total	6427
Q63. Citizenship	U.S. citizen	6106	96
	Documented non-citizen	156	2
	Undocumented non-citizen	117	2
		Total	6379
Q64. Voter Registration	Registered	5695	89
	Not Registered	689	11
		Total	6384
Q65. Armed Service	Yes	1261	20
	No	4983	78
	Denied Enlistment	133	2
		Total	6377
Q66. Sexual Orientation	Gay/Lesbian/Same-gender	1326	21
	Bisexual	1473	23
	Queer	1270	20
	Heterosexual	1341	21
	Asexual	260	4
	Other, specify	698	11
		Total	6368

Endnotes

- 1 In general, we suggest that future researchers not replicate the length of this survey, unless they have the resources to process the results and are sure that respondents will complete the questionnaire.
- 2 According to Don Dillman, “The lack of Internet service for 29% of the population and high-speed service for 53% of the population is complicated by differences between those who have and do not have these services. Non-Whites, people 65+ years old, people with lower incomes, and those with less education have lower internet access rates than their counterparts, and, therefore, are more likely to be left out of Internet surveys.” Don Dillman, Jolene Smyth, and Leah Melani Christian, *Internet, Mail, and Mixed-Mode Surveys: The Tailored Design Method* (New York: Wiley, 2008). Therefore, online samples often have higher educational attainment and higher household income. Our sample had considerably lower household income, which would lead one to speculate that we have avoided this bias. However, our educational attainment is much higher than the general population, which could lead to the opposite conclusion. Even more interestingly, one would expect the sample to demonstrate higher levels than the general population of being in school between 18-24, if it were privileged, yet, as discussed in the Education chapter later, our sample is in school less than the general population in that age range. For more information about online bias, see David Solomon, “Conducting web-based surveys,” *Practical Assessment, Research & Evaluation*, 7 no.19, (2001): <http://PAREonline.net/getvn.asp?v=7&n=19>. See also Lee Rainie et al., “The Ever-Shifting Internet Population: A new look at Internet access and the digital divide,” *Pew Internet & American Life Project* (2003): <http://www.pewinternet.org/Reports/2003/The-EverShifting-Internet-Population-A-new-look-at-Internet-access-and-the-digital-divide/02-Who-is-not-online/03-Several-demographic-factors-are-strong-predictors-of-Internet-use.aspx>.
- 3 We would recommend that future studies budget funding for translation. We also recommend working with members of the transgender community who speak the language you are translating to to be sure that the terms used are current and appropriate.
- 4 We urge other researchers to follow the IRB process to continue building peer-reviewed research and articles that document the overwhelming problems of discrimination against transgender and gender non-conforming people. However, the additional time and expense involved may make institutional review impractical for some community-based surveys that are not intended for publication in peer-reviewed academic or research journals.
- 5 In every case where writing in answers was an option, coding and tabulating the data was extremely time-consuming. For organizations conducting a survey such as this with fewer resources to process results, it may be advantageous to avoid or limit this type of question.

EMPLOYMENT

Employment is fundamental to people’s ability to support themselves and their families. Paid work is not only essential to livelihood; it also contributes greatly to a sense of dignity and accomplishment over a lifetime. The Universal Declaration of Human Rights asserts the rights of individuals to work at the job of their choice, receiving equal pay for equal work, without discrimination. Yet far too often, transgender people are denied these basic human rights.

There are also serious social consequences associated with unemployment and under-employment. The loss of a job and unemployment are linked to depression and other mental health challenges.¹ Given the high rates of unemployment seen in our sample and the high rates of suicide attempts noted in the Health chapter of this document, employment issues are of particular concern to transgender and gender non-conforming people.

Field work for this study was done from September 2008 through February 2009, with a large majority completing questionnaires during September. Accordingly, the employment statistics here largely precede the widespread layoffs and double digit unemployment that the nation as a whole experienced as the economy moved into a major recession. The data that follow show that due to discrimination, study participants were experiencing very high rates of unemployment and extremely poor employment conditions. Given that respondents were faring worse than the nation as a whole before the recession led to large-scale layoffs, the data suggests that in the current crisis, transgender and gender non-conforming people are likely facing even higher unemployment than their gender-conforming peers.

The data show not only the rampant discrimination against transgender and gender non-conforming people, but also show that large numbers have turned to the underground economy for income, such as sex work or drug sales, in order to survive. Throughout this chapter, we refer to this as “underground employment.”

KEY FINDINGS IN EMPLOYMENT

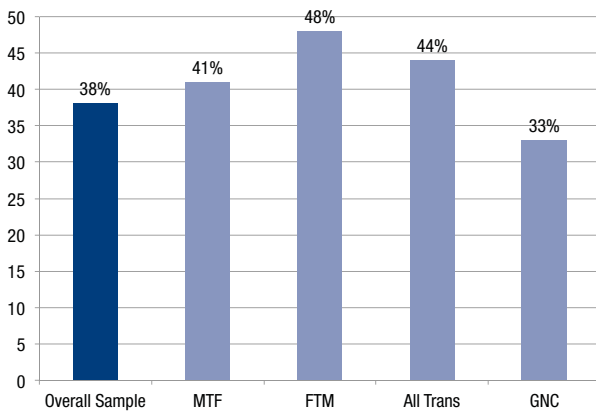
- **Double the rate of unemployment:** Survey respondents experienced unemployment at twice the rate of the general population, with rates for people of color up to four times the national unemployment rate.
- **Near universal harassment on the job:** Ninety percent (90%) of those surveyed reported experiencing harassment or mistreatment on the job or took actions to avoid it.
- **Considerable loss of jobs and careers:** Forty-seven percent (47%) said they had experienced an adverse job outcome, such as being fired, not hired or denied a promotion because of being transgender/gender non-conforming; 26% of respondents said that they had lost a job due to being transgender or gender non-conforming.
- **Race multiplies the effect of discrimination:** For Black, Latino/a, American Indian and multiracial respondents, discrimination in the workplace was even more pervasive, sometimes resulting in up to twice or three times the rates of various negative outcomes.
- **Living in dire poverty:** Fifteen percent (15%) of our respondents reported a household income under \$10,000/year, nearly four times the rate of this category for the general population. **Those who lost a job due to bias lived at this level of poverty at six times the rate of the general population.** More information about income can be found in the Portrait and Education chapters.
- **Rampant under-employment:** Forty-four percent (44%) reported experiencing under-employment.
- **Large majorities attempted to avoid discrimination** by hiding their gender or gender transition (71%) or delaying their gender transition (57%).
- **The vast majority (78%) of those who transitioned from one gender to the other reported** that they felt more comfortable at work and **their job performance improved.**
- **Eighty-six percent (86%)** of those who have not lost a job due to bias reported that they **were able to access restrooms at work** appropriate for their gender identity, meaning that 14% of those who kept their jobs were denied access.
- **People who had lost a job due to bias or were currently unemployed reported much higher involvement in underground employment such as sex work or drug sales,** had much higher levels of incarceration and homelessness, and negative health outcomes.
- Sixteen percent (16%) said they had been compelled to engage in underground employment for income. **Eleven percent (11%) turned to sex work.**
- **Many respondents demonstrated resilience:** Of the 26% who reported losing a job due to bias, 58% reported being currently employed.

Outness at Work

We asked about outness at work in two different ways, only examining those who were currently employed. First, we asked respondents whether they tell work colleagues they are transgender or gender non-conforming. Second, we asked whether or not people at work knew that the respondent was transgender or gender non-conforming

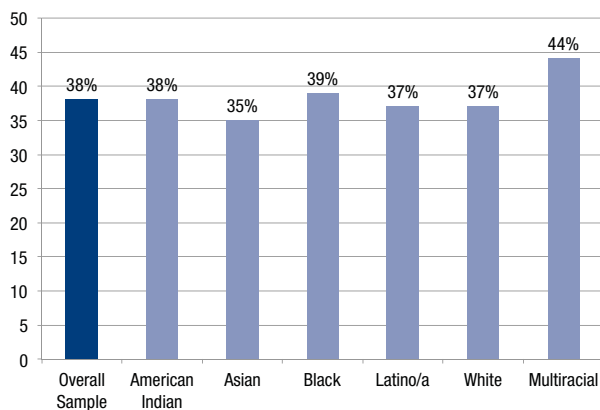
In the first measure, 38% reported that they tell work colleagues that they are transgender or gender non-conforming.²

Outness at Work by Gender Identity/Expression

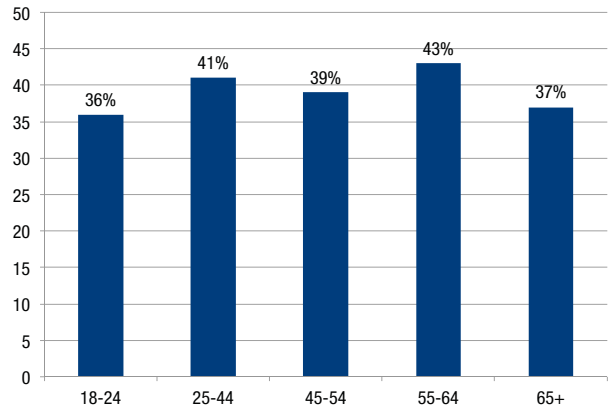


Outness did not vary much by race or age.

Outness at Work by Race



Outness at Work by Age



In the second measure, whether or not people at work knew that the respondent was transgender or gender non-conforming, we found that over one third (35%) reported that “most” or “all” coworkers knew they were transgender or gender non-conforming. Another third (37%) said “some” or “a few” coworkers knew, and 28% said no one knew.

Among those who had transitioned, we see slightly elevated rates of coworkers being aware of their transgender or gender non-conforming status. Half (50%) reported “most” or “all” coworkers knew, 34% said “some” or “a few” knew, and 16% said no one knew.

“The only positive benefit of being on Disability is that I do not have to worry about employment discrimination.”

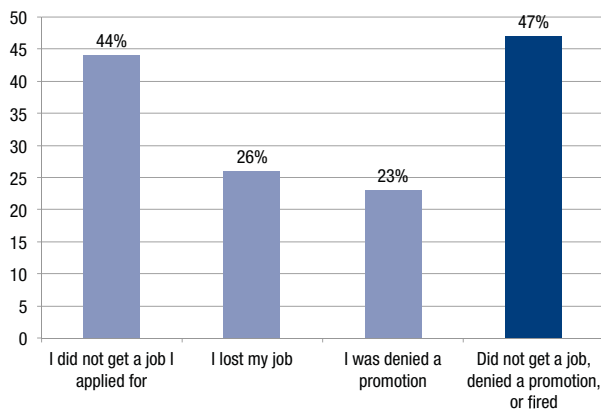
“For years, I lived ‘in the closet’ in order to support myself in my career.”

Employment Discrimination

Forty-seven percent (47%) of survey respondents said they had experienced an adverse job action—they did not get a job, were denied a promotion or were fired—because they are transgender or gender non-conforming.

“I went from making 40K, to nothing; I can barely get a part time job at a fast food restaurant.”

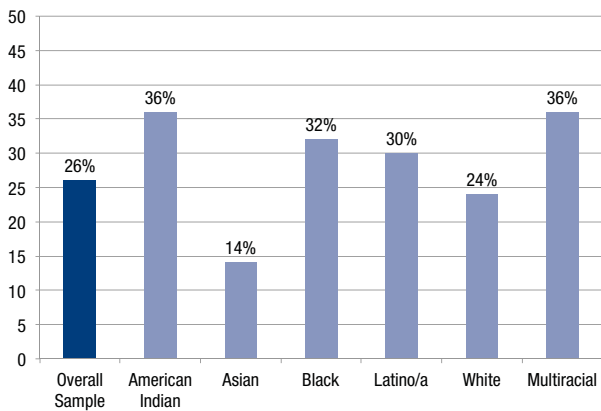
Adverse Job Actions



JOB LOSS DUE TO DISCRIMINATION

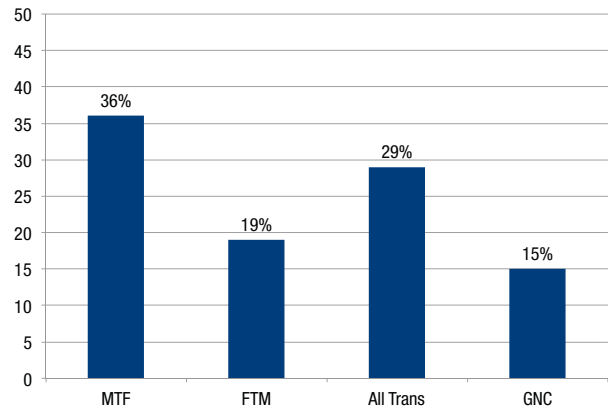
An alarming number of the people surveyed, 26%, reported losing their jobs directly due to their gender identity/ expression. Particularly hard hit were those who were Black (32%), multiracial (36%), and American Indian (36%).

Loss of Job by Race



Male-to-female transgender respondents reported job loss due to bias at a frequency of 36% while female-to-male transgender respondents reported 19%. Twenty-nine percent (29%) of transgender respondents experienced job loss due to bias while gender non-conforming participants reported 15%.

Loss of Job by Gender



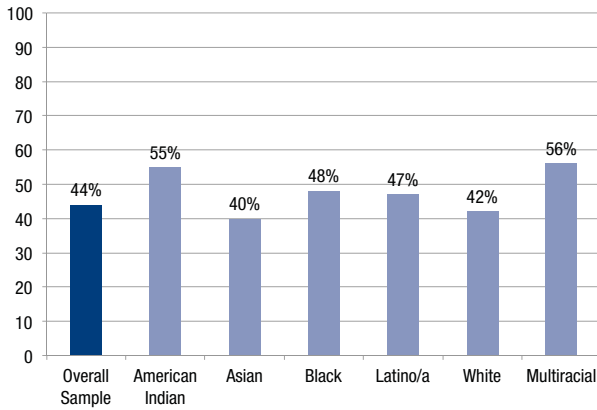
Respondents who reported having lost a job due to bias reported being currently unemployed (26%), many times the general population rate at the time of the survey (7%), which suggests that they have been unable to find new employment after a discriminatory termination. Twenty-eight percent (28%) of those who have lost a job due to bias have also reported work in the underground economy. Those who were living in the South were more likely to have lost a job due to bias (30%) than those living in other regions of the country. Undocumented non-citizens (39%) reported lost jobs due to bias more often than U.S. citizens (26%). Those with no high school diploma (37%) and those with only a high school diploma (33%) also experienced particularly high rates of job loss due to bias.

“I was highly regarded at my new workplace until one of my old co-workers came in for an interview there and saw me. During his interview he told them all about me. He didn’t get the job, but I soon lost mine.”

DISCRIMINATION IN HIRING

Forty-four percent (44%) of survey respondents reported they did not get a job they applied for because of being transgender or gender non-conforming. Eighty-one percent (81%) of those who had lost their job due to bias also reported discrimination in hiring as did 71% of those currently unemployed. Also particularly hard hit were multiracial respondents (56%), American Indians (55%) and those making under \$10,000/year (60%).

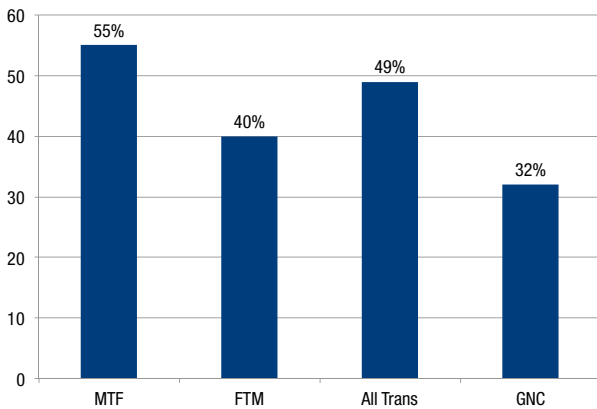
Discrimination in Hiring by Race



Sixty-one percent (61%) of those who reported doing sex work, drug sales or other underground work also say that they had experienced discrimination in hiring in the traditional workforce.

Male-to-female respondents experienced discrimination in hiring at 55%, compared to 40% of female-to-male respondents. Gender non-conforming respondents experienced this form of discrimination at 32%.

Discrimination in Hiring by Gender

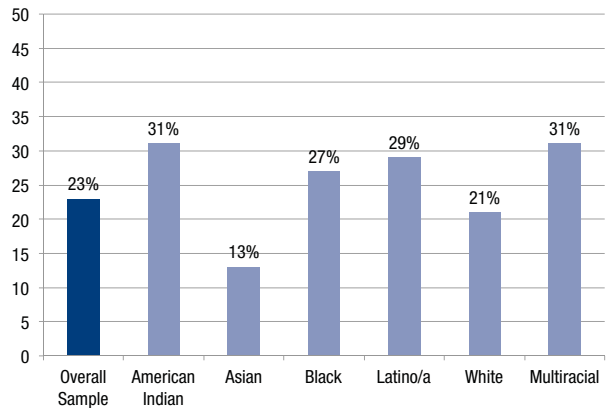


“It was absolutely impossible to find any work at all during transition. I was unemployed for four years. I went from comfortably upper middle class to the brink of destitution; I have spent all my retirement savings.”

DENIED PROMOTION

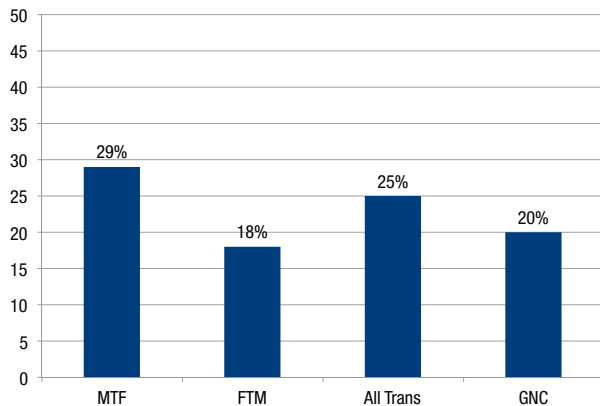
Twenty-three percent (23%) of respondents reported that they were denied a promotion because of being transgender or gender non-conforming. Thirty-three percent (33%) of those with no high school diploma reported denial of a promotion due to bias along with 31% of those who made under \$10,000/year. Also hard hit were Latino/a (29%), multiracial (31%) and American Indian (31%) respondents.

Denied Promotion by Race



Twenty-nine percent (29%) of male-to-female respondents reported denial of promotion due to bias, while female-to-male respondents reported an 18% rate. Twenty percent (20%) of gender non-conforming respondents reported denial of promotions due to bias.

Denied Promotion by Gender Identity/Expression



Under-employment

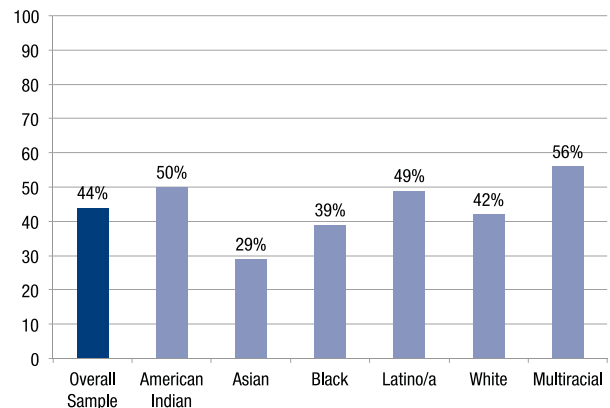
We asked respondents whether they were currently or previously under-employed due to their gender identity/expression; that is “working in the field I should not be in or a position for which I am over-qualified.”

Forty-four percent (44%) of our respondents reported that they considered themselves under-employed. Seventy-seven percent (77%) of those who lost a job due to bias also reported experiencing under-employment at some point as well. Sixty-four percent (64%) of those currently unemployed also reported under-employment. Those who made less than \$10,000/year reported current or previous under-employment at a rate of 56%. Also highly impacted were multiracial respondents (56%).

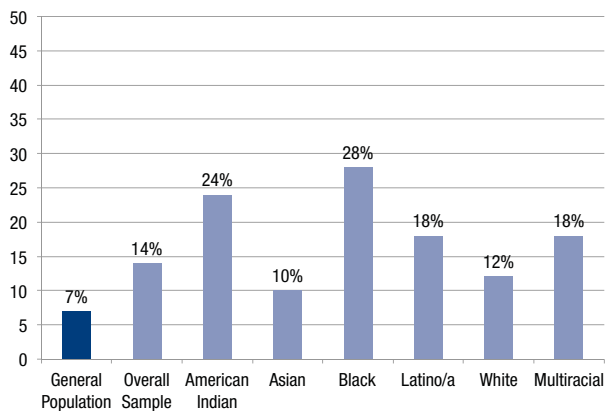
UNEMPLOYMENT

Transgender and gender non-conforming people are unemployed at alarming rates. Overall, the unemployment rate for respondents was 14%; double the weighted national average at the time of the survey.³ Nineteen percent (19%) of respondents were out of the workforce and “not looking.” Black, American Indian, Latino/a and multiracial respondents experienced unemployment at considerably higher rates than their white counterparts. Black respondents were unemployed at 28%, four times the rate among the general population; American Indian/Alaska Native respondents were unemployed at over three times the general population rate at 24%, Latino/a and multiracial respondents were unemployed over twice the general population rate at 18%

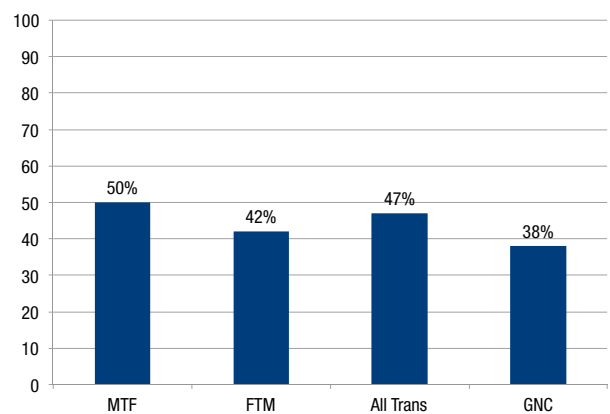
Underemployment Including by Race



Unemployment Rates including by Race



Underemployment by Gender Identity/Expression Chart



“I was a very respected lawyer before all of this, but lost my practice and clients, and have not been able to attract any new clients or get referrals or even get a job in my field for the past 8 years. Very frustrating because I don’t feel any less intelligent or less qualified, but others, both the public and lawyers, perceive me that way.”

Workplace Abuse — A Near-Universal Experience

Harassment and mistreatment at work is a near universal experience for transgender and gender non-conforming people and its manifestations and consequences are many. Not only do many face mistreatment and discrimination directly from coworkers and supervisors; others feel distressed and intimidated when they see others discriminated against, and decide they must hide who they are or give up certain career aspirations in order to stay protected.

Ninety percent (90%) of respondents said they had directly experienced harassment or mistreatment at work or felt forced to take protective actions that negatively impacted their careers or their well-being, such as hiding who they were, in order to avoid workplace repercussions.

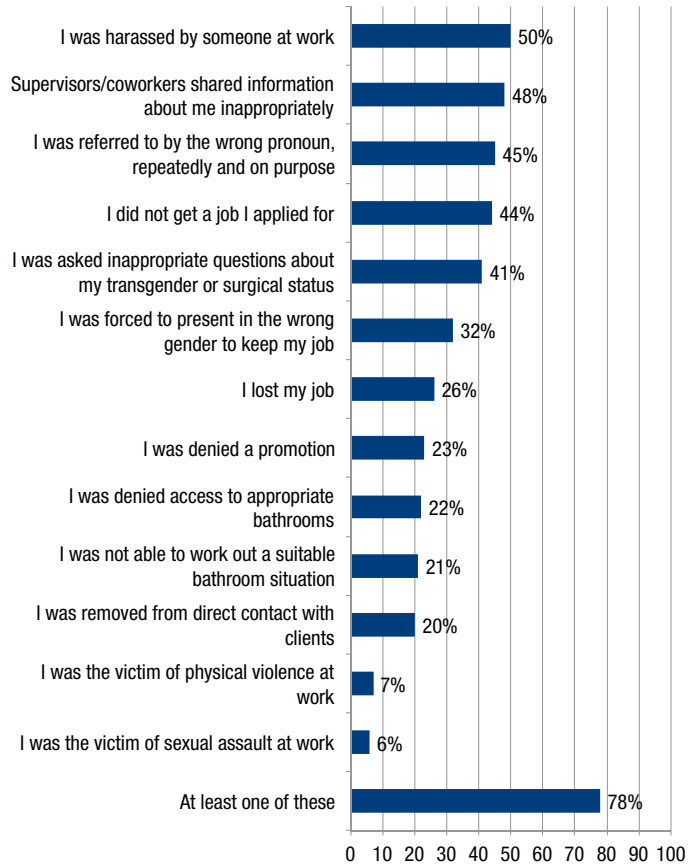
Mistreatment ranged from verbal harassment and breaches of confidentiality to physical and sexual assault, while bias-avoidant behaviors included hiding one’s gender, delaying transition, or staying in a job one would have preferred to leave. Given the broad spectrum of workplace abuse experienced by our study participants, their persistent engagement in the workforce speaks to a determination and resilience that goes largely unheralded in statistics and discourse about transgender and gender non-conforming people in the workplace.

“The obstacles currently facing trans people in regards to employment are the most insidious. Without an income, one has absolutely NO voice, politically, economically or socially. Elimination of employment discrimination, above all else, is the keystone to fundamental transgender equality in America.”

DIRECT MISTREATMENT AND DISCRIMINATION

Respondents reported on a wide range of workplace abuses, including direct discrimination and mistreatment by coworkers and supervisors. Seventy-eight (78%) of respondents said they experienced some type of direct mistreatment or discrimination.

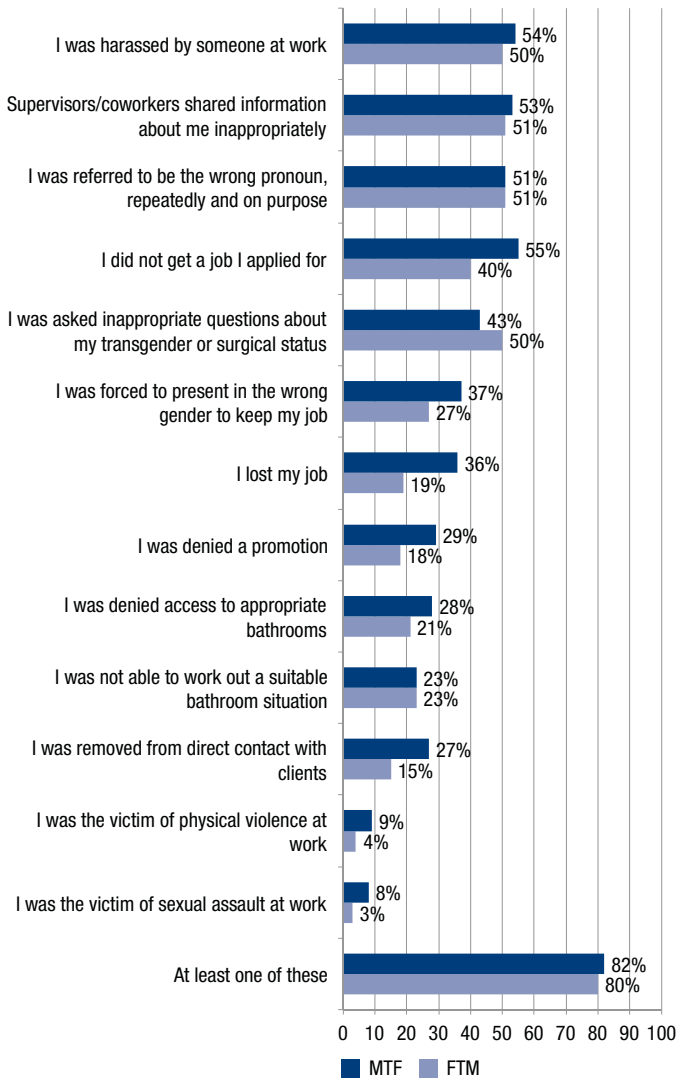
Direct Mistreatment and Discrimination in the Workplace



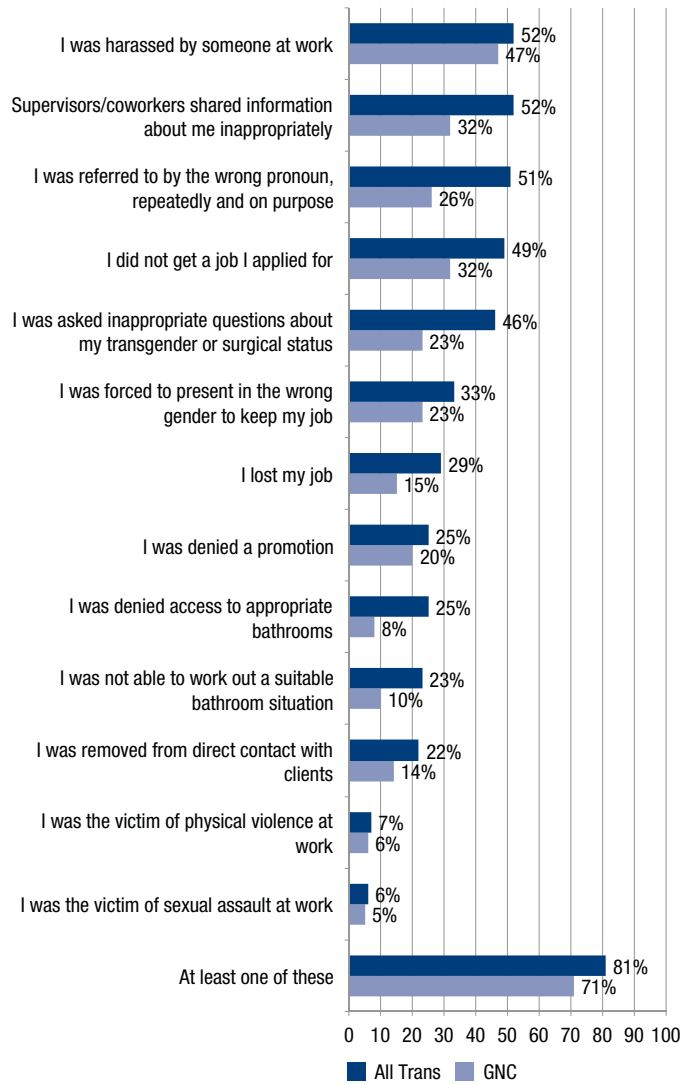
In answering each negative work experience question, transgender respondents reported higher levels of abuse than their gender non-conforming counterparts, often with a gap of 10 percentage points or more. Male-to-female respondents experienced harassment and mistreatment slightly more often than female-to-male respondents, though MTF experience of job loss, denial of promotion and discrimination in hiring was much higher than for FTM respondents.

People of color in the sample generally reported higher levels of abuse than the sample as a whole. Other respondents reporting higher vulnerability to mistreatment at work were those who had lost jobs due to discrimination; the unemployed; respondents who had done sex work, drug sales, or other underground work for income; and those earning under \$10,000 annually.

Direct Mistreatment at Work for MTF and FTM Respondents



Direct Mistreatment at Work for Transgender and Gender Non-Conforming Respondents

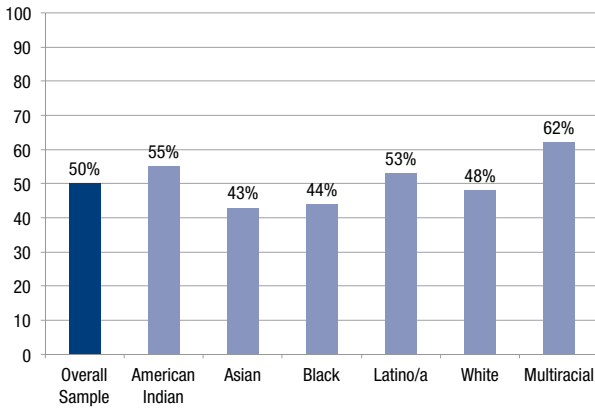


“I was fired from my job after 18 years of loyal employment after a fellow employee saw me dressed while attending counseling and reported me to the boss. I was forced on to public assistance to survive.”

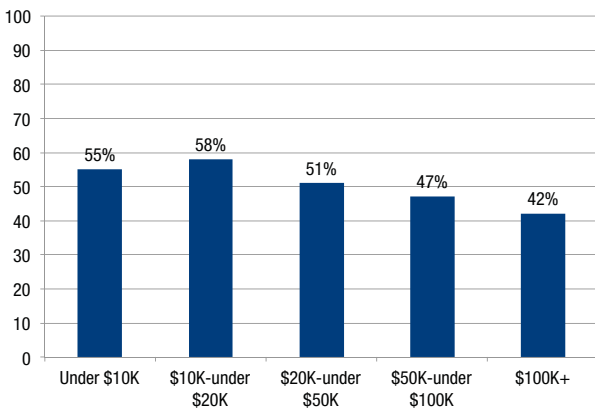
HARASSMENT

Fifty percent (50%) of respondents reported experiencing harassment in the workplace. This was the most common negative experience at work. Risk of harassment was higher for those earning lower incomes. High numbers of those who were currently unemployed also reported that they had been harassed when they were working. Similarly, a large number of those who reported having lost jobs due to bias also reported having been harassed at work. Last, those that had done underground work such as sex work, drug sales, or other underground activities for income also frequently reported that they had been harassed at work.

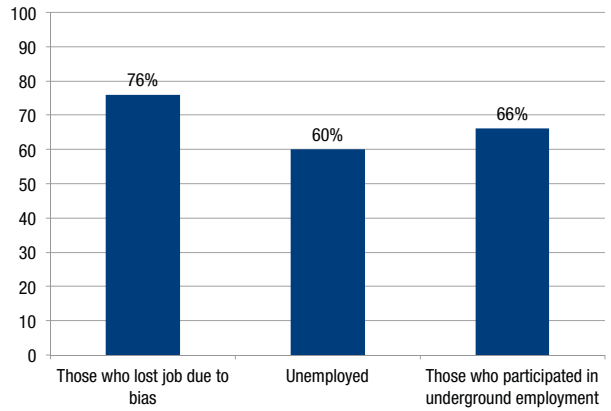
Harassment by Race



Harassment by Income



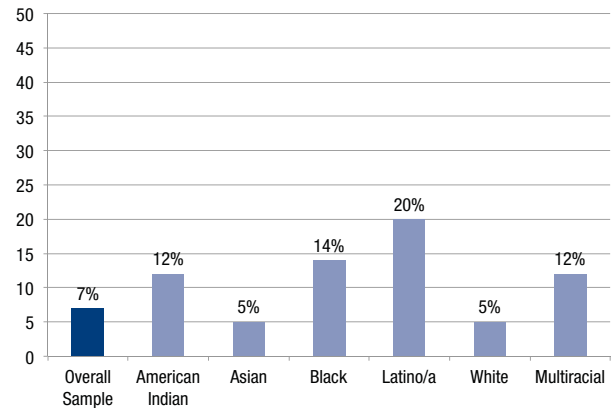
Harassment by Other Factors



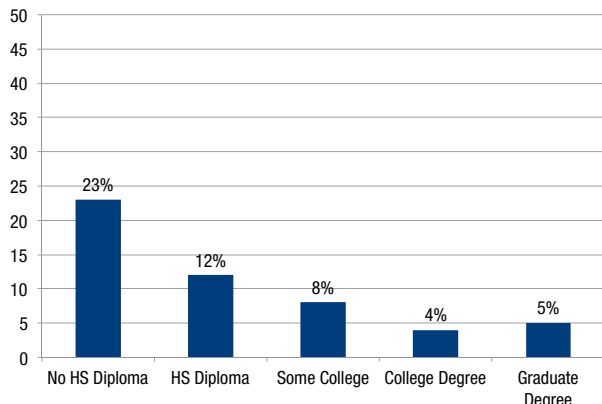
PHYSICAL ASSAULT AT WORK

Seven percent (7%) of our sample reported being physically assaulted at work because of being transgender or gender non-conforming. Undocumented noncitizens in our sample reported the highest rates of physical assault at 25%, over three times the rate of the overall sample.

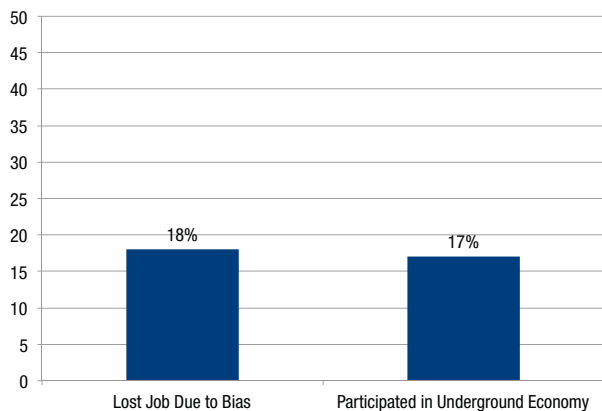
Physical Assault at Work by Race



Physical Assault at Work by Educational Attainment



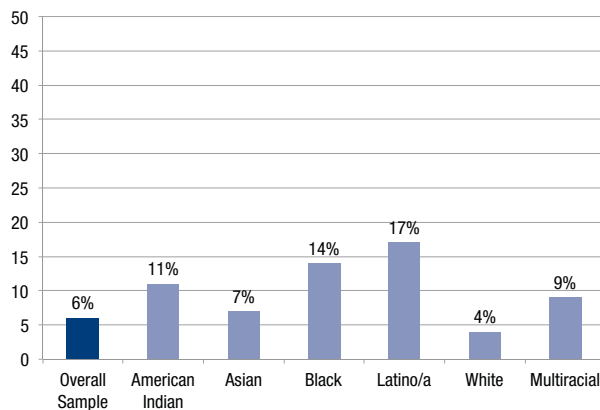
Physical Assault at Work, by Others at High Risk



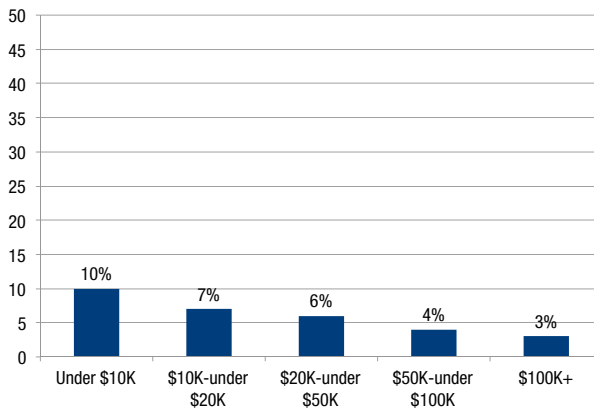
SEXUAL ASSAULT AT WORK

Six percent (6%) of respondents reported being sexually assaulted by someone at work because of being transgender or gender non-conforming. Undocumented noncitizens reported the particularly high rates of sexual assault at 19%, over three times the rate of the overall sample.

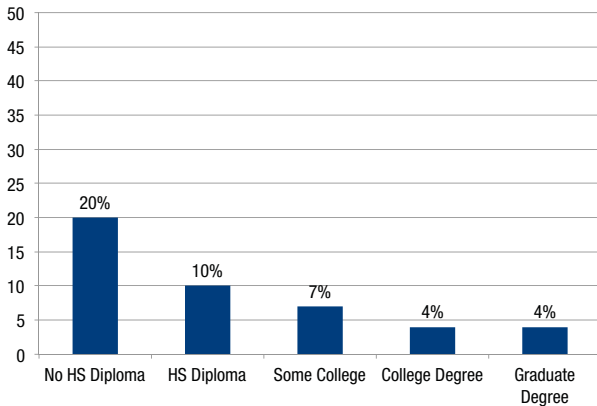
Sexual Assault at Work by Race



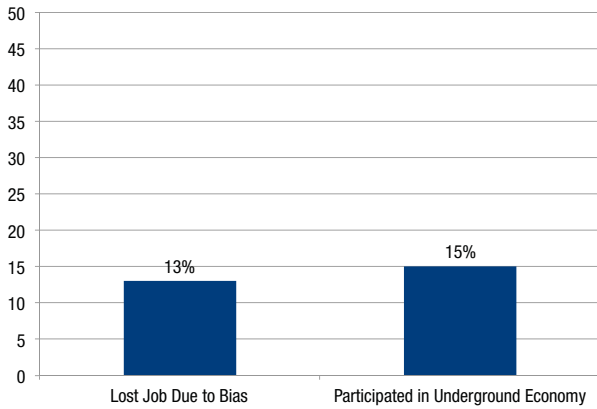
Sexual Assault at Work by Household Income



Sexual Assault at Work by Educational Attainment



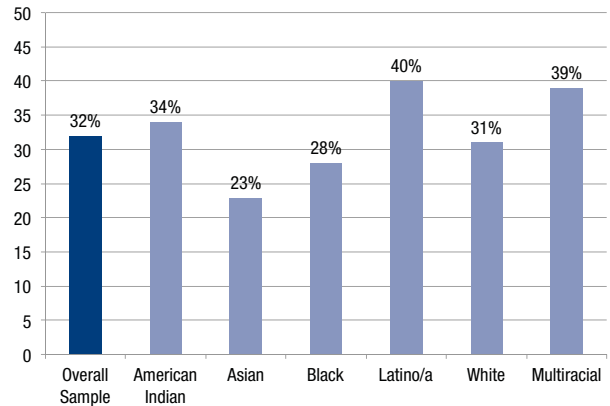
Sexual Assault at Work, Others at High Risk



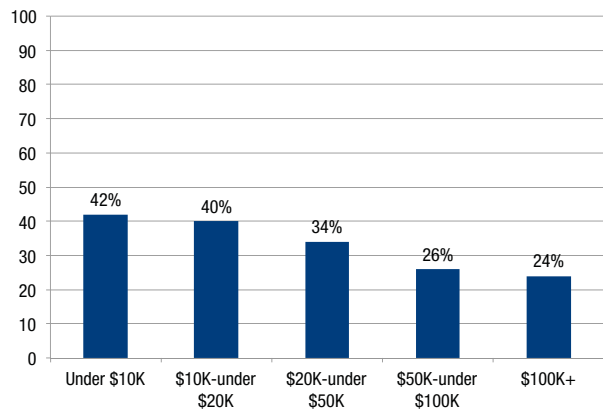
FORCED TO PRESENT IN THE WRONG GENDER

Thirty-two percent (32%) of respondents reported being forced to present in the wrong gender to keep their jobs. Our question did not specify whether they were required to do so by their employer, or they felt forced to because of fear of discrimination. Undocumented noncitizens reported this experience at a particularly high rate (45%).

Forced to Present in the Wrong Gender by Race



Forced to Present in the Wrong Gender by Household Income

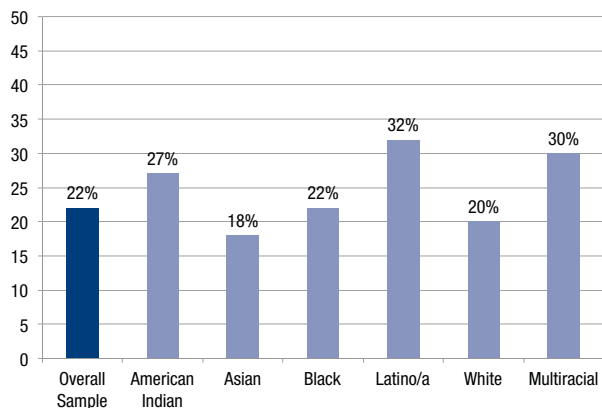


“When one of my colleagues found out I was born female, I was forced to use the bathroom in another part of the building where I worked, because he said that I made the ‘real’ men uncomfortable with my presence. Now, I look like a bio-male, and the only reason they knew about my status is because a supervisor found out, and spread my business to the other supervisors and friends. I had to walk 5 minutes to another building, which impeded my break times.”

RESTROOMS AT WORK

Eighty-six percent (86%) of those who have not lost a job due to bias reported that they were able to access restrooms at work appropriate for their gender identity, meaning that 14% of those who kept their jobs were denied access. Looking at the full sample, regardless of whether they were able to keep or they had lost a job, 78% were given access to restrooms appropriate for their gender identity and 22% were denied access.

Denied Access to Gender-Appropriate Restrooms by Race

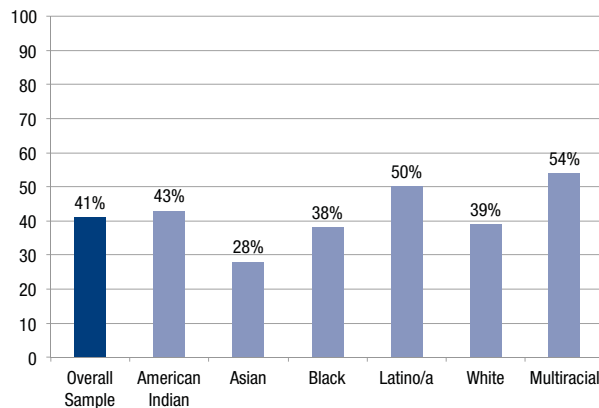


INAPPROPRIATE QUESTIONS

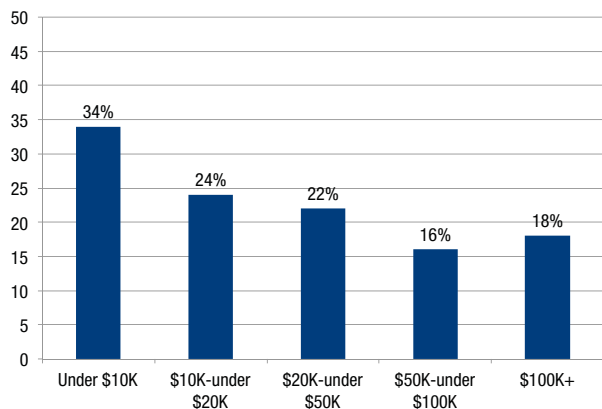
Forty-one percent (41%) of respondents reported having been asked inappropriate questions about their transgender or surgical status.

Forty-five (45%) of our sample reported having been referred to by the wrong pronouns “repeatedly and on purpose” at work.

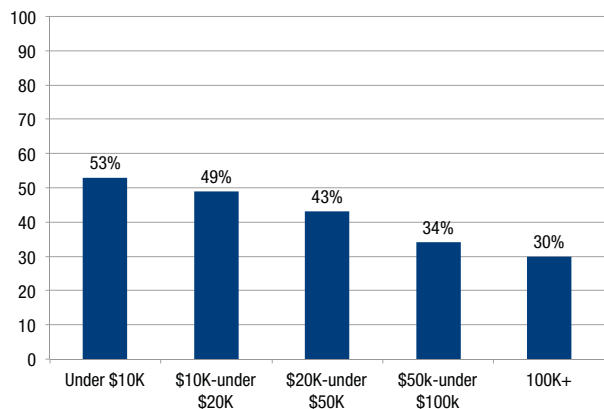
Was Asked Inappropriate Questions by Race



Denied Access to Gender-Appropriate Restrooms by Household Income



Was Asked Inappropriate Questions by Household Income

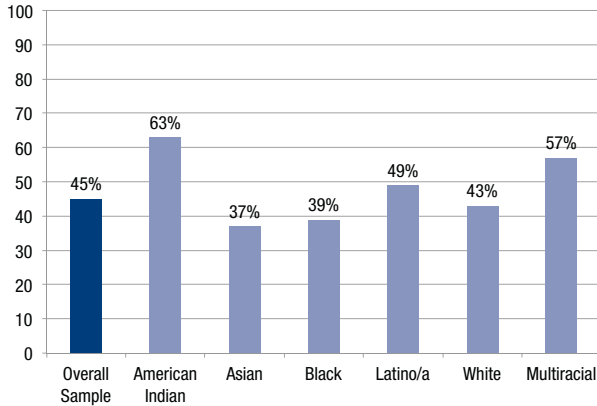


“At the job I came out at, most were ok and accepting; but the HR manager blocked any attempts for me to arrange a bathroom, even after I pointed to a local law allowing me to use the correct bathroom.”

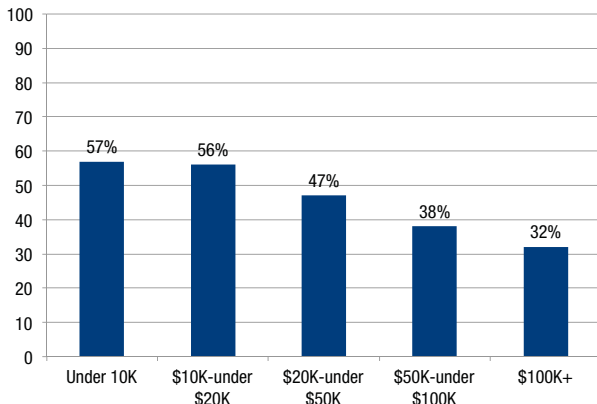
DELIBERATE MISUSE OF PRONOUNS

Forty-five (45%) of our sample reported having been referred to by the wrong pronouns “repeatedly and on purpose” at work.

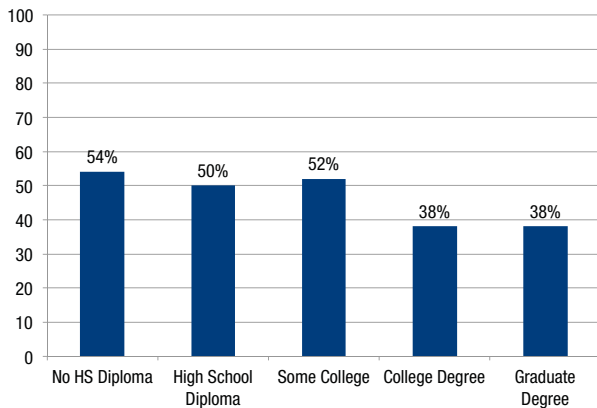
Deliberate Misuse of Pronouns by Race



Deliberate Misuse of Pronouns by Household Income



Deliberate Misuse of Pronouns by Educational Attainment

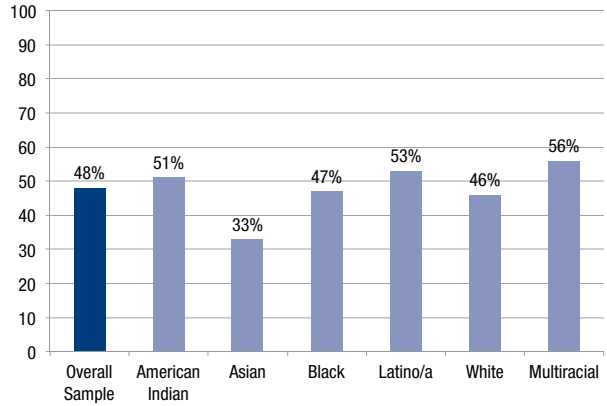


BREACHES OF CONFIDENTIALITY

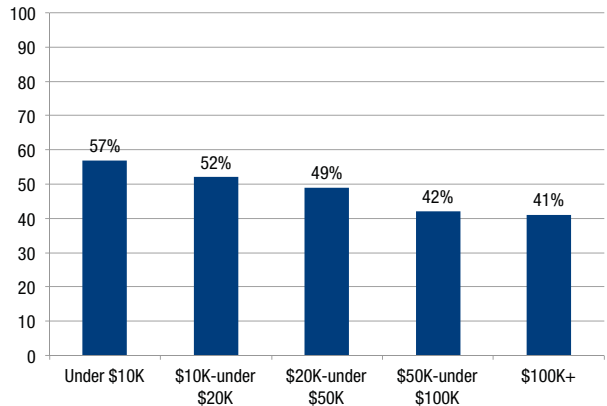
Forty-eight percent (48%) reported that supervisors or coworkers shared information about the respondent that they should not have had.

“My former employer outs me anytime a prospective employer calls.”

Breaches of Confidentiality by Race



Breaches of Confidentiality by Household Income

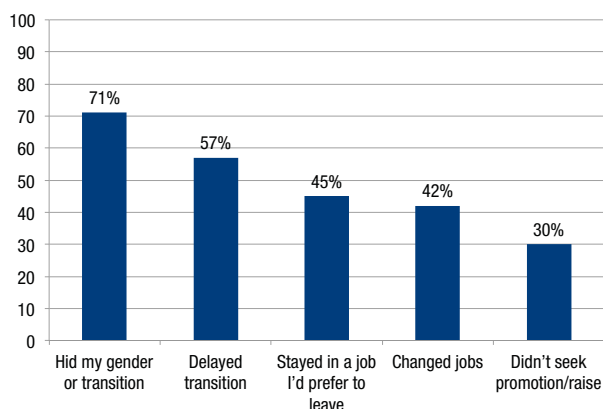


Attempts to Avoid Discrimination

In order to avoid discriminatory actions and workplace abuse, many study respondents reported having “delayed my gender transition” (57%) or “hid my gender or gender transition” (71%). Given the importance of transition for many people, it is striking that well over half of our respondents delayed this life-affirming, and often life-saving step. Even more alarming is that nearly three-quarters of respondents reported they felt they had to hide who they are on a daily basis for job security.

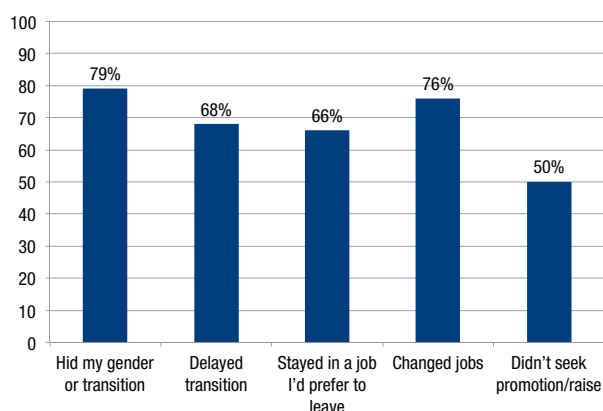
Many respondents stayed in jobs they would have preferred to leave (45%) or didn’t seek promotions or raises (30%) in order to avoid discrimination. Others (42%) said they had changed jobs to escape discrimination.

Discrimination-Avoidant Behaviors, Overall Sample

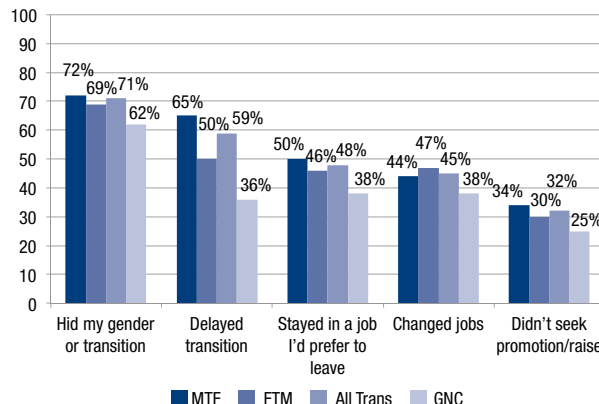


The discrimination avoidant behaviors described in this section all have implications for career achievement and secure livelihood. Those who have lost a job due to discrimination display the highest levels of discrimination avoidant behavior.

Discrimination-Avoidant Behavior Among Those Who Have Lost a Job Due to Bias



Discrimination-Avoidant Behaviors by Gender Identity/Expression



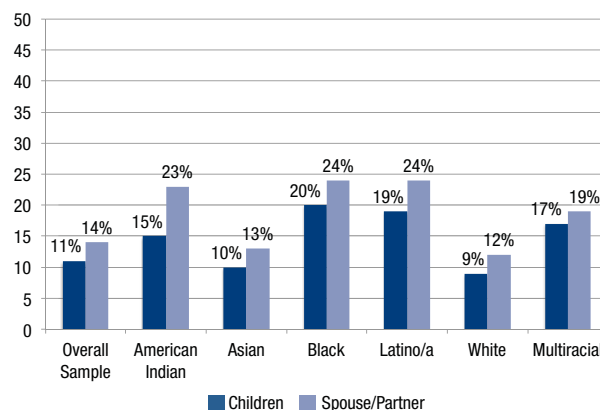
Employment Bias by Association

We asked respondents whether their spouses/partners or children experienced job discrimination due to the respondent being transgender or gender non-conforming.⁴ Fourteen percent (14%) of respondents reported that due to their gender identity, their spouse or partner experienced job discrimination. Respondents who reported having lost a job due to bias reported discrimination against their partners at twice that rate (28%).

Respondents also reported that their children were subject to job discrimination due to associational bias at 11%. For those who lost jobs due to bias, discrimination against their children was reported at 25%.

Undocumented non-citizens reported high levels of associational discrimination for both spouses/partners (20%) and children (20%).

Employment Bias by Association by Race

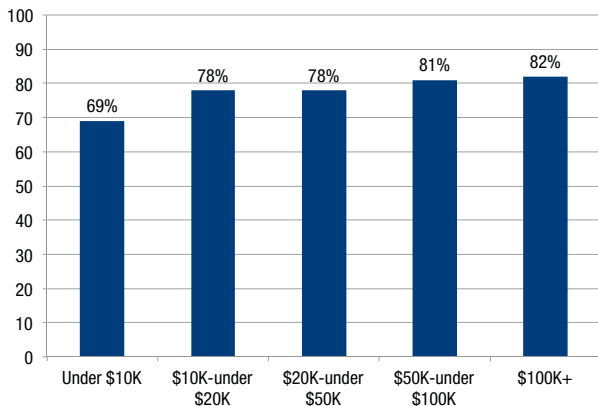


Improved Job Situation For Those Who Transition

Of respondents who are living full-time in accordance with their gender identity, 78% said they felt more comfortable and their performance improved at work. Respondents in the higher income categories more often reported an increase in feeling comfortable and performing better after transitioning. Transgender men (78%) and transgender women (79%) who have transitioned reported nearly identical rates of improved job situation.

These respondents who felt their performance improved experienced similar rates of harassment and other forms of mistreatment in the workplace as other transgender and gender non-conforming people. For example, of those who transitioned who said their job performance improved, 51% also reported being harassed at work, compared 50% of the overall sample.

Improved Job Performance by Income



“When I started my transition, the place that I was working was very supportive. My boss had a family member who is transgender. I was treated with respect by everyone. I had worked there for many years and everyone assumed that I was gay until then and they knew my partner. I guess they just figured I would still be me. Except for growing facial hair and going bald, I am the same, only better and more free.”

Sex Work, Drug Sales, and Other Underground Work for Income

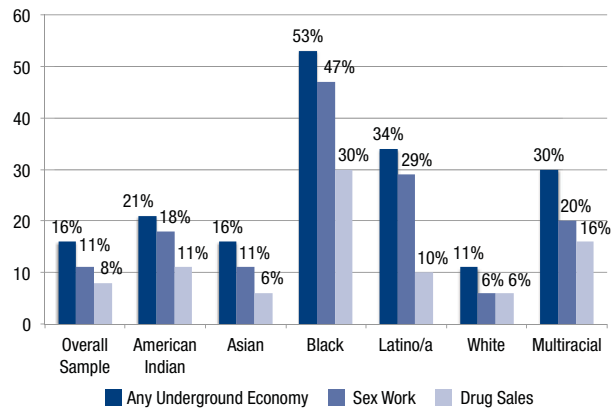
Given that transgender and gender non-conforming people are often denied access to, forced out of or grossly mistreated in traditional employment markets, it follows that underground work can be an essential survival strategy.

Sixteen percent (16%) of our sample has had some experience in sex work, drug sales, and other underground work. Those at high risk for underground work were those who had lost jobs due to bias (28%), compared to those who had not lost a job (13%), and the unemployed (29%), compared to 14% of those who were employed.

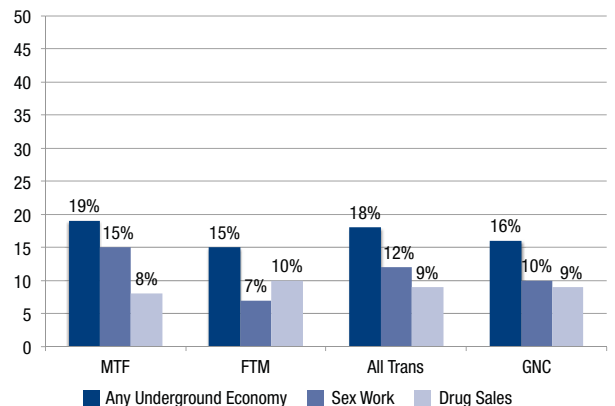
Black (53%) and Latino/a (34%) respondents had extremely high rates of underground work, likely related in part to barriers and abuse within educational systems and dramatically higher rates of employment discrimination.

Male-to-female (19%) respondents had slightly higher rates of underground work than female-to-male (15%) respondents, and transgender (18%) and gender non-conforming (16%) respondents were involved at almost equal frequency.

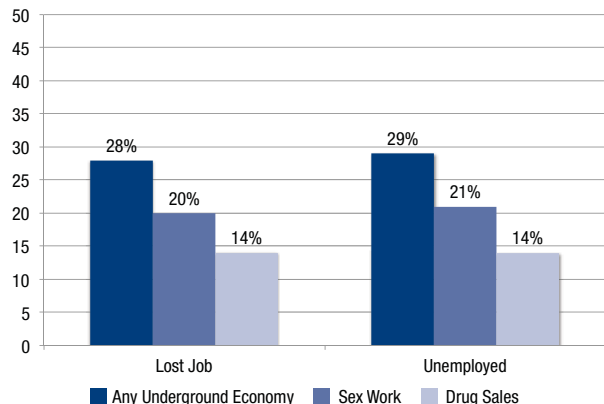
Participation in the Underground Economy by Race



Participation in the Underground Economy by Gender Identity/Expression



Participation in the Underground Economy by Employment



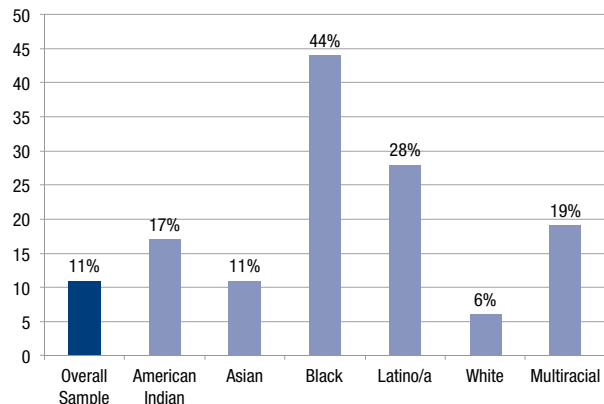
SEX WORK

Eleven percent (11%) of respondents did sex work for income. Here we take a closer look at the demographics of sex workers in our sample and then examine their rates of incarceration, homelessness, and health outcomes.

MTF respondents were more likely to report sex work (15%) than FTM respondents (7%); these data unearths the reality that some transgender men have also done sex work at some point in their lives. Transgender respondents, overall, reported sex work at 12%, only slightly higher than gender non-conforming respondents (10%).

Respondents of color were more likely to have reported having done sex work; African-American respondents reporting the highest rate at 44%. Latino/a respondents had the next highest rate at 28%. These data aligns with extremely high rates of unemployment and workplace abuse experienced by respondents of color in the study.

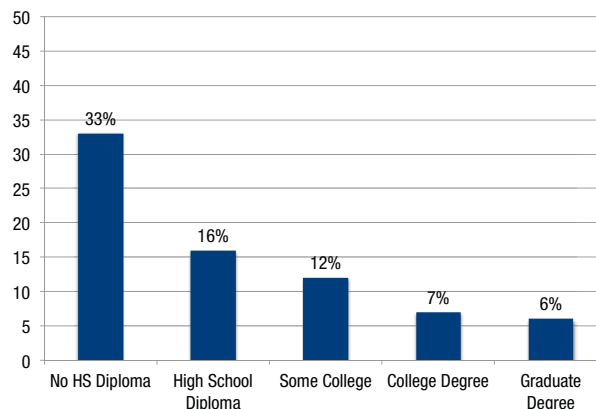
Sex Work by Race



Those with higher educational attainment were less likely to report sex work. Those with no high school diploma reported a 33% rate of sex work, compared to those with college degrees at 7%. However, sex work among those with high levels of

attainment remained elevated, including 6% of those with graduate degrees.

Sex Work by Educational Attainment



Homelessness

Respondents reporting sex work were far more likely to also report experiencing homelessness due to bias than the full sample; anecdotal evidence indicates that many who face homelessness do sex work to pay rent or to stay in a hotel. Forty-eight percent (48%) of those who had done sex work also reported experiencing homelessness due to bias. This compares to 19% of the sample overall and 7.4% for the general population overall.⁵

Incarceration

Participants who did sex work were almost four times as likely to have been incarcerated for any reason (48%) than the overall sample (16%).

HIV

Those who had did sex work were over 25 times more likely to be HIV-positive (15.32%) than the general population (0.6%).⁶

Smoking

The rate of smoking among those who had done sex work was much higher (49%) than the overall sample (30%).

Drinking and Drugs

Respondents who had done sex work were twice as likely to misuse drugs or alcohol to cope with the mistreatment (18%) as the overall sample (8%).

Suicide Attempts

The rate of attempted suicide among those who had done sex work was mucg higher (60%) than the overall sample (41%) and more than 37 times higher than the general population (1.6%).

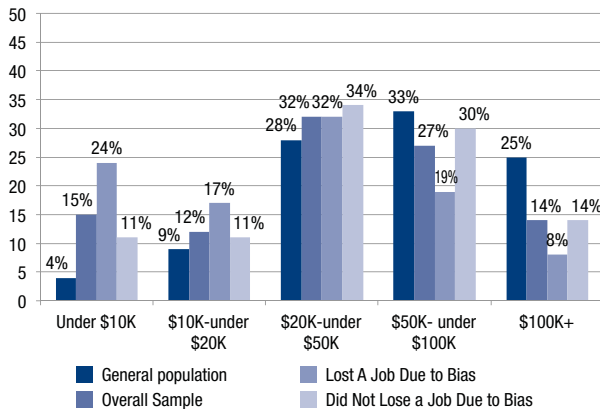
Making the Connections: Employment Discrimination, Economic Security, and Health

In this section, we examine the connections between employment discrimination and present income, incarceration, homelessness and health outcomes.

RESPONDENTS WHO HAVE LOST JOBS DUE TO DISCRIMINATION

We looked at present household income of the more than one quarter (26%) of our sample who said they had lost jobs because they were transgender or gender non-conforming and found the apparent effects to be severe. Respondents who had lost a job due to bias were six times as likely to be living on a household income under \$10,000/year (24%) as the general U.S. population (4%).⁷ They were nearly twice as likely to be living on between \$10,000 and \$20,000/year (17%) as the general population (9%).

Income of the General Population, Our Sample, and Those Who Lost a Job Due to Bias



“I was fired for being transgender. I was on the brink of homelessness and starvation until a friend (who is also transgender) invited me to stay with her in a different state, over 15 hours away.”

Homelessness

Respondents who had lost a job due to bias were four times more likely to have experienced homelessness due to bias (40%) than those who did not lose a job due to bias (10%).

Incarceration

Respondents who had lost a job due to bias were 85% more likely to have been incarcerated for any reason (24%) than those who did not lose a job (13%).

HIV

Respondents who had lost a job due to bias reported an HIV rate (4.59%) over seven times higher than the general population (.6%),⁸ and more than double the rate of those who did not lose a job (2.06%).

Smoking

Respondents who had lost a job due to bias were more likely to be smokers (38%) than the overall sample (30%).

Drinking & Drugs

Respondents who had lost a job due to bias were 70% more likely to misuse drugs or alcohol to cope with the mistreatment they face (12%) than those who had not lost a job (7%).

Suicide Attempts

Respondents who had lost a job due to bias were much more likely to have attempted suicide (55%) than those respondents who had not lost a job due to bias (38%), and both figures are striking in contrast to the general population figure of 1.6%.

UNEMPLOYED RESPONDENTS

Here we take a closer look at those respondents who reported being currently unemployed and describe the higher incidence of negative outcomes they experienced. These respondents may be unemployed because they lost a job due to bias, because they experienced discrimination in hiring, or for other reasons.

Homelessness

Respondents who were unemployed were more than twice as likely to have experienced homelessness due to bias (38%) than those who were employed (14%).

Incarceration

Respondents who were unemployed were 85% more likely to have been incarcerated for any reason (24%) than those who were employed (13%).

HIV

Respondents who were unemployed reported an HIV rate (4.67%) over seven times higher than the general population (.6%),⁹ and more than double the rate of those who were employed (1.81%).

Smoking

Respondents who were unemployed were more likely to be smokers (38%) than the overall sample (30%), and almost twice as likely to be smokers than those who were working (20%).

Drinking & Drugs

Respondents who were unemployed were almost two times as likely to misuse drugs or alcohol to cope with the mistreatment they face (13%) than those who were working (7%).

Suicide Attempts

Respondents who were unemployed were much more likely to have attempted suicide (51%) than those respondents who were working (37%), and both figures are striking in contrast to the general population figure of 1.6%.

“I was fired from a good job because I tried to transition on the job. I then lived on menial employment for over 3 years before finally landing another good one that was full-time job and had benefits. At one point, I had an offer of employment withdrawn after the would-be employer found out I was transgender.”

CONCLUSIONS FOR EMPLOYMENT

Transgender and gender non-conforming people face staggering rates of harassment mistreatment, and discrimination at work. In this chapter we have shown that many of those who faced this discrimination also experienced multiple, devastating outcomes across many areas of life.

The most obvious sign of this discrimination was the extremely high unemployment figure: double the rate of the general population at the time of study. Underemployment and low household income were also widely reported.

Encouragingly, most of those who have transitioned reported feeling more comfortable at work and that their job performance had improved. However, many of our respondents are unable to reap that benefit because they delayed their gender transition in order to avoid discrimination. The data appears to indicate that transition is not only pivotal to the individual's well-being, but also that employers would be wise to support and facilitate gender transition of their employees to increase productivity.

Many report changing jobs to avoid discrimination or the risk of discrimination. Again, employers should be aware how environments hostile to transgender workers negatively affect their bottom line, as they lose experienced employees and face the added expense of hiring and training replacements.

High rates of workplace abuse and unemployment among respondents, and resulting poverty, indicate that anti-transgender discrimination has left many in a position where sex work and drug sales are necessary for survival. Respondents of color were particularly vulnerable to being pushed into underground work, with a combination of discrimination based on gender, race and citizenship forcing them farthest to the margins.

The data show that there is a high price to pay for those who must do sex work and other underground work, including homelessness, incarceration and catastrophic health outcomes.

This survey is a call to action; employment discrimination has devastating effects on transgender and gender non-conforming people and must be confronted and eradicated. Not only must individual employers be held accountable, but society as a whole must be held accountable for widespread violations of a basic human right.

RECOMMENDATIONS FOR EMPLOYMENT

Respondents in this study faced overwhelming bias and mistreatment in the workplace due to gender identity and expression. In the absence of workplace protections, employers and coworkers are free to engage in a broad range of abuses from arbitrary firings to demeaning and even violent treatment. The solution to this problem requires the attention of the legislative and executive branches of government, corporations and other employers, labor organizations and non-profit organizations.

- Federal, state, and local laws should be enacted to prohibit discrimination on the basis of gender identity or expression.
 - Federal employment non-discrimination legislation should be enacted with transgender/gender non-conforming protections intact.
 - States and local governments should prioritize enactment of non-discrimination laws.
- Government agencies should implement laws through regulations, compliance guidelines, training, and publicized decisions by enforcement agencies.
 - Only a handful of the states/localities that currently have legal protections have written regulations or guidelines showing employers how to properly treat transgender and gender non-conforming employees. Without these specifics, employers are not sure what the law requires of them and employees cannot engage in effective self-advocacy when being mistreated or discriminated against.

- Enforcement agency staff should undergo training to better understand the specific issues that transgender and gender non-conforming employees experience in the workplace and should learn how to respectfully deal with transgender and gender non-conforming complainants.
- Decisions, investigations, and settlements related to discrimination on the basis of gender identity/expression should be publicized as much as possible to increase awareness of what constitutes illegal discriminatory actions.
- Enforcement agencies should develop and offer trainings for employers on how to comply with the law. If this is not done, non-profit organizations should develop and provide these trainings.
- Enforcement agencies and non-profit groups should develop “Know Your Rights” materials and trainings for transgender and gender non-conforming people.
- Corporations should enact and enforce their own gender identity/expression non-discrimination policies.
 - All employees should be trained on how to comply with the policy. Hiring officers must be instructed to ensure they are not consciously or unconsciously discriminating in hiring and should also be educated about how to recognize when an applicant has a poor work record due to discrimination.
 - Written policies should be developed concerning gender transition in the workplace so that all employees understand proper, respectful protocol. This policy should address confidentiality, access to gender-segregated facilities, dress standards (if relevant), medical leave policies, pronouns and forms of address, harassment, change of employee records and badges, and any other topic necessary for a smooth gender transition in the workplace.
 - Companies should actively recruit transgender and gender non-conforming applicants.
- Government agencies at all levels should develop transgender-specific workforce development programs, or modify existing programs, to train and match transgender and gender non-conforming people to the best jobs available.
 - Staff running these programs should be properly trained to address and work with transgender and gender non-conforming participants respectfully.
 - Special attention in such programs should be paid to devising ways to expunge criminal records of persons who have been incarcerated for survival behaviors, and/or find employers who are willing to hire applicants with criminal records.
 - These programs should train cooperating employers on how to avoid discrimination in hiring transgender and gender non-conforming employees and require that staff of cooperating employers have received training on how to respectfully treat these coworkers.
 - Government agencies should work with transgender organizations to develop such programs, ideally providing grants to these organizations for their assistance.
- Labor organizations should ensure that contracts include gender identity/expression nondiscrimination clauses, train union officers and rank-and-file on the importance of nondiscrimination in the workplace, and how to process grievances related to discriminatory treatment.
- Governments should focus their resources on providing meaningful pathways out of poverty, such as by increasing employment opportunities for transgender and gender non-conforming people, rather than expending significant resources on arresting, prosecuting, and incarcerating those doing sex work.

Endnotes

- 1 U.S. National Library of Health and the National Institutes of Health, Medline Plus, "Out of Work May Mean Out of Sorts: Mental health takes a beating with economic downturn, http://www.nlm.nih.gov/medlineplus/news/fullstory_102374.html
- 2 This includes people who said they tell "everyone."
- 3 Seven percent (7%) was the rounded weighted average unemployment rate for the general population during the six months the survey was in the field, based on which month questionnaires were completed. See seasonally unadjusted monthly unemployment rates for September 2008 through February 2009. For information on how we calculated the unemployment rate for respondents, see the Portrait chapter. U.S. Department of Labor, Bureau of Labor Statistics, "The Employment Situation: September 2008," (2008): http://www.bls.gov/news.release/archives/empst_10032008.htm
- 4 See Appendix B: Survey Instrument – Issues and Analysis for more discussion of this question.
- 5 Bruce G. Link, PhD, et al., "Lifetime and Five-Year Prevalence of Homelessness in the United States," *American Journal of Public Health* 84, (December 1994): <http://ajph.aphapublications.org/cgi/reprint/84/12/1907>.
- 6 HIV rates are reported without rounding in order to make a more precise comparison with general population data.
- 7 4.15% of the population had a household income below \$10,000 per year. U. S. Department of Commerce, U.S. Census Bureau and U.S. Department of Labor, Bureau of Labor Statistics, "Current Population Survey: Annual Social and Economic Supplement" (2008).
- 8 HIV rates reported without rounding in order to make a more precise comparison with general population data.
- 9 HIV rates reported without rounding in order to make a more precise comparison with general population data.

Preliminary Findings • November 2009

NATIONAL TRANSGENDER DISCRIMINATION SURVEY

by the National Center for Transgender Equality and the National Gay and Lesbian Task Force

EMPLOYMENT AND ECONOMIC INSECURITY

Transgender people are targets of discrimination in many areas of their lives; this marginalization exposes them to tremendous social and economic insecurity. Until now, data on the prevalence and character of this discrimination has been limited to small studies and anecdotal reports. In the first comprehensive national effort to document this problem, the National Center for Transgender Equality and the National Gay and Lesbian Task Force launched a six-month data collection process, interviewing 6,450 transgender people via an extensive questionnaire that covered critical topics such as employment, education, health care, housing, public accommodation, criminal justice, family life and access to government documents. Our final sample included residents of all 50 states, Puerto Rico, Guam and the U.S. Virgin Islands. Data gathered from respondents was compared to US Census Bureau and Department of Labor data.

KEY FINDINGS

- **Double the rate of unemployment:** Survey respondents experience unemployment at twice the rate of the population as a whole.
- **Near universal harassment on the job:** Ninety-seven percent (97%) of those surveyed reported experiencing harassment or mistreatment on the job.
- **Significant losses of jobs and careers:** Forty-seven percent (47%) had experienced an adverse job outcome, such as being fired, not hired or denied a promotion.
- **High rates of poverty:** Fifteen percent (15%) of transgender people in our sample lived on \$10,000 per year or less—double the rate of the general population.
- **Significant housing instability:** Nineteen percent (19%) of our sample have been or are homeless, 11% have faced eviction and 26% were forced to seek temporary space.

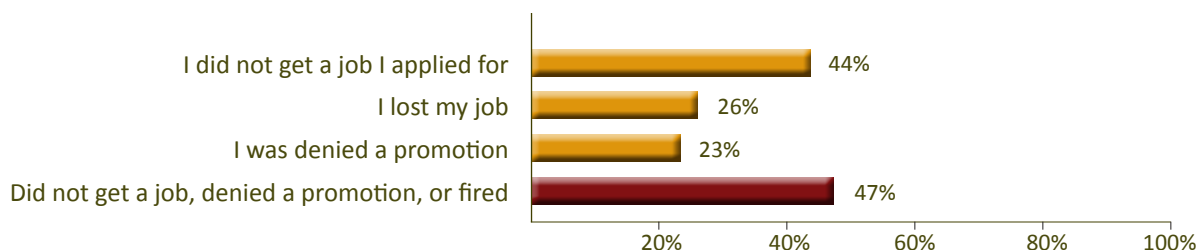
EMPLOYMENT CHALLENGES

Unemployment and Loss of Jobs

Transgender people are unemployed at alarming rates. Overall 13% of respondents were unemployed, nearly double the national average at the time of the survey. This is even more acute for respondents who are Black (26%), Latino (18%) and Multiracial (17%).

26%
lost their jobs
because they are transgender

Forty-seven percent (47%) of survey respondents experienced an adverse job action because they are transgender—they did not get a job, were denied a promotion or were fired—that directly impacted their employment status. A staggering number of the people surveyed, 26%, lost their jobs due to their gender identity/expression. Particularly hard hit were those who were Black (32%) or Multiracial (37%).

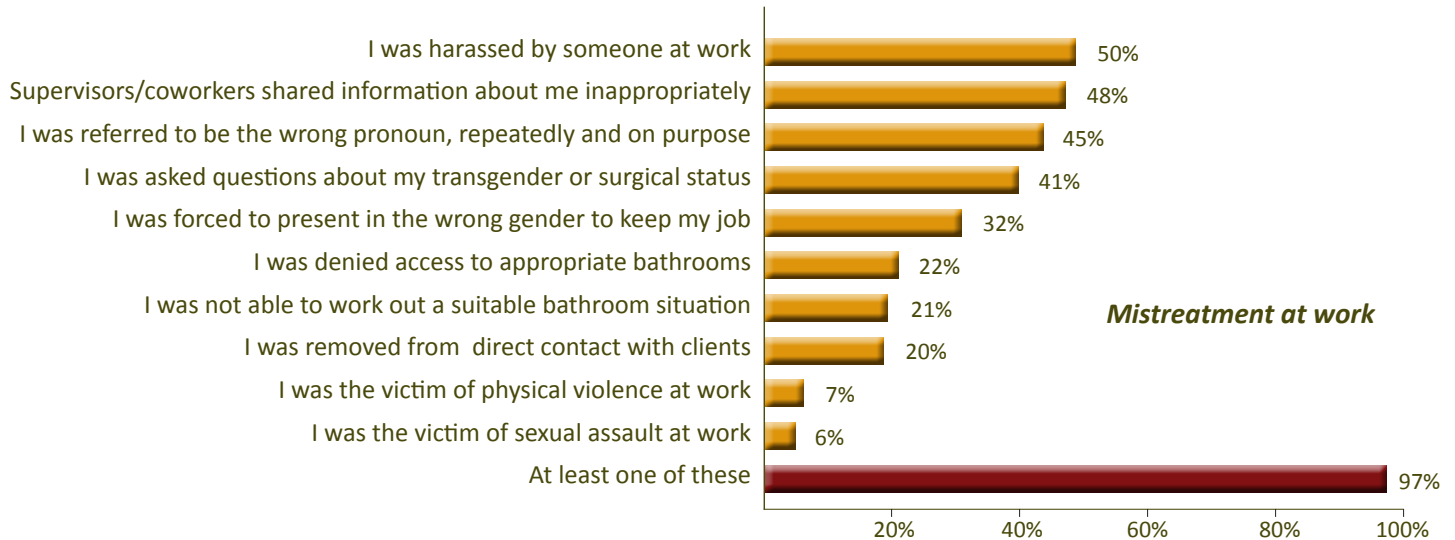


EMPLOYMENT CHALLENGES *(continued)*

Mistreatment and Harassment at Work—A Universal Experience

Ninety-seven percent (97%) have experienced mistreatment, harassment, or discrimination on the job including: invasion of privacy, verbal abuse, and physical or sexual assault.

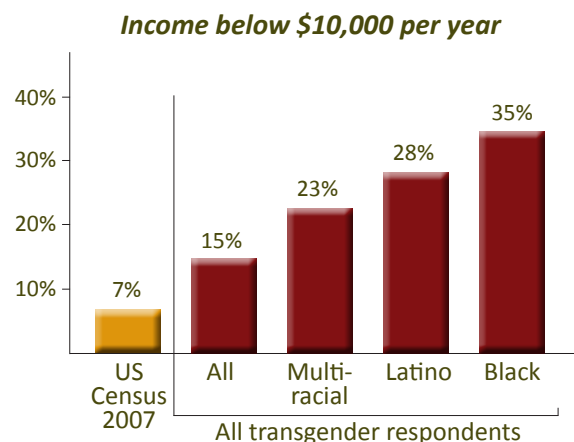
97%
mistreated at work
because they are transgender



twice
the national average earn
less than \$10,000/year
because they are transgender

Poverty

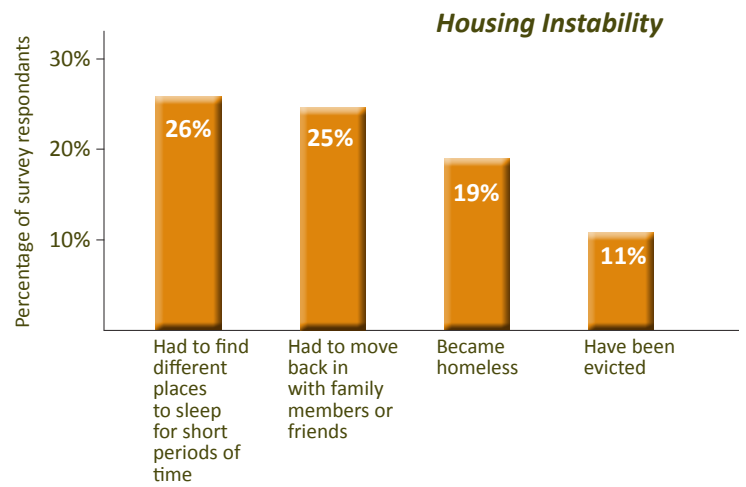
Study respondents experience poverty at a much higher rate than the general population, with more than 27% reporting incomes of \$20,000 or lower and more than 15% reporting incomes of \$10,000 or lower. Only 7% percent of the general population reports incomes of \$10,000 or lower.



NEGATIVE OUTCOMES AS A RESULT OF EMPLOYMENT DISCRIMINATION

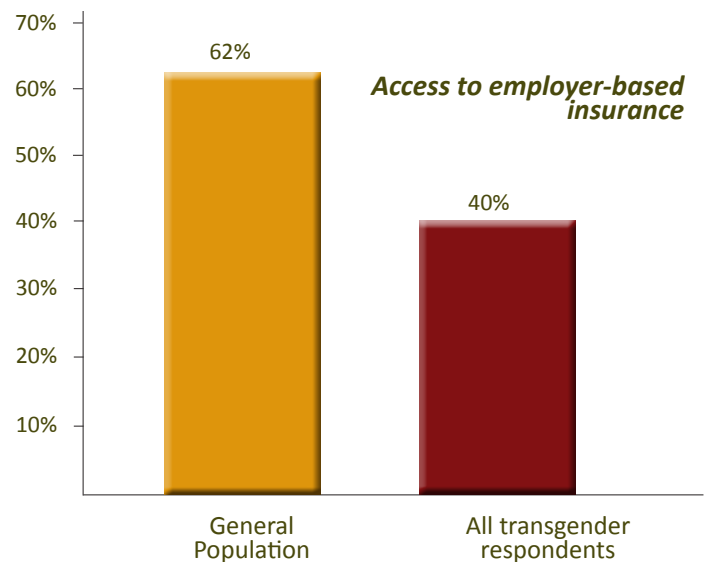
Housing Instability

Survey respondents experienced a series of negative outcomes, many of which stem from challenges they face in employment. A large percentage of our sample reports experiencing housing insecurity due to their gender identity, with almost one-fifth becoming homeless because they are transgender.



Lack of Health Insurance and Access to Appropriate Care

Employment issues also impact transgender people's access to health care. Transgender and gender non-conforming people do not have adequate health insurance coverage or access to competent providers. Respondents in our sample are uninsured at the same rate of the general population in the U.S.—19%—but only 40% of the sample enjoys employer-based insurance coverage, compared to 62% of the population at large. This figure underscores how high unemployment creates multiple liabilities for our sample.



SUMMARY

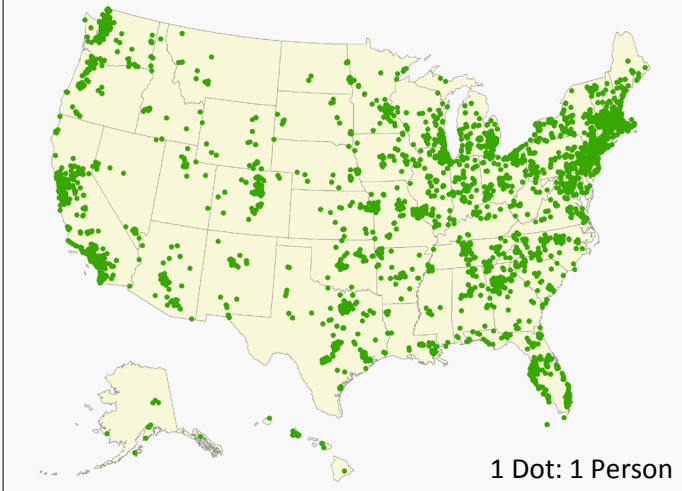
Employment protections are paramount. Transgender people face discrimination, harassment and anti-transgender violence in many areas of their lives. These conditions create significant barriers to employment and lead to devastating economic insecurity.

Basic employment protections for transgender people provide a crucial foundation for dignified, economically secure lives. Employment should be based on one's skills and ability to perform a job. No one deserves to be unemployed or fired because of their gender identity or expression.

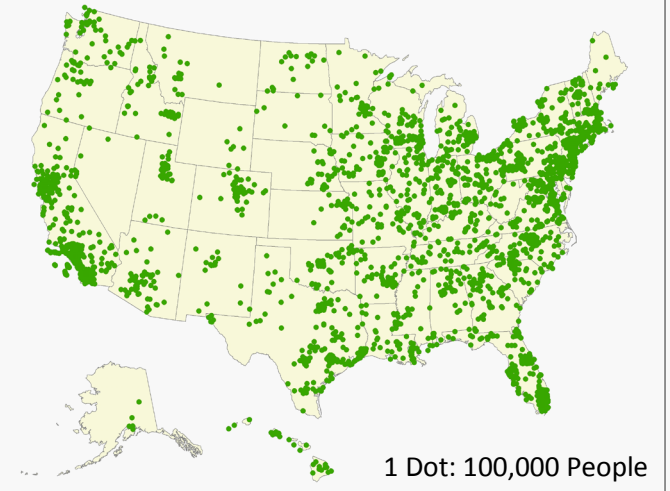
SAMPLE DEMOGRAPHICS

Our sample reflects the geographic and racial and ethnic diversity of the nation as a whole. The maps below show that the geographic distribution of our sample very much parallels that of the general population. Further, the 2007 American Community Survey reports that 75.1% of the nation identifies as white and 24.9 percent identify as people of color across a range of racial and ethnic categories. Transgender and gender non-conforming people in the NCTE/Task Force sample identify as white at a percentage of 76%, while 24% of respondents identify as one or more of the following: Black/African American, American Indian or Alaska Native, Hispanic or Latino, Asian or Pacific Islander, Arab or Middle Eastern, Multiracial or Mixed Race.

Trans People in the NCTE/Task Force Sample



Population Density in the United States



METHODOLOGY NOTE

A project team comprised of researchers, LGBT advocates and trans community leaders distributed on-line links to our survey through a network of more than 800 trans-serving and trans-led advocacy and service organizations, support groups, list-serves and online social networks. Nearly 2,000 paper surveys were distributed to hard-to-reach transgender and gender non-conforming populations. A total of 6,456 completed questionnaires were included in the final data set.



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CREATING CHANGE

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INJUSTICE AT EVERY TURN:

A LOOK AT BLACK RESPONDENTS IN THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY

The National Transgender Discrimination Survey [NTDS] measured transgender experiences of discrimination.¹ The survey results showed that transgender people faced bias that affects all areas of life. However, one of the most important findings was that the combination of anti-transgender bias with structural and individual racism meant that transgender people of color experience particularly devastating levels of discrimination. Among them, Black transgender people often reported the highest levels of discrimination.

That is why the National Black Justice Coalition is proud to partner with the National Center for Transgender Equality and the National Gay and Lesbian Task Force, who collected the data through the NTDS, to offer this report on discrimination against Black transgender people. As America's leading national Black LGBT civil rights organization, the National Black Justice Coalition envisions a world where all people are fully-empowered to participate safely, openly and honestly in family, faith and community, regardless of gender identity and sexual orientation.

The information in this report is based on the experiences of the 381 respondents who were Black or Black multiracial.² When this report uses the phrase, "due to bias," it refers to the questions on the survey that asked about respondents' experiences of anti-transgender bias, but the results also show the complex interactions of that bias with race and socio-economic status.

KEY FINDINGS

- Discrimination was pervasive for all respondents who took the National Transgender Discrimination Survey, yet **the combination of anti-transgender bias and persistent, structural and individual racism was especially devastating for Black transgender people** and other people of color.
- **Black transgender people live in extreme poverty with 34% reporting a household income of less than \$10,000/year.** This is more than twice the rate for transgender people of all races (15%), four times the general Black population rate (9%), and over eight times the general US population rate (4%).³
- Black transgender people are affected by HIV in devastating numbers. **Over one-fifth of Black respondents were HIV-positive (20.23%) and an additional 10% reported that they did not know their status.** This compares to rates of 2.64% for transgender respondents of all races, 2.4% for the general Black population, and 0.60% of the general US population.⁴
- **Nearly half (49%) of Black respondents reported having attempted suicide.**
- **Black transgender people who were out to their families found acceptance at a higher rate than the overall sample of transgender respondents.**



EDUCATION

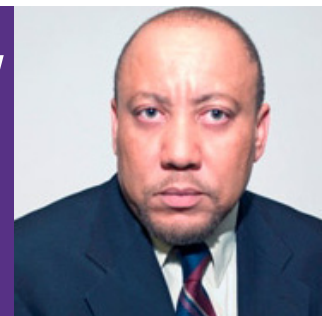
50% of Black respondents who attended school expressing a transgender identity or gender non-conformity **faced harassment**

- Black people who attended school as transgender people reported alarming rates of harassment (49%), physical assault (27%), and sexual assault (15%) at school; harassment was so severe that it led 21% to leave school. Six percent (6%) were also expelled due to bias.
- Respondents who were harassed and abused by teachers in K-12 settings showed dramatically worse health and other outcomes than those who did not experience such abuse. Peer harassment and abuse also had highly damaging effects.

EMPLOYMENT DISCRIMINATION

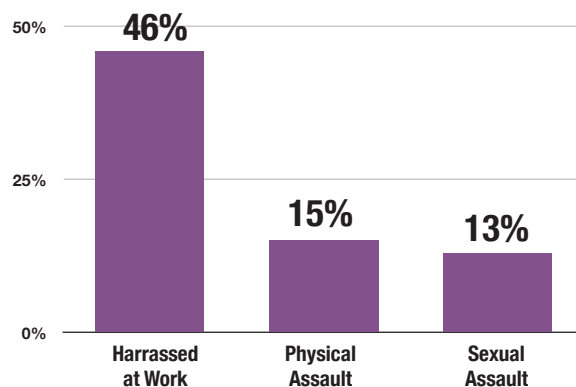


15% physically assaulted at work



- Black transgender people had an extremely high unemployment rate at 26%, two times the rate of the overall transgender sample and four times the rate of the general population.⁵
- Thirty-two percent (32%) of Black transgender people lost a job due to bias and 48% were not hired for a job due to bias.
- Forty-six percent (46%) of Black transgender people were harassed, 15% were physically assaulted, and 13% were sexually assaulted at work.
- Half (50%) of Black transgender people said they had been compelled to sell drugs or do sex work for income at some point in their lives.

Mistreatment at Work



HOUSING DISCRIMINATION AND HOMELESSNESS

41% of Black respondents said they had **experienced homelessness**



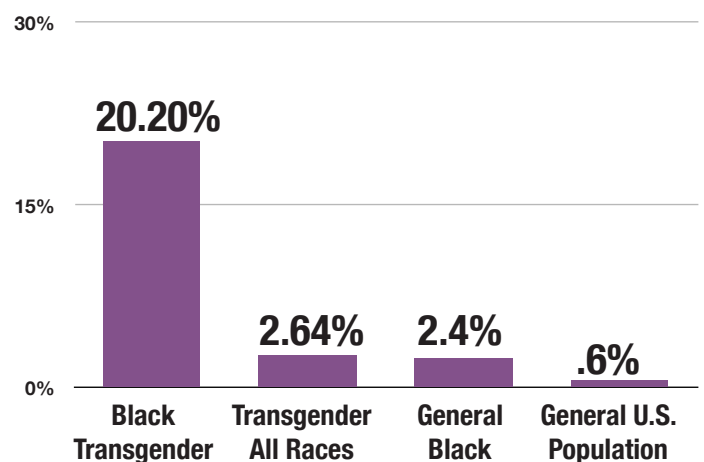
- Black transgender people reported various forms of direct housing discrimination – 38% reported having been refused a home or apartment due to bias and 31% reported being evicted due to bias.
- An alarming 41% of Black respondents said they had experienced homelessness at some point in their lives, over five times the rate of the general US population.⁶ Of those who had experienced homelessness, many tried to access shelters but were either denied access altogether (40%) or experienced harassment (61%), physical assault (32%), or sexual assault (31%) at the shelter.
- Black transgender people are less likely to own homes than respondents of other races with an ownership rate of 14%. This compares to 32% of transgender people of any race and 67% of the general US population.⁷ Also for comparison, the US Department of Housing and Urban Development reports that “minority home ownership” nationwide was 49.7%.⁸

DISCRIMINATION IN HEALTH CARE

20% are HIV positive
an additional 10% don't know their status

- Health outcomes for Black respondents show the appalling effects of social and economic marginalization, including much higher rates of HIV infection, smoking, drug and alcohol use and suicide attempts than the general population.
- Twenty-one percent (21%) of Black transgender people reported being refused medical care due to bias.
- Thirty-four percent (34%) of Black transgender people reported having postponed care when sick or injured due to fear of discrimination.
- Research has shown that generally African-Americans have much lower suicide rates than other racial groups. However, nearly half of Black transgender respondents (49%) reported having attempted suicide. This compares to 41% for transgender people of all races and 1.6% for the general U.S. population.

HIV Rates



ABUSE BY POLICE AND IN PRISON

- Thirty-eight percent (38%) of Black transgender people who had interacted with the police reported harassment, 14% reported physical assault, and 6% reported sexual assault.
- Thirty-five percent (35%) of Black transgender people had been arrested or held in a cell due to bias at some point in their lives.
- Half (51%) reported discomfort seeking police assistance.
- Physical and sexual assault in jail/prison is a serious problem. Twenty-nine percent (29%) of Black respondents who had been to jail or prison reported being physically assaulted and 32% reported being sexually assaulted while in custody.



METHODOLOGY NOTE

Links to the online NTDS survey instrument was distributed through a network of more than 800 trans-serving and trans-led advocacy and service organizations, support groups, list-serves and online social networks. Nearly 2,000 paper surveys were distributed to hard-to-reach transgender and gender non-conforming populations. A total of 6,456 completed questionnaires were included in the final data set, 381 of which were Black or Black multiracial.

- 1 Throughout this report, we use transgender to mean all respondents.
- 2 Some numbers in this report differ slightly from other reports based on the NTDS data because generally those report only on those who were Black and not Black multiracial because Black multiracial people were included in the separate multiracial category.
- 3 U.S. Census Bureau, "Current Population Survey," Annual Social and Economic Supplement (Washington, DC: GPO, 2008).
- 4 United Nations Programme on HIV/AIDS (UNAIDS) and World Health Organization (WHO), "2007 AIDS Epidemic Update" (2007): http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf; Henry J. Kaiser Family Foundation, "The HIV-AIDS Epidemic in the United States" (2007): <http://www.kff.org/hivaids/upload/3029-071.pdf>.
- 5 Seven percent (7%) was the rounded weighted average unemployment rate for the general population during the six months the survey was in the field, based on which month questionnaires were completed. See seasonally unadjusted monthly unemployment rates for September 2008 through February 2009. U.S. Department of Labor, Bureau of Labor Statistics, "The Employment Situation: September 2008," (2008): http://www.bls.gov/news.release/archives/empsit_10032008.htm.
- 6 United States Conference of Mayors, "Hunger and Homelessness Survey" (2006): 48, <http://usmayors.org/hungersurvey/2006/report06.pdf>.
- 7 U.S. Department of Housing and Urban Development, "U.S. Housing Market Conditions, 2nd Quarter, 2009" (Washington, DC: GPO, 2009): http://www.huduser.org/portal/periodicals/ushmc/summer09/nat_data.pdf.
- 8 U.S. Department of Housing and Urban Development, "U.S. Housing Market Conditions, 2nd Quarter, 2009" (Washington, DC: GPO, 2009): http://www.huduser.org/portal/periodicals/ushmc/summer09/nat_data.pdf. HUD did not define "minority" in this report.

For the full report and detailed recommendations, visit our websites at www.TheTaskForce.org and www.TransEquality.org.
More information about the survey is available at www.EndTransDiscrimination.org.



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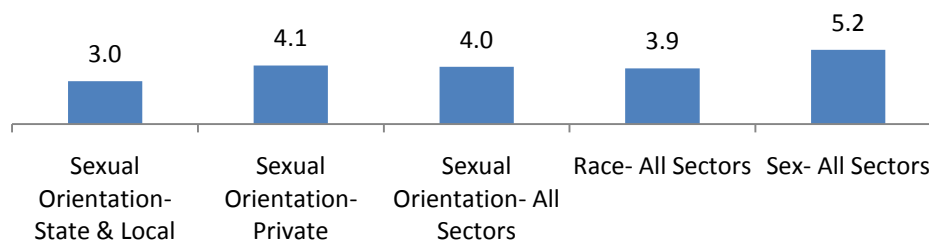
Evidence of Employment Discrimination on the Basis of Sexual Orientation in State and Local Government: Complaints Filed with State Enforcement Agencies 2003-2007

Introduction

Previous studies have analyzed discrimination complaints filed with administrative agencies in those states that prohibit sexual orientation discrimination.¹ These studies have shown that when adjusted for population size, sexual orientation discrimination laws are used at similar frequencies by Lesbian, Gay, and Bisexual (LGB) workers as sex discrimination laws by female workers, and that race complaints are filed at slightly higher rates. The results of these studies, when combined with other research documenting discrimination against LGB people, support that there is both a need for laws that prohibit discrimination on the basis of sexual orientation, and that prohibiting this form of discrimination will not overwhelm administrative enforcement agencies.

This report uses a similar methodology to compare sexual orientation discrimination complaints filed by employees in the private sector with those filed by state and local government employees. Overall, we find that sexual orientation filings are slightly lower, but similar, for employees in the public sector when compared to the private sector. The filing rate for state and local employees is 3 for every 10,000 LGB employees compared to 4 for every 10,000 LGB employees in the private sector. Currently, there are not enough data to do a similar analysis of gender identity discrimination complaints and federal employees are not covered by these state anti-discrimination statutes.²

Figure 1. National Population Adjusted Complaint Rates Per 10,000



When comparing sexual orientation discrimination filings by state employees with those of local employees, the rates are similar, but slightly higher for local employees: 2.8 complaints for every 10,000 state LGB employees and 3.2 for every 10,000 local LGB employees. In addition, in 6 out of the 8 states where we can compare state and local filings, the local filings outnumber the state filings. This data is very limited, but may suggest slightly higher rates of discrimination in local employment than in state employment.

Although we do not have a breakdown of race and sex discrimination complaints by employment sector, we can compare the filing rates of sexual orientation, race, and sex complaints in all sectors. When looking at all employment sectors, the rates are similar, with 4 race discrimination complaints filed for every 10,000 people of color employees, 4 sexual orientation complaints for every 10,000 LGB employees and 5 sex discrimination complaints for every 10,000 female employees.

These findings of a similar pattern of sexual orientation discrimination in state and local government when compared to the private sector are consistent with prior research analyzing data from surveys of LGB employees and other research.³

Methodology

In 2008-2009, following the methodology of an earlier study by Norma M. Riccucci and Charles W. Gossett⁴, we contacted state agencies in charge of enforcing anti-discrimination statutes to collect data on discrimination complaints. We contacted the agencies responsible for enforcing anti-discrimination statutes in 20 of the 21 states which currently offer statutory protection for sexual orientation and/or gender identity. We did not contact Delaware because its statutory protection had not gone into effect at the time the study was conducted, and excluded data from Oregon for the same reason.

Upon contact with these state agencies by phone, the agency was asked for the number of employment discrimination complaints filed on the basis of sexual orientation and/or gender identity by state or local government employees for each year since protection went into effect or, alternatively, as far back as the agency had a record. If the agency provided the data, the agency was asked if it would release redacted copies of the actual complaints filed and/or a record of case dispositions. If the agency refused to provide the data, the reason for refusal was logged. If the agency did not follow through on a request that was made by phone or failed to return a voicemail message, approximately four follow up contacts were made, either via phone calls, e-mails, or written inquiries. If the agency had not produced the data after these additional contacts, a formal public records request was sent to the agency. If the agency refused to provide data in response to the public records request, the reason for refusal was logged.

Of the 20 states we contacted, 13 provided data about sexual orientation complaints, 2 failed to respond to the request in any manner, and 5 provided an explanation for why they could not provide any data. For those 5 states, all but one, Hawai'i, explained that they were unable to collect and report the requested data. Hawai'i did not provide data because of a confidentiality requirement in its state anti-discrimination law (Table 1).

Table 1. Responses from States that Provided No Complaint Data

State	Reason for not providing data
Colorado	At time of request, protection too recently enacted to have compiled and maintained data in a way that made release feasible
Connecticut	Limited data provided that did not indicate complaints by state and local employees
Hawai'i	Could not provide data because of confidentiality requirement in anti-discrimination law (Haw. Rev. Stat. § 368-4)
Illinois	Unable to provide data because Commission does not create or maintain the information requested
Iowa	Information cannot be generated
Massachusetts	No response
Maryland	Office of the General Counsel of the Maryland Commission on Human Relations would not provide the information because it would require them to look up every case. When caller asked if there was a formal request procedure, the Office of the General Counsel told caller to write a letter to the Executive Director of the Maryland Commission on Human Relations. Executive Director did not respond to the request.
Nevada	Information not available
New Hampshire	No response

Although gender identity complaints were requested, we did not receive a report of any single gender identity discrimination complaint filed by a state or local employee. Only one state, New Mexico, reported a total of two complaints of gender identity discrimination by employees in the private sector. Three states, Maine, Minnesota, and Washington, indicated that gender identity complaints, if any, were included in their sexual orientation complaint data, and they could not separate out any such complaints. Due to this limited data, we focused the rest of our analysis only on sexual orientation complaints.

We did not collect data on the basis of race and sex discrimination complaints by employment sector. Based on our experience with collecting sexual orientation complaints by sector, this would have been difficult to do. In most cases, staff at the state administrative agencies we contacted had to review individual complaints one by one to identify those filed by state and local employees. Given the limited responsiveness to our request for the sexual orientation data, it is likely that asking them to review a much larger number of race and sex complaints in order to identify those filed by state and local employees would have been met with even less success.

In total, 460 complaints of sexual orientation and gender identity discrimination by state and local employees were filed with administrative agencies in 13 states from 1999-2007 (Table 2).

Table 2. Administrative Complaints Filed with State Enforcement Agencies on the Basis of Sexual Orientation by Employees of State and Local Governments, 1999-2007

State	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
California	+	16 ^x	22 ^x	23 ^x	27 ^x	24 ^x	22 ^x	26 ^x	23 ^x	183 ^x
Iowa	*	*	*	*	*	*	*	*	3	3
Maine	*	*	*	*	*	*	0	5	7	12
Minnesota	4	5	2	4	8	3	4	0	2	32
New Jersey	2	1	1	2	1	1	4	5	1	18
New Mexico	*	*	*	*	4	7	8	8	4	31
Nevada	0	2	4	3	3	3	3	4	5	27
New York	*	*	*	*	18	24	21	26	10 ^x	99
Oregon	*	*	*	*	*	*	*	*	2	2
Rhode Island	0	1	0	0	0	0	2	2	0	5
Vermont	+	+	+	1	2	2	0	3	2	10
Washington	*	*	*	*	*	*	*	3	4	7
Wisconsin	+	+	+	3	11	3	5	5	4	31
Total	6	25	29	36	74	67	69	87	67	460

* No statutory protection in the given year

+ Data not available

x State complaints only

Although not every state provided a break down between state and local employees, at least 265 of these complaints were by state employees (Table 3). California only provided us with complaints by state employees, and New York did the same for one year of data, 2007.

Table 3. Sexual Orientation Complaints by State and Local Employees filed with State Administrative Agencies

State	1999	2000	2001	2002	2003	2004	2005	2006	2007
	State Local	State Local	State Local	State Local	State Local	State Local	State Local	State Local	State Local
CA	+ +	16 +	22 +	23 +	27 +	24 +	22 +	26 +	23 +
ME	* *	* *	* *	* *	* *	* *	0 0	2 3	2 5
MN	2 2	1 4	0 2	1 3	3 5	1 2	0 4	0 0	1 1
NJ	2 0	0 1	0 1	0 2	1 0	0 1	2 2	2 3	0 1
NM	* *	* *	* *	* *	1 3	3 4	4 4	5 3	1 3
NY	* *	* *	* *	* *	2 16	5 19	5 16	2 24	10 +
OR	* *	* *	* *	* *	* *	* *	* *	* *	1 1
VT	+ +	+ +	+ +	1 +	2 +	2 0	0 0	2 1	0 2
WA	* *	* *	* *	* *	* *	* *	* *	1 2	2 2
WI	+ +	+ +	+ +	1 2	5 6	1 2	2 3	3 2	2 2

* No statutory protection in the given year
+ Data not available

To compare these filings with those in the private sector, we used data collected for a study previously published by the Williams Institute.⁵ For that study, the Williams Institute contacted the administrative agencies responsible for investigating employment discrimination complaints in all twenty-one states that currently prohibit sexual orientation or gender identity discrimination in the workplace. These agencies were contacted directly to acquire the most complete and updated data on sexual orientation, gender identity, race, sex, and other forms of prohibited discrimination.

For our analysis, we then included only those states that had at least one year of data between 2003-2007 for complaints filed by state and local employees and for complaints filed by employees in all sectors. We only included data for years during which a state's sexual orientation anti-discrimination statute had been in effect for the full year; for this reason, no data from Iowa was included. For each state, we then calculated an average annual number of complaints per protected group for 2003 to 2007 (Appendix I). State agencies were unable to separate local employee complaints from total complaints filed in California in years 2003-2007

and in New York in 2007, but did separate those filed by state employees. We include all non-state employee discrimination complaints as private complaints for California because the small number of local government employees compared to private sector employees (local employees are only 12% of private employees) suggests that it would be unlikely that the rate of local employee complaints would have a significant impact on the complaint rate for private employees. For year 2007 in New York, we reported the number of state employee complaints provided by the agency for that year, and used the average number of local employee complaints filed in the previous four years to estimate the number of complaints filed by local employees in 2007. We subtracted these two figures from the total number of complaints filed to estimate the number of complaints filed by private sector employees that year.

To calculate the population-adjusted rates for each state, we then divided the annual average number of complaints filed on each basis of discrimination by the number of people most likely to file these types of claims in the relevant sector of the state's workforce. For example, when examining sex discrimination complaints, we look at the number of sex complaints filed and the number of women in the workforce. We used an average of annual figures from the 2005-2007 American Community Survey (ACS) data to find the workforce population totals for women and for people of color (Appendices II and III). For the underlying population for race discrimination complaints, we included all non-whites and all Hispanics in the workforce.

While no existing surveys provide precise estimates of the size of the LGBT workforce in the public and private sectors, estimates of employment patterns of the LGBT population can be derived by extrapolating information from nationally representative data sources. Analyzing data from several population-based surveys, Gary J. Gates estimated that 3.5% of adults in the U.S. identify as LGB.⁶ Applying this 3.5% figure to all adults implies that there are approximately 8.2 million LGB adults in the United States. Data from the US Census Bureau provides employment information about same-sex "unmarried partners," and we use that data to estimate the number of LGB adults in each employment sector. These are same-sex couples who identified one partner as either a "husband/wife" or an "unmarried partner." Data from the American Community Survey (2005-2007) provides a state-level distribution of individuals in same-sex couples who are employed by their type of employment: private or public (local, state, and federal). Assuming that LGBT adults have the same employment patterns and state locations as same-sex couples, then we can estimate the size of the LGBT workforce employed in the private sector along with those in local, state, and federal government employment. The results of these analyses are presented in Appendix IV.

We then divide the average annual complaints for each group (LGB, women, and people of color) by that group's workforce population and multiply that figure by 10,000 to generate a population-adjusted complaint rate. The adjusted rate represents the number of discrimination complaints per 10,000 workers in each protected class. For California, we included private and local employees in the underlying population used to calculate the adjusted complaint rate for the private sector because that data could potentially include complaints by local employees. To determine a national rate, we combine the rates of all the states, weighting each state's population-adjusted rates by the proportion of the relevant workforce in that state. The proportion of the relevant workforce in a given state is calculated by dividing the number of employees in the relevant workforce of that state by the total number of employees in the relevant workforce of all states included in this report.

Findings

The rate of discrimination complaints filed by LGB state and local employees was slightly lower but similar to that of filings by LGB employees in the private sector, 3.0 per 10,000 LGB public employees compared with 4.1 per 10,000 LGB private employees. Two states with smaller populations stood out in having a pattern that was significantly different, with higher population-adjusted rates for state and local employees. However, those high rates might reflect the limited data available for Maine (only two years) and that Vermont was the only state, for which we received data, that had a separate agency to enforce complaints by public employees. Possibly, differences in the effectiveness, outreach, and education efforts of the separate agencies in Vermont may have contributed to its different complaint rates.

Table 4. Population-Adjusted Complaint Rates (per 10,000) for Sexual Orientation Discrimination Complaints Filed by State & Local Employees and Private Sector Employees, 2003-2007

State	Sexual Orientation - State & Local	Sexual Orientation - Private
California	4.3 (state only)	5.9 (private and local)
Maine	14.9	3.4
Minnesota	1.7	1.8
Nevada	6.5	5.4
New Jersey	.9	.9
New Mexico	5.1	6.0
New York	2.8	2.7
Rhode Island	2.0	1.2
Vermont	10.6	.8
Washington	1.2	.3
Wisconsin	2.4	6.7
All	3	4.1

For eight of the eleven states, we were able to compare complaints filed by state employees with those filed by local employees. The rates were similar, with 2.8 sexual orientation complaints filed for every 10,000 state LGB employees and 3.2 filed for every 10,000 local LGB employees. Although the data is limited, this pattern of fewer complaints filed by state employees was also seen when comparing the data in six out of those eight states, with Vermont being the only state with a sizeable departure from this pattern. Vermont, the one state with two different enforcement agencies for public and private employees, was again one of the states that did not follow the overall pattern.

Table 5. Population-Adjusted Complaint Rates (per 10,000) for Sexual Orientation Discrimination Complaints Filed by State Employees and Local Employees, 2003-2007

State	Sexual Orientation – State	Sexual Orientation - Local
California	4.3	NA
Maine	8.2	25.1
Minnesota	1.1	2.2
Nevada	NA	NA
New Jersey	.8	.9
New Mexico	6.2	4.3
New York	1.5	3.6
Rhode Island	NA	NA
Vermont	15	6.7
Washington	1.1	1.5
Wisconsin	1.9	3.3
All	2.8	3.2

By using data from an earlier study⁷ for nine of the eleven states, we are to compare complaints filed by LGB employees in all sectors with those filed on the basis of race and sex. When comparing sexual orientation complaints in all states with those based on race and sex, the population-adjusted rates for all three groups were similar; with 4.0 for every 10,000 LGB employees; 3.9 for every 10,000 people of color employees, and 5.2 for every 10,000 female employees.

Table 6. Population-Adjusted Complaint Rates (per 10,000) for Complaints Filed by All Employees Based on Sexual Orientation, Race, or Sex, 2003-2007

State	Sexual Orientation - All Sectors	Race – All Sectors	Sex – All Sectors
California	5.9	3.5	8.8
Maine	4.1	20.8	7.2
Minnesota	1.8	5.0	1.9
Nevada	5.5	NA	NA
New Jersey	.9	1.0	.5
New Mexico	5.8	NA	NA
New York	2.7	4.4	2.9
Rhode Island	1.3	3.9	2.8
Vermont	1.6	1.6	.3
Washington	.4	1.4	1.4
Wisconsin	5.8	25.9	6.8
All	4.0	3.9	5.2

Conclusion

When comparing population-adjusted rates for filing discrimination complaints with state enforcement agencies, we find similar rates for LGB employees in state and local governments as for LGB employees in the private sector. This finding is consistent with earlier research that concluded that patterns of workplace discrimination in state and local governments on the basis of sexual orientation were similar to that in the private sector after looking at a number of different kinds of research, including surveys of LGB employees, surveys of heterosexual co-workers, wage disparity studies, and representation in the workforce studies.⁸ This study also confirms earlier research⁹ that finds that the filing rates in all sectors by LGB employees are similar to filling rates on the basis of race and sex.

Table 7. Population-Adjusted Complaint Rates (per 10,000) for Complaints Filed on the Basis of Sexual Orientation, Race, or Sex, by Employment Sector, 2003-2007

State	Sexual Orientation - State	Sexual Orientation - Local	Sexual Orientation - State & Local	Sexual Orientation - Private	Sexual Orientation - All Sectors	Race - All Sectors	Sex - All Sectors
CA	4.3	NA	4.3 (state only)	5.9 (private and local)	5.9	3.5	8.8
ME	8.2	25.1	14.9	3.4	4.1	20.8	7.2
MN	1.1	2.2	1.7	1.8	1.8	5.0	1.9
NV	NA	NA	6.5	5.4	5.5	NA	NA
NJ	.8	.9	.9	.9	.9	1.0	.5
NM	6.2	4.3	5.1	6.0	5.8	NA	NA
NY	1.5	3.6	2.8	2.7	2.7	4.4	2.9
RI	NA	NA	2.0	1.2	1.3	3.9	2.8
VT	15	6.7	10.6	.8	1.6	1.6	.3
WA	1.1	1.5	1.2	.3	.4	1.4	1.4
WI	1.9	3.3	2.4	6.7	5.8	25.9	6.8
All	2.8	3.2	3	4.1	4.0	3.9	5.2

Appendix I

Administrative Enforcement Agency Discrimination Complaint Data by State, 2003-2007

California	2003	2004	2005	2006	2007	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation – All Sectors	695	614	694	716	722	688.2	5.9
Sexual Orientation – State & Local	NA	NA	NA	NA	NA	NA	NA
Sexual Orientation – State	27	24	22	26	23	24.4	4.3
Sexual Orientation – Local	NA	NA	NA	NA	NA	NA	NA
Sexual Orientation – Private	668	590	672	690	699	663.8	5.9
Race – All Sectors	4911	3849	3531	3531	3503	3865	3.5
Sex – All Sectors	7627	6291	6289	6111	5767	6417	8.8

Source: California Department of Fair Employment and Housing

Maine	2003	2004	2005	2006	2007	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation – All Sectors	NA	NA	NA	13	33	23	4.1
Sexual Orientation – State & Local	NA	NA	NA	5	7	6	14.9
Sexual Orientation – State	NA	NA	NA	2	2	2	8.2
Sexual Orientation – Local	NA	NA	NA	3	5	4	25.1
Sexual Orientation – Private	NA	NA	NA	8	28	18	3.4
Race – All Sectors	NA	NA	NA	64	88	76	20.8
Sex – All Sectors	NA	NA	NA	236	207	221.5	7.2

Source: Maine Human Rights Commission

Minnesota	2003	2004	2005	2006	2007	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation – All Sectors	27	22	25	27	21	24.4	1.8
Sexual Orientation – State & Local	8	3	4	0	2	3.4	1.7
Sexual Orientation – State	3	1	0	0	1	1	1.1
Sexual Orientation – Local	5	2	4	0	1	2.4	2.2
Sexual Orientation – Private	19	19	21	27	19	21	1.8
Race – All Sectors	214	242	200	165	164	197	5.0
Sex – All Sectors	284	305	241	190	165	237	1.9

Source: Minnesota Department of Human Rights

Nevada	2003	2004	2005	2006	2007	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation – All Sectors	46	42	26	23	30	33.4	5.5
Sexual Orientation – State & Local	3	3	3	4	5	3.6	6.5
Sexual Orientation – State	NA	NA	NA	NA	NA	NA	NA
Sexual Orientation – Local	NA	NA	NA	NA	NA	NA	NA
Sexual Orientation – Private	43	39	23	19	25	29.8	5.4
Race – All Sectors	NA	NA	NA	NA	NA	NA	NA
Sex – All Sectors	NA	NA	NA	NA	NA	NA	NA

Source: Nevada Equal Rights Commission

New Jersey	2003	2004	2005	2006	2007	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation – All Sectors	20	18	20	13	16	17.4	0.9
Sexual Orientation – State & Local	1	1	4	5	1	2.4	0.9
Sexual Orientation – State	1	0	2	2	0	1	0.8
Sexual Orientation – Local	0	1	2	3	1	1.4	0.9
Sexual Orientation – Private	19	17	16	8	15	15	0.9
Race – All Sectors	203	207	169	157	220	191.2	1
Sex – All Sectors	109	99	98	74	94	94.8	0.5

Source: New Jersey Division on Civil Rights

New Mexico	2003	2004	2005	2006	2007	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation – All Sectors	39	32	45	44	40	39	5.8
Sexual Orientation – State & Local	7	8	8	4	6.8	7	5.1
Sexual Orientation – State		3	4	5	1	3.3	6.2
Sexual Orientation – Local		4	4	3	3	3.5	4.3
Sexual Orientation – Private		32	24	37	40	33.3	6.0
Race – All Sectors	NA	NA	NA	NA	NA	NA	NA
Sex – All Sectors	NA	NA	NA	NA	NA	NA	NA

Source: New Mexico Human Rights Division

New York	2003	2004	2005	2006	2007	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation – All Sectors	118	163	152	159	152	148.8	2.7
Sexual Orientation – State & Local	18	24	21	26	29 (est.)	23.7	2.8
Sexual Orientation – State	2	5	5	2	10	3.5	1.5
Sexual Orientation – Local	16	19	16	24	19 (est.)	18.8	3.6
Sexual Orientation – Private	100	139	131	133	123 (est.)	125.8	2.7
Race – All Sectors	1885	1884	1796	1581	1786.5	1885	4.4
Sex – All Sectors	1448	1209	1171	1114	1235.5	1448	2.9

Source: New York Division of Human Rights

Rhode Island	2003	2004	2005	2006	2007	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation – All Sectors	3	3	7	2	5	4	1.3
Sexual Orientation – State & Local	0	0	2	2	0	0.8	2.0
Sexual Orientation – State	NA	NA	NA	NA	NA	NA	NA
Sexual Orientation – Local	NA	NA	NA	NA	NA	NA	NA
Sexual Orientation – Private	3	3	5	0	5	3.2	1.2
Race – All Sectors	42	38	43	51	52	45.2	3.9
Sex – All Sectors	96	106	73	82	0	71.4	2.8

Source: Rhode Island Commission for Human Rights

Vermont	2003	2004	2005	2006	2007	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation – All Sectors	4	4	0	7	2	3.4	1.6
Sexual Orientation – State & Local	2	2	0	3	2	1.8	10.6
Sexual Orientation – State	2	2	0	2	0	1.2	15.0
Sexual Orientation – Local	0	0	0	1	2	0.6	6.7
Sexual Orientation – Private	2	2	0	4	0	1.6	0.8
Race – All Sectors	2	2	2	3	4	2.6	1.6
Sex – All Sectors	0	5	2	10	3	4	0.3

Source: Vermont Human Rights Commission; Vermont Attorney General's Office

Washington	2003	2004	2005	2006	2007	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation – All Sectors	NA	NA	NA	NA	9	9	0.4
Sexual Orientation – State & Local	NA	NA	NA	NA	4	4	1.2
Sexual Orientation – State	NA	NA	NA	NA	2	2	1.1
Sexual Orientation – Local	NA	NA	NA	NA	2	2	1.5
Sexual Orientation – Private	NA	NA	NA	NA	5	5	0.3
Race – All Sectors	NA	NA	NA	NA	113	113	1.4
Sex – All Sectors	NA	NA	NA	NA	191	191	1.4

Source: Washington Human Rights Commission

Wisconsin	2003	2004	2005	2006	2007	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation – All Sectors	71	76	58	51	60	63.2	5.8
Sexual Orientation – State & Local	11	3	5	5	4	5.6	2.4
Sexual Orientation – State	5	1	2	3	2	2.6	1.9
Sexual Orientation – Local	6	2	3	2	2	3	3.3
Sexual Orientation – Private	60	73	53	46	56	57.6	6.7
Race – All Sectors	1110	1136	1127	1004	995	1074.4	25.9
Sex – All Sectors	1091	987	911	811	727	905.4	6.8

Source: Wisconsin Civil Rights Bureau

Appendix II

Estimated Women in the Workforce by State and Sector, ACS 2005-2007

State	All	Private	Local	State	State & Local
California	7,505,607	6,330,681	828,076	346,850	1,174,926
Maine	317,060	270,852	30,829	15,379	46,208
Minnesota	1,323,735	1,151,770	120,253	51,712	171,965
Nevada	546,166	480,518	47,468	18,180	65,648
New Jersey	2,059,155	1,758,048	209,090	92,017	301,107
New Mexico	402,545	320,462	45,742	36,341	82,083
New York	4,523,979	3,781,901	553,991	188,087	742,078
Rhode Island	262,586	228,314	23,208	11,064	34,272
Vermont	160,236	135,314	16,318	8,604	24,922
Washington	1,414,571	1,183,691	129,967	100,913	230,880
Wisconsin	1,396,160	1,215,575	121,689	58,896	180,585
All	19,911,800	16,857,126	2,126,631	928,043	3,054,674

Appendix III

Estimated People of Color in the Workforce by State and Sector, ACS 2005-2007

State	All	Private	Local	State	State & Local
California	10,943,080	9,825,354	778,431	339,314	1,117,726
Maine	36,485	33,180	1,822	1,483	3,305
Minnesota	395,144	356,934	25,082	13,128	38,210
Nevada	557,367	521,526	24,695	11,146	35,841
New Jersey	1,852,289	1,657,013	111,923	83,353	195,276
New Mexico	573,520	469,051	60,094	44,375	104,469
New York	4,091,459	3,540,355	426,849	124,255	551,104
Rhode Island	117,322	109,882	3,800	3,640	7,440
Vermont	15,985	13,915	1,009	1,061	2,070
Washington	816,399	733,906	40,584	41,909	82,493
Wisconsin	415,181	368,797	29,698	415,181	46,384
All	19,814,231	17,629,913	1,503,987	1,078,845	2,184,318

Appendix IV

Estimated LGB Workforce, by State and Sector, ACS 2005-2007

State	All	Private	Local	State	State & Local
California	1,172,887	998,481	117,658	56,747	174,406
Maine	56,362	52,335	1,595	2,431	4,026
Minnesota	134,107	114,480	10,752	8,875	19,626
Nevada	61,202	55,622	3,408	2,172	5,580
New Jersey	203,761	175,885	14,879	12,997	27,876
New Mexico	68,593	55,243	8,100	5,251	13,350
New York	549,543	465,634	52,439	31,470	83,909
Rhode Island	31,105	27,069	2,695	1,342	4,036
Vermont	21,753	20,052	901	801	1,701
Washington	220,380	188,338	13,056	18,986	32,042
Wisconsin	108,598	85,701	9,100	13,797	22,897
All	2,628,291	2,238,840	234,583	154,869	389,449

Endnotes

¹ CHRISTOPHER RAMOS, M.V. LEE BADGETT & BRAD SEARS, THE WILLIAMS INSTITUTE, EVIDENCE OF EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES 1999-2007 (Nov. 2008), *available at* <http://www3.law.ucla.edu/williamsinstitute/pdf/PACR.pdf>; William B. Rubenstein, *Do Gay Rights Laws Matter?* 75 S. CAL. L. REV. 65 (2007).

² Anti-discrimination laws in the 21 states that currently prohibit employment discrimination based on sexual orientation and/or gender identity by statute define covered “employer” as private businesses with a few limited exceptions, and state and local governments. See BRAD SEARS, NAN D. HUNTER & CHRISTY MALLORY, DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT 15-1 – 15-86 (2009), *available at*

http://www3.law.ucla.edu/williamsinstitute/programs/EmploymentReports_ENDA.htm.

³ BRAD SEARS, NAN D. HUNTER & CHRISTY MALLORY, DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT (2009), *available at*

http://www3.law.ucla.edu/williamsinstitute/programs/EmploymentReports_ENDA.htm.

⁴ Norma M. Riccucci & Charles W. Gossett, *Employment Discrimination in State and Local Government: The Lesbian and Gay Male Experience*, 26 AM. REV. OF PUBLIC ADMIN. 175 (1996).

⁵ RAMOS, *supra* note 1.

⁶ GARY J. GATES, THE WILLIAMS INSTITUTE, HOW MANY PEOPLE ARE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER? (Apr. 2011), *available at* <http://www3.law.ucla.edu/williamsinstitute/pdf/How-many-people-are-LGBT-Final.pdf>.

⁷ RAMOS ET AL., *supra* note 1.

⁸ SEARS ET AL., *supra* note 3.

⁹ RAMOS ET AL., *supra* note 1; Rubenstein, *supra* note 1.



Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment

This report addresses whether there has been a widespread and persistent pattern of unconstitutional discrimination by state governments on the basis of sexual orientation and gender identity. This finding will support Congress in exercising its authority under Section 5 of the 14th amendment to provide a private right of action for damages under H.R. 3017, the Employment Non-Discrimination Act of 2009 (“ENDA”), to state government employees who have suffered discrimination.

This report is the result of research conducted during 2008 and 2009 by the Williams Institute.¹ In addition, ten different law firms assisted with the project, with offices and attorneys from across the country.² Also making contributions were scholars and experts from a number of academic disciplines, including history, political science, economics, sociology, and demography. The research resulted in a set of reports on employment law and discrimination on the basis of sexual orientation and gender identity for each of the fifty states, which are included as Appendices to this report. Based on these fifty state reports, plus additional studies conducted by the William Institute, literature reviews, and research projects conducted by the firms, we drafted and reviewed the following papers, presented here as a series of chapters summarizing the research findings. Based on this analysis, we conclude that:

- There is a widespread and persistent pattern of unconstitutional discrimination on the basis of sexual orientation and gender identity against state government employees;
- There is no meaningful difference in the pattern and scope of employment discrimination against LGBT people by state governments compared to the private sector and other public sector employers; and
- The list of documented examples that we have compiled far under-represents the actual prevalence of employment discrimination against LGBT people by state and local governments.

These conclusions are based on the following findings:

¹ The principal co-investigators were Brad Sears, Executive Director of the Williams Institute, Professor Nan Hunter, Georgetown Law Center, and Christy Mallory, Williams Institute Law Fellow.

² Alston & Bird LLP, Bryan Cave LLP, Dewey & LeBeouff LLP, DLA Piper LLP, Irell & Manella LLP, Kirkland & Ellis LLP, Latham & Watkins LLP, Manatt, Phelps & Phillips, LLP, Mayer Brown LLP, O'Melveny & Myers LLP.

State governments are the largest in employer in every state. There are over 400,000 LGBT state employees.

- According to data from the 2007 American Community Survey, over 6.2 million Americans are state employees. In every state, the state government is the largest employer.
- Using data from the 2000 Census and the 2002 National Survey of Family Growth, in September 2009, the Williams Institute estimates that there are approximately 418,000 LGBT state government employees in the United States.
- There are also an estimated 585,000 local government employees, for a total of slightly more than 1 million state and local LGBT employees. There are just under 7 million LGBT private employees and just over 200,000 LGBT people working for the federal government.

Courts and legal scholars have concluded that sexual orientation is not related to an individual's ability to contribute to society or perform in the workplace.

- We document 15 federal and state courts and a number of legal scholars that have concluded that sexual orientation is not related to an individual's ability to contribute to society or perform in the workplace. Every court that has considered this criteria when determining whether sexual orientation is a suspect class has reached the same conclusion.
- For example, in 2008, the Connecticut Supreme Court found that “the characteristic that defines the members of this group—attraction to persons of the same sex—bears no logical relationship to their ability to perform in society, either in familial relations or otherwise as productive citizens.”³
- Similarly, in 2004, a justice on the Montana Supreme Court, found that “there is no evidence that gays and lesbians do not function as effectively in the workplace or that they contribute any less to society than do their heterosexual counterparts.”⁴

When state employers discriminate against LGBT people in the workplace, a cluster of constitutional rights are implicated, including those protected by the Equal Protection Clause, the First Amendment, and the Due Process Clause.

- **Courts have found that discrimination by state employers on the basis of sexual orientation violates the Equal Protection Clause. For example,**

³ *Id.* at 432.

⁴ *Snetsinger v. Mont. Univ. Sys.*, 104 P.3d 445, 455-456 (Mont. 2004) (concurring opinion).

- A railroad ticket agent sued the Long Island Railroad, a state employer, for failing to address sexual orientation harassment in the workplace. In 2006, a U.S. District Court, relying on the U.S. Supreme Court's 1996 decision, *Romer v. Evans*,⁵ denied the Railroad's summary judgment motion and found that adverse differential treatment of a gay employee in the absence of any legitimate policy justification would violate the Equal Protection Clause.⁶ The ticket agent alleged that he was referred to by several people in the office as a "f***** faggot" and "a queer."
- In 2001, a lesbian brought an action against her former employer, a hospital district, for wrongful termination based on sexual orientation alleging state and federal equal protection clause violations. She and her immediate supervisor, Nan Miguel, were both terminated for opposing the hospital's discriminatory treatment of her. The director of the radiology department made several derogatory comments, including calling her a "f***** faggot" a "f***** dyke" and a "queer." The Washington Court of Appeals held that she had raised material issues of fact with respect to whether the hospital and the doctor were "state actors" for her federal claims and remanded the case for trial.⁷ The hospital eventually settled with Davis for \$75,000.⁸
- In 1995, Justice Sotomayor, then a judge for the Southern District of New York, denied a motion to dismiss a case where the plaintiff had been fired from his job as a prison kitchen worker because he was gay. Criticizing the defendants' argument that removing the plaintiff was rationally related to preserving mess hall security, Sotomayor stated that a "person's sexual orientation, standing alone, does not reasonably, rationally or self-evidently implicate mess hall security." She also rejected the defendants' qualified immunity defense, stating that "the constitutional right not to be discriminated against for any reason, including sexual orientation, without a rational basis is an established proposition of law."⁹
- **Courts have also found that discrimination against LGBT people violates the Equal Protection Clause when employers engage in impermissible discrimination on the basis of sex and sex stereotyping. For example,**
 - A Legislative Editor for the Georgia General Assembly's Office of Legislative Counsel was fired after she was diagnosed with gender identity disorder and began appearing (upon a doctor's orders) at work as a woman prior to undergoing gender reassignment surgery. Since 2005, she had

⁵ 517 U.S. 620 (1996).

⁶ *Pugliese v. Long Island Rail Road Co.*, 2006 WL 2689600 (Sept. 29, 2006 E.D.N.Y.).

⁷ *Miguel v. Guess*, 112 Wn. App. 536, (Wash. Ct. App. 2002); *Miguel v. Guess*, 51 P.3d 89 (Wash. Ct. App. 2002).

⁸ ACLU, *Following ACLU Lawsuit, Lesbian Illegally Fired from Washington Hospital Received Generous Settlement* (Oct. 8, 2003), <http://www.aclu.org/lgbt/discrim/12359prs20031008.html>.

⁹ *Holmes v. Artuz*, 1995 WL 634995 (S.D.N.Y. Oct. 27, 1995).

been responsible for editing proposed legislation and resolutions for the Georgia Assembly. In 2009, in rejecting the state's motion to dismiss, a U.S. District Court ruled that the editor's complaint "clearly states a claim for denial of equal protection" under the 14th Amendment on alternative theories of discrimination on the basis of sex and a medical condition.¹⁰ The court summarized the grounds for termination as, "In the view of Glenn's employers, gender transition surgery and presentation as a woman in the workplace would be seen as immoral... and would make other employees uncomfortable."¹¹ The court the held that "Unequal treatment fails even the most deferential equal protection review when the disadvantage imposed is born of animosity toward the class of persons affected," quoting the Supreme Court's opinion in *Romer v. Evans*^{12, 13}.

- Two 16-year-old twin brothers who were subject to "a relentless campaign of harassment by their male co-workers," sued the city they were working for, alleging intentional sex discrimination.¹⁴ The plaintiffs alleged that their harassment included being called "queer" and "fag," comments such as, "[a]re you a boy or a girl?" and talk of "being taken 'out to the woods'" for sexual purposes. One plaintiff wore an earring and was subject to more ridicule than his brother, and was once asked whether his brother had passed a case of poison ivy to him through intercourse. The verbal taunting turned physical when a co-worker grabbed one of the plaintiff's genitals to determine "if he was a girl or a boy." When the plaintiffs failed to return to work, supervisors terminated their employment. The Seventh Circuit noted that "a homophobic epithet like 'fag,'...may be as much of a disparagement of a man's perceived effeminate qualities as it is of his perceived sexual orientation." The court found that a "because of" nexus between the allegedly proscribed conduct and the victim's gender could be inferred "from the harassers' evident belief that in wearing an earring, [the brother] did not conform to male standards."¹⁵
- A housing and nuisance inspector for the Bureau of Development Services of Portland settled her lawsuit based on sexual orientation and sex stereotyping harassment for \$150,000 after her Title VII claim survived summary judgment in a U.S. District Court.¹⁶ At work, she did not wear makeup, had short hair and wore men's clothing. Her supervisors made

¹⁰ *Glenn v. Brumby*, 2009 U.S. Dist. LEXIS 54768 (N.D. Ga. 2009).

¹¹ *Id.*

¹² *Romer v. Evans*, 517 U.S. 620 (1996).

¹³ *Glenn*, 2009 U.S. Dist. LEXIS 54768.

¹⁴ *Doe v. City of Belleville*, 119 F.3d 563 (7th Cir. 1997), *vacated*, 523 U.S. 1001 (1998). The U.S. Supreme Court vacated and remanded to the Seventh Circuit for further consideration in light of *Oncale v. Sundowner Offshore Services* *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 (1998) (holding that same-sex sexual harassment is actionable under Title VII).

¹⁵ *Id.*

¹⁶ LESBIAN & GAY L. NOTES (Dec. 2004), *available at* <http://www.qrd.org/qrd/usa/legal/lgl/12.04>.

remarks such as that her shirt looked “like something her father would wear” and “are you tired of people treating you like a bull dyke[?]” She also alleged her co-workers harassed her, calling her a “bitch,” saying loudly that they were “surrounded by all these fags at work,” and asking her “would a woman wear a man’s shoes?” In holding for the inspector, the court noted that, for the purpose of Title VII analysis, it was irrelevant whether or not the harassers were motivated by plaintiff’s sexual orientation, as sexual orientation, alone, is not actionable under Title VII. However, the court held that gender stereotyping “constitutes actionable harassment.”¹⁷

- **Courts have held in a number of cases that discrimination against LGBT public employees has also infringed on the First Amendment rights of expression and association. For example,**
 - In 2007, a volleyball coach was awarded \$5.85 million in damages in her discrimination suit against Fresno State University after the University refused to renew her contract. The coach had alleged that this was a result of her advocacy of gender equity in the funding of women’s sports as well as her perceived sexual orientation.¹⁸
 - Paul Scarbrough, a director/superintendent of schools for the Morgan County School Board, was not selected to continue in his position because of the public outrage that resulted after he was invited to speak at a convention hosted by a church with predominantly gay and lesbian members. At the time, Scarbrough was unaware that the church had a predominately gay and lesbian congregation. He was ultimately unable to accept the invitation, however, approximately a month later, a newspaper published an article announcing—incorrectly—that he would be a speaker at the convention. After this article ran, school board members began receiving criticisms regarding him. In response, he provided written statements to two newspapers explaining the inaccuracies of the article and noting that he did not endorse homosexuality, but he would not refuse to associate with LGBT people. When Scarbrough was then not selected by the school board to continue as Superintendent/Director, he sued and won a judgment from the U.S. Court of Appeals for the Sixth Circuit.¹⁹
- **In addition, some of the examples of discrimination include cases where employees Due Process Rights are violated, both their right to adequate procedures prior to being terminated, and substantive due process rights of liberty in intimate association and privacy recognized by the Supreme Court in *Lawrence v. Texas*.**

¹⁷ *Fischer v. City of Portland*, 2004 U.S. Dist. LEXIS 20453 (D. Or. 2004).

¹⁸ LESBIAN & GAY L. NOTES (Summer 2007).

¹⁹ *Scarbrough v. Morgan County Bd of Educ.*, 470 F.3d 250 (6th Cir. 2007).

- A state employee of a community college in Delaware was fired on the basis of a same-sex sexual harassment claim. He filed suit alleging he was denied a proper pre-termination hearing on the charges. A jury awarded that he be reinstated to his teaching position and \$134,081 in back pay.²⁰
- In 1995, an applicant for police department job filed a right to privacy action against a police official. She alleged that during her application for a job as a police officer, she was asked, "What exactly are your sexual practices and preferences?" The District Court held that such inquiries had, indeed, violated her right to privacy, but that the police official was entitled to qualified immunity. On appeal, the Second Circuit reasoned that since the conduct had occurred in 1995, a reasonable official would not have known the conduct was constitutionally proscribed.²¹
- An administrator of the City of Petersburg's Community Diversion Incentive Program was fired in 1986 for refusing to answer questions about her sexual orientation as part of a city background check. She had already been in her position for three years when asked to complete the questionnaire. When she refused, she was suspended but then reinstated because the City Manager determined that her position did not require a background check. However, at the same time he changed city policy to require her to have one. When she again refused, she was terminated. In 1990, the 4th Circuit relied upon *Bowers v. Hardwick* in holding that she had no right to privacy with respect to this information although it did note that the relevance of this information was "uncertain".¹⁹ In 2003, the United States Supreme Court held that *Bowers v. Hardwick* was wrong when it was decided in 1986.²²

Beginning with purges of thousands of LGBT employees from public employment in the 1950s and 60s, LGBT people have experienced a long history of explicit and pervasive discrimination by federal, state, and local government employers. Moreover, state laws, including sodomy laws and morality requirements for state-issued occupational licenses, provided the basis for extensive discrimination against LGBT employees in the public and private sectors.

- The “Lavender Scare” was a part of the anti-communist campaigns during the 1950s and 60s, during which the federal government fired thousands of LGBT federal employees and denied jobs to tens of thousands of more. For example, the State Department dismissed over twice as many employees for being suspected homosexuals as being suspected communists. During this period, the “loyalty oaths” required by the federal government of all employees and contractors, which included questions about homosexuality, spread to state,

²⁰ *McDaniels v. Delaware County Cmty. Coll.*, 1994 WL 675292 (E.D. Pa. Nov. 21, 1994).

²¹ *Eglise v. Culpin*, 2000 WL 232798, at *1 (2d Cir. Feb. 28, 2000).

²² *Walls v. City of Petersburg*, 895 F.2d 188 (4th Cir. 1990).

local, and private employers, eventually impacting as much as 20% of the U.S. workforce.

- Federal agencies could deny LGBT people employment until 1975, when the Civil Service Commission issued guidelines prohibiting sexual orientation, but not gender identity, discrimination. Federal agencies still had policies of denying security clearance to LGBT people until the 1990s. The Department of Defense, the Secret Service, and the FBI still had discriminatory security clearance policies until 1995, when President Clinton issued an Executive Order barring the federal government from denying security clearance simply on the basis of sexual orientation.
- Purges of state and local public employees during the 1950s and 1960s, similar to the Lavender Scare, have been documented across the country, including in California, Florida, Idaho, Iowa, Oklahoma, Massachusetts, North Carolina, and Texas. For example, beginning in 1958, a Florida legislative investigation committee known as the “Johns Committee,” interrogated 320 suspected gay men and lesbians over a five year period. Countless state employees, teachers, hospital workers, and others lost their jobs as a result. Near the end of its tenure, the Johns Committee announced that it had revoked seventy-one teachers’ certificates with sixty-three more cases pending; fourteen professors had been removed from state universities with nineteen cases pending; and thirty-seven federal employees had lost their jobs, while fourteen state employees faced removal in pending cases. State laws and policies explicitly prohibiting LGBT people from public employment continued in some states until the 1990s, including in Oklahoma, New York, South Carolina, and West Virginia.
- State sodomy laws were also used to deny jobs to LGBT employees in the public and private sector. The mere potential that an applicant or employee could violate a state sodomy statute was sufficient grounds to deny employment. The substantial obstacle that state sodomy laws created for LGBT people in obtaining employment was recognized by the Supreme Court in *Lawrence v. Texas*, when it overturned the remaining sodomy laws in the United States. This direct burden that state sodomy laws placed on employment opportunities for LGBT people was also recognized by the highest courts in Arkansas, Maryland, Massachusetts, Minnesota, Montana, and Tennessee when they overturned state sodomy laws.
- One of the areas where sodomy laws presented almost insurmountable barriers to openly LGBT people in public employment was law enforcement. Federal, state and local law enforcement agencies adopted policies stating that it was incompatible for LGBT people, as actual or potential felons, to serve in law enforcement. Explicit discriminatory policies ranged from those in Dallas, Texas successfully challenged in the 1980s and 90s to a policy prohibiting employment of officers in Puerto Rico who even associated with homosexuals

that was not overturned until 2001. The legacy of this history of discrimination is clearly demonstrated in Chapter 12 of this report. Over 40% of the almost 400 examples of discrimination against state and local employees presented in Chapter 12 involve law enforcement and corrections officers.

- Morality requirements for state-issued occupational licenses also provided a substantial barrier to LGBT people in public and private employment. Under these requirements, set by state law, LGBT people in dozens of professions, ranging from lawyers, teachers, and doctors to pilots, realtors, and hairdressers, were considered immoral and had their licenses either denied or revoked. This form of discrimination had a disproportionate impact on public employees: a 2006 survey revealed that over 40% of public employees in the United States are in professions requiring professional licenses.
- One sector where discrimination in state-issued occupational licenses has had the biggest impact is education. Explicit state laws or policy statements that LGBT people could not receive state teaching credentials date from those of California and Florida in the 1950s to a West Virginia Attorney General Opinion in 1983 stating that that homosexual teachers were “immoral” and an Oklahoma law barring LGBT people from teaching that was not repealed until 1989. The legacy of this form of discrimination is also clearly demonstrated in Chapter 12: over 27% of the almost 400 documented examples of discrimination involve employees of public schools and universities.

Courts have unanimously found that LGBT people have experienced a long history of discrimination.

- Every state and federal court that has substantively considered whether sexual orientation is a suspect class has held that LGBT people have faced a long history of discrimination. In addition, dozens of legal scholars have reached the same conclusion. In making these determinations, many of these courts and scholars have explicitly considered employment discrimination by public employers, including state, local, and federal government employers.
- Judicial opinions from appellate courts in seven states - including six of those states’ highest courts - have all agreed that LGBT people have faced a long history of discrimination, no matter how they ultimately ruled on whether sexual orientation is a suspect classification.
- For example, in 2008, Maryland’s highest court found that “[h]omosexual persons have been the object of societal prejudice by private actors as well as by the judicial and legislative branches of federal and state governments”²³

²³ *Conaway v. Deane*, 932 A.2d 571, 609 (Md. 2007).

and that “homosexual persons, at least in terms of contemporary history, have been a disfavored group in both public and private spheres of our society.”²⁴

- Similarly, in 1995, the Sixth Circuit concluded, “Homosexuals have suffered a history of pervasive irrational and invidious discrimination in government and private employment, in political organization and in all facets of society in general, based on their sexual orientation.”²⁵

Based on their own research, many state and local government officials have also concluded that LGBT people have faced widespread discrimination in public employment.

- A number of state and local elected officials, legislative bodies, and special commissions have issued findings of widespread discrimination against LGBT people in their jurisdictions, including discrimination in public employment. We document 29 examples of such findings from 17 different states.
- For example, in May 2007 when the governor of Ohio issued an executive order prohibiting discrimination in state employment based on sexual orientation and/or gender identity,²⁶ the order included the finding that the “[i]nformation compiled by the Ohio Civil Rights Commission documents ongoing and past discrimination on the basis of sexual orientation and/or gender identity in employment-related decisions by personnel at Ohio agencies, boards and commissions.”
- Similarly, when the governor of Alaska issued an administrative order in 2002 prohibiting sexual orientation discrimination in state employment,²⁷ the order stated that it was “in recognition of the findings concerning perceived institutional intolerance in state agencies set out in the final report of the Governor’s Commission on Tolerance.”²⁸
- And when the governor of Oregon issued an executive order in 1988 prohibiting sexual orientation discrimination, it was accompanied by a statement that, “Although existing law may require equality in state employment or services, some homosexual employees or applicants for state services are afraid to assert their rights because they fear discrimination if they make their sexual orientation public. This order is intended to reduce that fear

²⁴ *Id.* at 610.

²⁵ *Equal. Found. of Greater Cincinnati v. City of Cincinnati*, 54 F.3d 261, 264 n.1 (6th Cir. 1995) (quoting trial court findings), *rev’d and vacated* by 54 F.3d 261 (6th Cir. 1995), *cert. granted, judgment vacated*, 518 U.S. 1001 (1996).

²⁶ Ohio Exec. Order No. 2007-10S (May 17, 2007), *available at* <http://www.wright.edu/admin/affirm/ExecutiveOrder2007-10S.html> (last visited Feb. 1, 2009).

²⁷ Alaska Admin. Order No. 195 (Mar. 5, 2002), *available at* <http://gov.state.ak.us/admin-orders/195.html> (last visited Sept. 21, 2009).

²⁸ *Id.*

by making it clear that the Governor expects state officials and agencies not to discriminate.”²⁹

For the past fifteen years, Congress has consistently reviewed evidence of employment discrimination by public employers when considering ENDA.

- Direct victims of such discrimination have testified at Congressional hearings; legal scholars have presented specific cases and scholarship on the history of such discrimination; social scientists have presented survey data documenting such discrimination; LGBT rights organizations have submitted reports and expert testimony documenting such discrimination; and members of Congress have shared specific examples and spoken more generally about such discrimination.
- In total, over 67 specific examples of employment discrimination on the basis of sexual orientation or gender identity by public employers have been presented to Congress from 1994 to 2007, including discrimination involving 13 state employees, 28 local employees, and 26 federal employees.

On surveys, LGBT public employees consistently report high rates of discrimination and harassment in the workplace.

- We reviewed studies documenting over 80 surveys of LGBT employees about their experiences of discrimination that either were conducted with just public employees, or where a substantial portion of those surveyed were public employees. The majority of these surveys were conducted with just LGBT employees of state governments.
- These surveys provide compelling evidence that discrimination against LGBT state government employees, as well as other public sector workers, is serious, pervasive and continuing. They also indicate that the patterns and level of employment discrimination based on sexual orientation and gender identity by state employers is similar to that of private employers. Examples include:
 - One in five LGB public sector employees in the 2008 General Social Survey reported being discriminated against on the basis of their sexual orientation.
 - A 2009 survey of over 640 transgender employees, 11% of whom were public employees, found that 70% reported experiencing workplace discrimination on the basis of gender identity.

²⁹ Or. Exec. Order No. EO-87-20 (Feb. 12, 1988), *available at* <http://extension.oregonstate.edu/internal/sites/default/files/documents/civil-rights/EO-87-20.pdf> (last visited Sept. 21, 2009).

- A 2009 survey of more than 1,900 LGBT employees of state university systems nationwide found that more than 13% had experienced discriminatory treatment or harassment *during the past year alone*.
- In a 2009 survey of LGBT public safety officers published in *Police Quarterly*, 22% reported experiencing discrimination in promotions, 13% in hiring, and 2% reported being fired because of their sexual orientation or gender identity.
- A 2008 Out & Equal survey reported that 36% of lesbians and gay men were closeted at work.

Analysis of the wages of LGB employees compared with heterosexual employees provides further evidence of discrimination in the public sector.

- If, after controlling for factors significant for determining wages such as education, a wage gap exists between people who have different personal characteristics, such as sexual orientation, economists typically conclude that the most likely reason for the wage gap is discrimination. More than twelve studies have shown a significant wage gap, ranging from 10% to 32%, for gay men when compared to heterosexual men.
- Two recent studies have found similar wage gaps when looking just at public employees. Together, the studies find that LGB government employees earn 8% to 29% less than their heterosexual counterparts.
- One of these studies finds that men in same-sex couples who are state employees earn 8% to 10% less than their married heterosexual counterparts.
- These studies of wages suggest that sexual orientation discrimination in state government is similar to that in the private sector and other public employment.

Complaints filed with administrative agencies also document a widespread and persistent pattern of discrimination against LGBT people by state and local government employers.

- During 2009, the Williams Institute collected data about complaints from state and local administrative agencies charged with enforcing prohibitions against sexual orientation and gender identity discrimination. Although we requested data from 20 state and 203 local agencies, many did not respond, even after repeated requests.

- The agencies that did respond provided us with 430 administrative complaints of sexual orientation and gender identity discrimination by state and local employers between 1999 and 2007 from 18 different states.
- Although not all states could provide us with data distinguishing between state and local government defendants, at least 265 of these were filed by employees of state government agencies.
- Five states provided us information about the dispositions of the claims made by state employees. For four of these states, the combined rate of positive administrative outcomes for the complaints, such as findings of probable cause of discrimination or settlements, averaged 30%. For the fifth state, California, 61% of complainants sought an immediate right to sue letter, which often indicates they have already found counsel to take their cases to court. A review of the dispositions of complaints made to local enforcement agencies found a similar rate of favorable outcomes (23%).
- Scholarship shows that the number of administrative filings most likely significantly under-represents the frequency of employment discrimination experienced by LGBT state and local workers. Several academic studies demonstrate that state and local administrative agencies often lack the resources, knowledge, enforcement mechanisms and willingness to accept sexual orientation and/or gender identity discrimination complaints.
- Supporting this scholarship, of the 36 city and county agencies that responded to the 2009 Williams Institute study with data, two incorrectly referred such complainants to the United States Equal Employment Opportunity Commission even though no federal law prohibits sexual orientation discrimination, one incorrectly said the city did not prohibit such discrimination, one incorrectly said there was no administrative enforcement mechanism for such complaints, five said they did not have the resources to enforce such claims and referred callers to their state administrative agency, and three said they lacked the resources to provide the requested data.

There are over 380 documented examples of employment discrimination on the basis of sexual orientation and gender identity by state and local employers, 1980 to the present.

- We compiled a set of documented examples of discrimination based on sexual orientation and gender identity from court opinions, administrative complaints, complaints to community-based organizations, academic journals, newspapers and other media, and books.
- This record demonstrates that discrimination is widespread in terms of quantity, geography, and occupations. The quantity compares favorably to

that of past records of public employment discrimination supporting civil rights legislation, particularly so in light of the size of the LGBT workforce.

- Geographically, the examples reach into every state except North Dakota, which has a small state population and state government workforce. The LGBT public employees discriminated against work for every branch of state government: legislatures, judiciaries, and the executive branch.
- In many of these cases, courts have found violations of rights to equal protection, free expression, and privacy, as well as the impermissible use of sex stereotypes. There are also cases where plaintiffs lose because judges rule that, in the absence a law like ENDA, state and federal law do not provide a remedy.
- In none of these cases do employers assert that sexual orientation or gender identity impacts an employee's performance in the workplace. To the contrary, among the examples are many public servants have received awards, commendations, and excellent work evaluations.
- The irrationality of this discrimination is vividly indicated by the harassment that many of these workers have been subjected to. Here is a very limited sense of what they are called in the workplace: an officer at a state correctional facility in New York, "pervert" and "homo;" a lab technician at a state hospital in Washington, a "dyke;" an employee of New Mexico's Juvenile Justice System, a "queer." There are countless examples of the use of the words "fag" and "faggot" in the report.
- The examples of workplace harassment also frequently include physical violence. For example, a gay employee of the Connecticut State Maintenance Department was tied up by his hands and feet; a firefighter in California had urine put in her mouthwash; a transgender corrections officer in New Hampshire was slammed into a concrete wall; and a transgender librarian at a college in Oklahoma had a flyer circulated about her that said God wanted her to die. Frequently, when employees complain about this kind of harassment, they are often told that it is of their own making, and no action is taken.
- These 380-plus documented examples should in no way be taken as a complete record of discrimination against LGBT people by state and local governments. Based on our research, and on other scholarship, we have concluded that these examples represent just a fraction of the actual discrimination.
 - First, our record does not even completely capture all of the documented instances. For example, of the twenty state enforcement agencies we contacted, only six made available redacted complaints

for us to review. Moreover, 117 of the local agencies never provided any type of response to our requests.

- Second, as noted above, several academic studies have shown that state and local administrative agencies often lack the resources, knowledge and willingness to consider sexual orientation and gender identity discrimination complaints. Similarly, legal scholars have noted that courts and judges have often been unreceptive to LGBT plaintiffs and reluctant to write published opinions about them, reducing the number of court opinions and administrative complaints that we would expect to find.
- Third, many cases settle before an administrative complaint or court case is filed. Unless the parties want the settlement to be public, and the settlement is for a large amount, it is likely to go unreported in the media or academic journals.
- Fourth, LGBT employees are often reluctant to pursue claims for fear of retaliation or of outing themselves further in their workplace. For example, in a study published this month by the Transgender Law Center, only 15% of those who reported that they had experienced some form of discrimination had filed a complaint.
- Finally, and perhaps most important, numerous studies have documented that as many one-third of LGBT people are not out in the workplace. They try to avoid discrimination by hiding who they are.

Statements by some state and local government officials provide further evidence of animus towards LGBT people.

- The Supreme Court has recognized that irrational discrimination is often signaled by indicators of bias, and bias is unacceptable as a substitute for legitimate governmental interests.³⁰ As Justice O’Connor stated in her concurring opinion in *Lawrence v. Texas*, 539 U.S. 558, 580-82 (2003): “We have consistently held...that some objectives, such as “a bare...desire to harm a politically unpopular group,” are not legitimate state interests. ... Moral disapproval of this group [homosexuals], like a bare desire to harm the group, is an interest that is insufficient to satisfy rational basis review under the Equal Protection Clause.”
- Drawing from the 50 state reports attached, we document comments made by state legislators, governors, judges, and other state and local policy makers and officials which reflect animus towards LGBT people.

³⁰ *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 367 (2001).

- These include statements that LGBT people are mentally ill, pedophiles, wealthy, terrorists, Nazis, condemned by God, immoral, and unhealthy. Often, these statements are made while the speakers are opposing state or local laws that would prohibit discrimination on the bases of sexual orientation and gender identity or endorsing laws to repeal or prevent the enactment of such protections.
- Such statements are likely to both deter LGBT people from seeking state and local government employment, and cause them to be closeted if they are employed by public agencies. In addition, these statements often serve as indicia of why laws extending legal protections to LGBT people are opposed or repealed.

Over 120 ballot measures have sought to repeal or prevent laws prohibiting discrimination on the basis of sexual orientation or gender identity.

- One marker of the animus directed towards LGBT Americans is the proliferation of attempts to use state and local ballot measures to repeal or preclude protection against employment discrimination based on sexual orientation or gender identity. In this analysis we do not include ballot measures to repeal or prevent the extension of marriage to same-sex couples.
- Ballot initiatives aimed at preventing the LGBT population from gaining legal protection from discrimination in the workplace began as attempts to repeal specific legislation or executive orders. Over time, an increasing number of these campaigns have attempted to block future laws to prohibit discrimination.
- Updating prior scholarship, we documented 120 such ballot measures from 1974 to 2009. Most of these, 92, were at the local level, with 28 at the state level. While the ballot measures were proposed in eighteen different states, most were in Oregon, Michigan, Maine, Washington, Florida, and California.
- One hundred and fifteen of these measures sought to repeal prohibitions of discrimination against LGBT people, prevent or inhibit such prohibitions from being passed, or even mandate discriminatory or stigmatizing treatment of LGBT people. Of these ballot measures, 50% passed.
- In 1996, the United States Supreme Court declared unconstitutional Colorado's Amendment 2, which would have repealed several local anti-discrimination laws in the state and two statewide protections and made the passage of such protections in the future require another amendment to the Colorado constitution. Writing for the Court in *Romer v. Evans*, Justice Kennedy stated that the amendment's "sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class that it affects; it lacks a rational relationship to

legitimate state interests.”³¹ He concluded that it was “a denial of equal protection of the laws in the most literal sense.”³² Thus, in the Court's opinion, Amendment 2's scope was too expansive to rationally relate to any acceptable state purpose.³³

- Since the Supreme Court decision in 1996, there have been nearly two dozen such initiatives introduced around the country, with the latest occurring in Gainesville, Florida, in February 2009.

State statutes and executive orders do not adequately address employment discrimination against state employees on the basis of sexual orientation and gender identity.

- Twenty-nine states do not have anti-discrimination statutes that prohibit sexual orientation discrimination, and 38 do not have statutes that explicitly prohibit gender identity discrimination.
- Of the states that do have anti-discrimination statutes that prohibit discrimination on these bases:
 - Three do not prohibit discrimination on the basis of *perceived* sexual orientation;
 - Five either do not provide for compensatory damages or subject such damages to caps that are lower than ENDA's; and
 - Five do not provide for attorney's fee's, and another five only provide for them if the employee files a court action as opposed to an administrative action.
- In 10 other states that do not offer statutory protection for sexual orientation or gender identity, gubernatorial executive orders prohibit discrimination on either or both bases against state employees. However, these orders provide little enforcement opportunities and lack permanency:
 - None of these orders provide for a private right of action;
 - Only 6 confer any power to actually investigate complaints; and
 - Executive orders in Kentucky, Louisiana, Iowa, and Ohio have been in flux during the last 15 years and the constitutionality of Virginia's is currently in dispute.

³¹ *Id.* at 632.

³² *Romer v. Evans*, 517 U.S. 620, 633 (1996).

³³ *Id.*

Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination

June 2007



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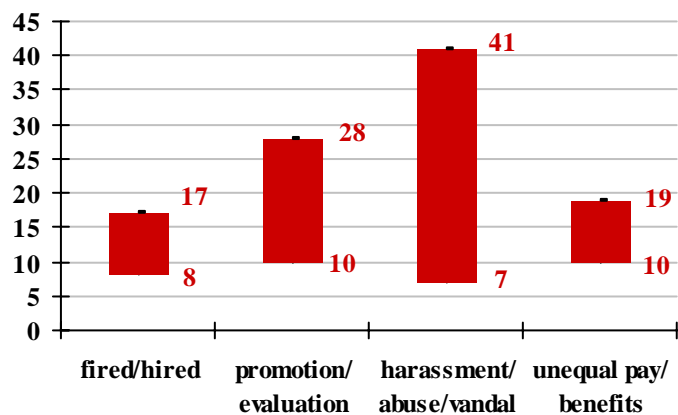
Executive Summary

Over the last ten years, many researchers have conducted studies to find out whether lesbian, gay, bisexual, and transgender (“LGBT”) people face sexual orientation discrimination in the workplace. These studies include surveys of LGBT individuals’ workplace experiences, wage comparisons between LGB and heterosexual persons, analyses of discrimination complaints filed with administrative agencies, and testing studies and controlled experiments. This report summarizes findings from these studies.

When surveyed, 16% to 68% of LGBT people report experiencing employment discrimination.

Studies conducted from the mid-1980s to mid-1990s revealed that 16% to 68% of LGB respondents reported experiencing employment discrimination at some point in their lives. Since the mid-1990s, an additional fifteen studies found that 15% to 43% of LGB respondents experienced discrimination in the workplace.

When asked more specific questions about the type of discrimination experienced, LGB respondents reported the following experiences that were related to their sexual orientation: 8%-17% were fired or denied employment, 10%-28% were denied a promotion or given negative performance evaluations, 7%-41% were verbally/physically abused or had their workplace vandalized, and 10%-19% reported receiving unequal pay or benefits.



Fifteen to 57% of transgender people also report experiencing employment discrimination.

When transgender individuals were surveyed separately, they reported similar or higher levels of employment discrimination. In six studies conducted between 1996 and 2006, 20% to 57% of transgender respondents reported having experienced employment discrimination at some point in their life. More specifically, 13%-56% were fired, 13%-47% were denied employment, 22%-31% were harassed, and 19% were denied a promotion based on their gender identity.

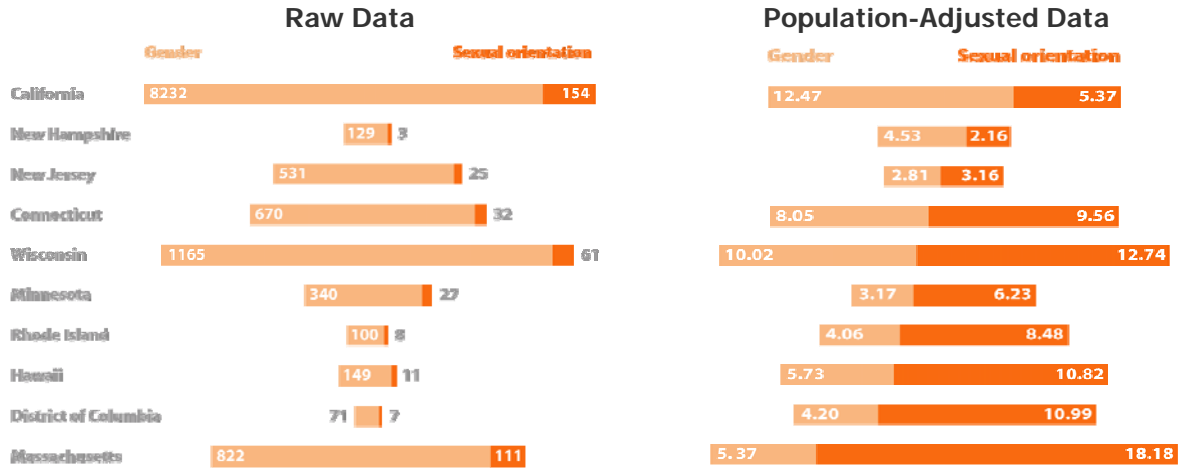
When surveyed, many heterosexual co-workers report witnessing sexual orientation discrimination in the workplace.

A small number of researchers have also asked heterosexuals whether they have witnessed discrimination against their LGB peers. These studies revealed that 12% to 30% of respondents in certain occupations, such as the legal profession, have witnessed antigay discrimination in employment.

In states that currently prohibit sexual orientation discrimination, LGB people file complaints of employment discrimination at similar rates to women and racial minorities.

Individual complaints of discrimination filed with government agencies provide another measure of perceived discrimination. The General Accounting Office (or “GAO”, now known as the Government Accountability Office) collected the number of complaints filed in states that outlaw sexual orientation discrimination and found that 1% of all discrimination complaints related to sexual orientation. However, comparisons of data from ten states show that the rate of sexual orientation discrimination complaints per GLB person is 3 per 10,000, which is roughly equivalent to gender-based discrimination complaints.

Gender v. Sexual Orientation



Gay men earn 10% to 32% less than similarly qualified heterosexual men.

A wage or income gap between LGB people and heterosexual people with the same job and personal characteristics provides another indicator of sexual orientation discrimination. A growing number of studies using data from the National Health and Social Life Survey (“NHSL”), the General Social Survey (“GSS”), the United States Census, and the National Health and Nutrition Examination Survey (“NHANES III”) show that gay men earn 10% to 32% less than otherwise similar heterosexual men. The findings for lesbians, however, are less clear. In some studies they earn more than heterosexual women but less than heterosexual or gay men.

Transgender people report high rates of unemployment and very low earnings.

While no detailed wage and income analyses of the transgender population have been conducted to date, convenience samples of the transgender population find that 6%-60% of respondents report being unemployed, and 22-64% of the employed population earns less than \$25,000 per year.

Controlled experiments reveal sexual orientation discrimination in workplace settings.

In controlled experiments, researchers manufacture scenarios that allow comparisons of the treatment of LGB people with treatment of heterosexuals. Seven out of eight studies using controlled experiments related to employment and public accommodation find evidence of sexual orientation discrimination.

Despite the variations in methodology, context, and time period in the studies reviewed in this report, our review of the evidence demonstrates one disturbing and consistent pattern: sexual orientation-based and gender identity discrimination is a common occurrence in many workplaces across the country.

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Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination

Over the last ten years, academic researchers in economics, sociology, psychology, and other social sciences have conducted research to find out whether lesbian, gay, bisexual, and transgender (“LGBT”) people face employment discrimination. Government and community organizations have also conducted such research. With increasing frequency, policymakers at the federal, state, and local level are considering the rates of employment discrimination as they consider laws that would ban employment discrimination based on sexual orientation and gender identity. In this report we summarize the findings of research about employment discrimination against LGBT people from four different kinds of studies.

Surveys of LGBT people’s experiences with workplace discrimination

These studies routinely show that considerable numbers of LGBT people believe they have been discriminated against in the workplace. These studies also show that heterosexuals perceive discrimination against their LGB peers. Because these studies tend to focus on particular occupations, population groups, or geographic areas, the rates of perceived discrimination vary considerably across their findings.

Analyses of employment discrimination complaints filed with government agencies

Thus far, there has been one published study on the number of sexual orientation discrimination complaints filed with government agencies. Although the raw number of complaints is small, the rate of complaints per 10,000 LGB people is comparable to the rate of sex discrimination complaints per 10,000 women.

Analyses of wage differentials between LGBT and heterosexual persons

Employment discrimination often translates into lower earnings. Wage analyses consistently show that gay men earn 10% to 32% less than heterosexual men. The findings on lesbians’ earnings are less consistent. While less data is available about the incomes of transgender people in comparison with non-transgender people, a number of surveys have found high unemployment rates and low income levels for transgender people.

Controlled experiments

A new and expanding line of research involves experiments that control conditions to test whether LGB people experience differences in treatment when compared with identical heterosexual people. These studies find that LGB and heterosexual persons are subject to disparate treatment.

The remainder of this report describes the studies’ methods and findings. The methodologies used and contexts studied vary considerably and limit our ability to generalize findings to all locations, occupations, or economic contexts. Also, the limitations of the methods mean that we cannot say how likely a LGBT person would be to experience employment discrimination. Despite these caveats, the review does demonstrate a consistent pattern: there is ample evidence that sexual orientation and gender identity discrimination against LGBT people occurs in many workplaces across the country.

Self-Reported Experiences of Sexual Orientation and Gender Identity Employment Discrimination

Surveys Measuring Sexual Orientation Discrimination

One way that researchers have assessed discrimination is by asking LGB people directly whether they believe they have experienced discrimination. These studies routinely show that many LGB individuals believe that they have experienced employment discrimination. Tables 1 and 2 present details of the studies.

Literature Reviews

Five academic reviews of such studies that were published between 1992 and 1999 found substantial evidence of discrimination. These reviews, examining over 35 studies, found that 16% to 68% of LGB respondents reported experiencing discrimination in the workplace (see Table 1). Since these literature reviews were published, an additional fifteen surveys have been conducted that report similar findings.

Table 1: Literature reviews examining studies published between 1992 and 1999

Study	Year(s) Data Collected	Population	Method	% Reporting Discrimination Ever (unless otherwise noted)	Specific Types of Discrimination Experienced
Badgett <i>et al.</i> (1992)	1992	Review of 1 national survey and 20 city and state surveys of LGB people (n of 21 surveys = 11,984)	Literature Review	16-44%	8-19% fired 5-24% denied employment 5-33% denied a promotion 3-14% bad job rating or evaluation
Badgett (1997)	1997	Review of 3 city surveys and 6 surveys of various professional groups of LGB people (n of 9 surveys = 8,221)	Literature Review	27-68%	
Croteau (1996)	1996	Review of 9 published studies on work experiences of LGB people, with 3 studies reporting experiences of discrimination (n of 3 surveys = 626)	Literature Review	25-66%	
Durkin (1998)	1998	Review of 11 studies of sexual orientation bias in the legal profession, 2 reporting experiences of discrimination (n of 2 surveys = 293)	Literature Review	23-40%	
Fox, Sarah D. (1999)	1999	Review of 2 studies on sexual orientation employment discrimination (n of 2 surveys = 378)	Literature Review	41-58%	

National Random Samples

Three recent surveys are based on national probability samples (or “random” samples) of lesbian, gay, and bisexual people.

- In 2000, the Henry J. Kaiser Family Foundation (2001) surveyed a random sample of 405 LGB people in 15 large metropolitan areas and found that 18% of the respondents reported experiencing discrimination when applying for a job or keeping a job.
- Another study analyzed data from the 1995 National Survey of Midlife Development, a nationally representative sample of adults aged 25 to 74 years old, and revealed that LGB respondents reported the following types of

Fifteen recent studies found that 15% to 43% of LGB respondents experienced workplace discrimination.

- of “discrimination”: 8% reported being fired, 13% being denied employment, and 11% being denied a promotion (Vickie Mays and Susan Cochran 2001). While the survey did not ask LGB respondents whether each type of employment discrimination was related to their sexual orientation, 43% of LGB respondents said that some discrimination they experienced was due to their sexual orientation (Mays and Cochran 2001).
- Another recent survey of a random sample found that 10% of LGB people (16% of lesbians and gay men) reported being fired or denied a job because of their sexual orientation (Gregory Herek, 2007).

Other National Samples

Two other national studies of non-random samples also found that self-reported experiences of discrimination were common and that respondents reported facing a variety of discrimination in the employment context.

- The most recent survey, conducted in 2006, found that 7% of the 662 LGB respondents had reported experiencing job discrimination at some point in their lives.
- A survey conducted at the end of 2005, found that 39% of the 1,205 LGBT respondents have experienced some level of harassment or discrimination in their

workplace over the past five years (Lambda Legal and Deloitte 2006).

- Similar rates of discrimination were documented in a survey by Out & Equal in 2002, which found that 41% of participants had experienced discrimination in the workplace (2002).

Recent Surveys of Specific Areas

Eight other studies of sexual orientation discrimination surveyed narrower subgroups of the LGB population focusing on people in a particular geographic area. These studies recruit “convenience” samples, or samples of LGB people who are easy to locate and willing to return a survey. These survey respondents may not be representative of the larger population of LGB people. These studies also show experiences of perceived employment discrimination on the basis of sexual orientation are common.¹

- 30% of LGBT people in Pennsylvania reported discrimination.
- 36% of New Yorkers reported employment discrimination during the five years prior to the 2001 survey.
- 11.2% of GB men in three southwestern cities reported experiencing employment, housing or insurance discrimination in the six months prior to the survey.
- 15% of GB Latino men in Los Angeles, New York City, and Miami reported experiencing employment discrimination.
- In a survey of LGB residents of Topeka, Kansas, 15%-41% reported employment discrimination and on-the-job harassment.
- 27% of the 195 northern Floridians surveyed reported experiencing employment discrimination.

¹ Two other surveys also indicate high levels of discrimination against LGBT people of color, although neither survey defined discrimination to be limited to, or even include, employment discrimination. In 2005 and 2007, the National Gay and Lesbian Task Force’s Policy Institute released two reports on Asian Pacific American and Islander LGBT individuals showing that 75%-82% of the respondents from the two surveys reported experience with sexual orientation discrimination or prejudice of some kind (Alain Dang & Mandy Hu 2005; Alain Dang & Cabrini Vianney 2007). Another survey of participants from nine Black Pride events in 2000 by the Policy Institute found that 42% of black LGBT respondents reported having experienced discrimination or prejudice of some kind. (Battle *et al.* 2002).

- 30% of LGB people from fourteen of the sixteen counties across Maine reported experiencing discrimination in employment.
- 43% of Washington State Pride event attendees reported experiencing employment discrimination.
- 21% of the LGB attorneys in Minnesota law firms reported being denied employment, equal pay, equal benefits, a promotion, or another employment opportunity.
- LGBT members of the California State Bar reported that 26% had been denied a promotion, 15% received unequal pay, and 19% received poor work assignments.
- LG employees of the New Jersey Supreme Court reported that 17% were denied employment, 29% were teased or harassed, and 21% were given poor work assignments.

Surveys of Heterosexual Co-Workers

A small number of researchers have asked heterosexuals whether they have witnessed discrimination against their LGB peers. These studies have been limited to particular occupations, mainly the legal profession.

- In a survey of heterosexual attorneys in Minnesota law firms, 23% believe that LGBT attorneys were treated differently, with an additional 32% stating that they were not certain.
- New Jersey Court system employees reported seeing sexual orientation discrimination: 7% reporting witnessing discrimination in hiring, 10% witnessed verbal abuse or harassment of LGBT coworkers, and 6% reported witnessing discrimination in the distribution of work assignments.
- 30% of the judges and attorneys surveyed in Arizona believe that lesbians and gays were discriminated against in the legal profession.
- 12% to 14% of heterosexual political scientists reported witnessing antigay discrimination in academic employment decisions, such as hiring and tenure decisions.
- In Los Angeles, 24% of female heterosexual lawyers and 17% of male heterosexual

reported either having experienced or witnessed anti-gay discrimination.

Methods and Limitations of Surveys

Although these studies provide a useful snapshot of LGB individuals' perceptions, they have certain limitations. As already noted, the samples used for most studies were not representative of the larger LGB population. Many of these studies only surveyed individuals in a particular geographic region, occupation, or population group. Almost all were convenience samples, as opposed to random or probability samples. Individuals who have been subject to sexual orientation discrimination may have been more likely to participate in such surveys, skewing the rate of discrimination reported. Therefore, we cannot necessarily apply these findings to all LGB people.

Two other limitations related to these studies' reliance on perceptions of discrimination are worth noting. First, people's perceptions may not be accurate measures of actual discrimination. For example, individuals may misperceive employers' motivations behind hiring and promotion decisions, ascribing discriminatory motives to employers when none existed.

Alternatively, employers may conceal their discriminatory motives so well that LGB people perceive less discrimination than actually exists.

Heterosexual co-workers report witnessing discrimination against their LGB peers

Second, many of these studies had vague definitions of "discrimination" and some did not define the term at all. In addition, the questions asking about employment discrimination were worded differently in each of the surveys. "Discrimination" included everything from denials of promotions to being subjected to "hard stares" because of one's sexual orientation (Martin P. Levine and Robin Leonard 1984; James M. Croteau and Julianne S. Lark 1995). The variations in definitions and the wording of questions may also explain why the studies found varying levels of perceived discrimination.

Table 2: Results of surveys measuring employment discrimination against LGB people on the basis of sexual orientation since 1999

Study	Year(s) Data Collected	Population	Method	% Reporting Discrimination Ever (unless otherwise noted)	Specific Types of Discrimination Experienced
Colvin R. (2004)	2003-2004	LGB people in Topeka, Kansas (n = 121)	Convenience Sample	NA	15% fired 16% denied employment 11% denied a promotion 18% overlooked for additional responsibilities 24% teased or harassed 35% received harassing e-mails, letters, or faxes 41% verbal or physical abuse 16% vandalized workplace
Diaz et al. (2001)	1998-1999	GB Latino Men in New York, Miami, and Los Angeles (n = 912)	Convenience Sample	15%	
Empire State Pride Survey (2001)	2001	LGB people in New York State (n = 1,891)	Convenience Sample	36% experienced discrimination in the past 5 years	8% fired 12% denied promotion 10% negative performance evaluation 27% verbally harassed 7% physically harassed
Gross et al. (2000)	1999-2000	LG people in Pennsylvania (n = 3,014)	Convenience Sample	30%	
Henry J. Kaiser (2001)	2000	LGB people in 15 metro areas in U.S. (n = 405)	Random Sample	18% applying for and/or keeping a job	
Herek (2007)	2006	LGB people in U.S. (n = 662)	Random Sample	10% experienced job discrimination once in their life	
Huebner et al. (2004)	1996-1997	GB Men aged 18 to 27 in Phoenix, AZ, Albuquerque, NM and Austin, TX (n = 1,248)	Convenience Sample	11.2% experienced employment, housing, or insurance discrimination in a 6 month period	
Karp, B. and Human Rights Council of North Central Florida (1997)	1997	LGB people in Gainesville/ Alachua County Florida (n = 195)	Convenience Sample	27%	9% fired 15% denied employment 20% denied a promotion 16% bad job rating or evaluation
Lambda Legal & Deloitte (2006)	2005	LGBT people nationally (n = 1,205)	Convenience Sample	39% experienced discrimination/harassment in the past five years	19% denied a promotion

Study	Year(s) Data Collected	Population	Method	% Reporting Discrimination Ever (unless otherwise noted)	Specific Types of Discrimination Experienced
Mays <i>et al.</i> (2001)	1995	LGB people nationally (n = 73)	Random Sample	43%	8% fired 13% denied employment 11% denied a promotion
New Jersey Supreme Court (2001)	2000	LG New Jersey Court employees (n = 42)	Convenience Sample	NA	17% denied employment 28% denied a promotion 21% negative performance evaluation 21% not given good work assignments 29% teased or harassed 10% received unequal pay
Out & Equal Advocates. Harris Interactive & Witeck Combs (2002)	2002	LGBT people nationally (n = 110)	Convenience Sample	41%	9% fired 8% pressured to quit 12% denied a promotion 23% teased or harassed 22% experienced other forms of discrimination
Seattle Office of Civil Rights (2006)	2006	LGBT people in Washington (n = 54)	Convenience Sample	43%	
State Bar of California (2006)	2005	LGBT California State Bar members (n = 155)	Convenience Sample	NA	26% denied a promotion 19% not given good work assignments 15% received unequal pay 19% received unequal benefits
Task Force on Diversity in the Profession of the Minnesota State Bar Association (2006)	2005-2006	LGB attorneys in Minnesota (n = 51)	Convenience Sample	22%	
Wessler (2005)	2005	LGBT people in Maine (n = 90)	Convenience Sample	30%	

Surveys Measuring Discrimination on the Basis of Gender Identity or Transgender Status

Since 1996, a number of studies have found that large percentages of transgender persons report experiencing employment discrimination on the basis of their gender identity or transgender status. Details of these studies are presented in Table 3.

Convenience Samples

All of the surveys measuring employment discrimination against transgender people relied upon convenience samples. Only one was national in scope. The other studies focused on a particular geographic area or population group. Most were based on the transgender population in San Francisco. Despite these limitations, the studies consistently found that between 15% and 57% of transgender people report experiencing employment discrimination on the basis of transgender status or gender identity.

- Nationally, 37% reported experiencing employment discrimination.
- 25% of transsexuals from Northern California had difficulties getting a job.
- A study of 244 transsexuals in Los Angeles County found that 28% reported being fired based on their gender identity and 47% reported difficulty in finding a job.
- In a study of 248 transgender people of color in Washington, D.C., 15% reported losing a job because of their transgender status.
- 37-42% of gender variant persons in Illinois reported experiencing some type of employment discrimination.

- A study of male-to-female (MTF) transgender people of color in San Francisco found that 39% reported losing a job or a career opportunity because of their gender identity.
- 20% of transgender persons in Virginia reported employment discrimination, with 13% fired, 20% denied employment and 31% harassed at work.

The most recent survey of transgender individuals was conducted in 2006 by the San Francisco Bay Guardian and the Transgender Law Center (San Francisco Bay Guardian and Transgender Law Center 2006). The survey was specifically focused on employment issues, using a very broad definition of being transgender, and sought to recruit a broad cross-section of San Francisco's transgender population. The study found that 57% of the transgender respondents surveyed had experienced employment discrimination on the basis of their transgender status or gender identity. More specifically, of those surveyed, 18% reported being fired, 40% being denied employment, 19% being denied a promotion, and 22% being verbally harassed. In addition, 24% reported being sexually harassed, 14% lacked access to appropriate restrooms, 23% reported persistent use of their old name and/or pronoun, and 12% faced persistent questions about surgery. In other words, this survey found ample evidence of many forms of discrimination in what should be one of the most tolerant cities for transgender people in the United States.

15% to 57% of transgender people report experiencing employment discrimination

Table 3: Results of surveys measuring employment discrimination against transgender people on the basis of transgender status or gender identity

Study	Year(s) Data Collected	Population	Method	% Reporting Discrimination Ever (unless otherwise noted)
Clements K., et al. (1999)	1997	MTFs in San Francisco (n = 392)	46% report losing a job or difficulty in getting a job	
Clements K., et al. (1999)	1997	FTMs in San Francisco (n = 123)	57% report losing a job, difficulty getting a job or job discrimination	
Lombardi et al. (2001)	1996-1997	Transgender people in the U.S. (n = 402)	37%	
Reback et al. (2001)	1998-1999	MTF Transsexuals in Los Angeles County (n = 244)	NA	29% fired 47% difficulty getting job
Sykes (1999)	1998	Transsexuals in Northern California (n = 232)	25% difficulties with getting a job because of gender issues	
Minter and Daley (2003)	2002	Transgender people in San Francisco (n = 155)	49%	
Plotner et al. (2002)	1995-2001	Transgender people in Illinois (n = 108)	37-42%	56% fired 13% denied employment 31% harassed
San Francisco Bay Guardian and Transgender Law Center (2006)	2006	Transgender people in San Francisco (n = 194)	57%	18% fired 40% denied employment 19% denied a promotion 22% verbally harassed 24% sexual harassed 11% health coverage issues 14% appropriate restroom access 23% use of old name/pronoun 12% questions about surgery 4% other
Sugano et al. (2006)	2000-2001	Transsexual Women (MTF) of Color in San Francisco (n = 327)	39% report loss of job or career opportunity	
Xavier et al. (2000 & 2005)	1999-2000	Transgender People of Color in Washington, D.C. (n = 248)	NA	15% fired (another 8% "unsure" if job lost due to discrimination)
Xavier et al. (2007)	2005-2006	Transgender People in Virginia (N = 350)	20%	13% fired 20% denied employment 31% harassed

Methodology and Limitations of Surveys of Transgender People

The surveys of transgender people summarized in Table 3 have many of the same limitations as the surveys summarizing the LGB population. For example, they were all based on convenience samples and are generally limited to surveying one city, San Francisco. In fact, only one was a national in scope. Although some surveys varied in how they defined discrimination, many of these surveys were based upon each other and deliberately used the same definition of discrimination. Thus, there may in fact be greater consistency among these surveys results than in others reviewed by this study.

These surveys also have some additional limitations. Perhaps the most notable one is the variance of the definition of the transgender population among the surveys. Some of the studies focused only on MTFs (male-to-female) or only on FTMs (female-to-male). Some only included those who self-identity as transsexuals; one only included pre-operative and post-operative transsexuals, while others included anyone who is visibly "gender variant," including those who identify as cross-dressers, drag queens, drag kings, effeminate males and gender queers. Some studies explicitly excluded those who identify in these groups from their definition of transgender.

Glossary of Terms

Table 3 and the studies it summarizes use a variety of terms to describe all or parts of the transgender community. These terms represent real differences in how the researchers defined the populations which they surveyed. Below is a short glossary of these terms.

Transgender: An umbrella term for people whose gender identity, expression, or behavior is different from that typically associated with their assigned sex at birth, including but not limited to transsexuals, cross-dressers, androgynous people, genderqueers, and gender non-conforming people.

Gender Identity: An individual's internal sense of being male, female, or something else. Since gender identity is internal, one's gender identity is not necessarily visible to others.

Transsexual: A term for people whose gender identity is different from their assigned sex at birth. Often, but not always, transsexual people alter their bodies through hormones or surgery in order to make it match their gender identity.

Cross-dresser: A term for people who dress in clothing traditionally or stereotypically worn by the other sex, but who generally have no intent to live full-time as the other gender.

Genderqueer: A term used by some individuals who identify as neither entirely male nor entirely female. Genderqueer is an identity more common among young people.

Gender non-conforming/gender variant: A term for individuals whose gender expression is different from the societal expectations based on their assigned sex at birth.

FTM: A person who has transitioned from "female-to-male," meaning a person who was assigned female at birth, but now identifies and lives as a male.

MTF: A person who has transitioned from "male-to-female," meaning a person who was assigned male at birth, but now identifies and lives as a female

Drag Queen: Generally used to refer to men who dress as women (often celebrity women) for the purpose of entertaining others at bars, clubs, or other events.

Drag King: Used to refer to women who dress as men for the purpose of entertaining others at bars, clubs, or other events.

These definitions are influenced by a variety of sources. See Letellier, Patrick. 2003. "Beyond He and She: A Transgender News Profile." *The Good Times*; Intersex Society of North America, www.isna.org; The Gay and Lesbian Alliance Against Defamation, www.glaad.org; The Gay, Lesbian and Straight Education Network, www.glsen.org; and Currah, Paisley and Shannon Minter. 2000. *Transgender Equality: A Handbook for Activists and Policymakers*. San Francisco: National Gay and Lesbian Task Force Policy Institute and National Center for Lesbian Rights.

Only three of these surveys focused specifically on employment discrimination or violence and discrimination against transgender people. Most are focused on HIV prevention, prevalence, and risk behaviors. Some even required participants to take an HIV-test. Others are more generally focused on the health and social service needs of the transgender population. As a result, many of these surveys deliberately over-represent clients of AIDS service organizations, other social services organizations, low income people, and commercial sex workers.

Finally, many of the samples may over-represent transgender people of color, although this is difficult to assess with the extremely limited information available about the demographics of the transgender population. Many of the studies had samples with high percentages of African-American and Latino/a respondents, and some were designed to focus on people of color. On the other hand, two of the surveys noted that they underrepresented people of color.

Another difference between the transgender studies in Table 3 and the LGB surveys

summarized in Table 2 is that over half of the transgender studies were based on face-to-face interviews, and all of the LGB studies were based on written questionnaires. It is difficult to assess the impact of the interview method on the responses collected. On the one hand, interviews might have resulted in less accurate information about employment discrimination if respondents were reluctant to admit experiences of discrimination. On the other hand, given that most of the surveys were also asking highly personal questions, such as about HIV-status, risky sexual behaviors, drug use, and suicide, respondents might have been desensitized to reporting stressful information such as experiences of discrimination and were, therefore, more likely to report discrimination they have experienced.

However, what was most notable about the entire set of transgender studies was the commitment of researchers to having transgender people included in every phase of their research—design of the survey instrument, recruitment, and interviewing. Almost all of the studies based on interviews used transgender people to conduct all or most of the interviews.

Administrative Complaints Filed About Discrimination

Surveys are not the only one way to study people's perception of discrimination. In those states that already prohibit sexual orientation discrimination, individuals can file complaints of discrimination, which provide a different way of measuring perceived discrimination. Reports by the General Accounting Office (now the Government Accountability Office) have summarized the number of complaints filed in states that outlaw sexual orientation discrimination (James Rebbe, Veronica Sandidge, and Richard Burkard 2002; Stefanie Weldon and Dayna K. Shah 2000; Author Unknown 1997).

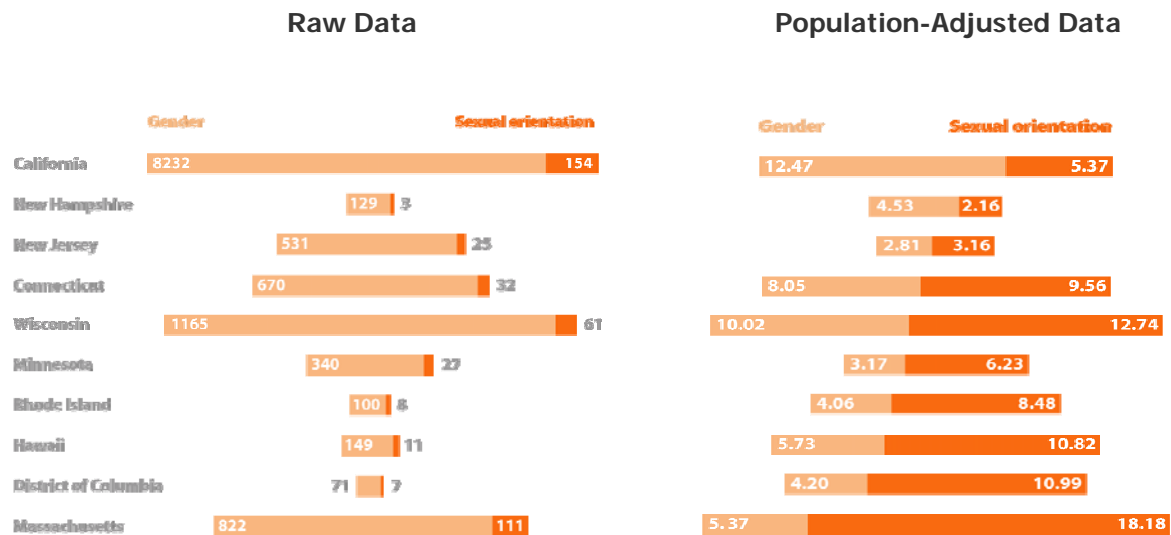
In a report published in 2002, Rubenstein examined legal complaints filed in states that had outlawed sexual orientation discrimination. The report examined data from ten state-level agencies that recorded complaints regarding sexual orientation discrimination in employment. Rubenstein found that the raw number of complaints for each state was small. For example, in 1995, only 23 people in Connecticut filed complaints alleging sexual orientation discrimination (William Rubenstein 2002).

Although the actual number of sexual orientation discrimination complaints per gay person was small, they were roughly equivalent to the number of sex-based discrimination complaints per woman.

The average for the ten states was three complaints per 10,000 LGB people under the assumption that 5% of the U.S. population is LGB, compared with nine gender-related complaints per 10,000 women and eight race-related complaints per 10,000 people of color (Rubenstein 2002).

Rubenstein's research showed that complaint rates of sexual orientation discrimination were similar to complaints of sex or race discrimination. Because the complaints studied were not necessarily substantiated through adjudication, though, Rubenstein's study—like the survey-based studies—only measured perceived discrimination.

No similar study has been conducted for the states that currently prohibit gender identity discrimination. However, the most recent survey of transgender people in San Francisco found that although 57% of respondents had experienced employment discrimination on the basis of gender identity, only 12% had filed a complaint about the discrimination they experienced, and of those, only 3% had filed their complaint with an independent agency having the authority to enforce California's anti-discrimination law (Bay Guardian and TLC 2006).



Evidence of Sexual Orientation Discrimination in Wage Gaps

Background

Economists and sociologists have used survey data on wages and sexual orientation to look for associations between LGB status and earnings, just as they have studied race and sex discrimination.² The basic idea is that people who have the same job and personal characteristics should, on average, be paid the same wage. Applying this theory, if no discrimination exists, members of two different social groups who have the same characteristics should have the same average pay. If, after controlling for productive characteristics (education, occupation, location, experience, training, etc.) and other relevant social characteristics (marital status, sex, race), members of one group earn less than members of the other group, then most economists and sociologists would conclude that employers are discriminating against the lower earning group. In addition to providing another perspective on the existence of discrimination, these studies also allow researchers to see whether discrimination translates into income loss and economic hardship.

LGB people file complaints of employment discrimination at similar rates to women and racial minorities

Wage analyses are important but difficult to conduct because only a few of the studies that survey random population samples ask questions related to sexual orientation. Those that include questions on income and some measure of sexual orientation include the National Health and Social Life Survey ("NHSLs"), the General Social Survey ("GSS"), the United States Census, and the National Health and Nutrition Examination Survey ("NHANES III").

Conducted by the National Opinion Research Center at the University of Chicago, the NHSLs questioned participants in 1993 about their sexual attraction, sexual behavior, and sexual identity.

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² This section relies on the analysis in M. V. Lee Badgett's "Discrimination Based on Sexual Orientation: A Review of the Literature in Economics and Beyond," in M. V. Lee Badgett and Jefferson Frank, eds. *Sexual Orientation Discrimination: An International Perspective*. London: Routledge.

The main drawback of NHSLs is its relatively small sample size of 3,432 (Edward O. Laumann *et al.* 1994). Therefore, many studies combine the NHSLs with the GSS, also conducted by the

National Opinion Research Center has conducted surveys regularly over the past two decades to assess the general public's social and political attitudes. In the late 1980's, the GSS began asking both men and women how many male and female sex partners they have had since the age of 18, and for a sub-sample, the sex of their partners in the last five years and in the past year.

One drawback of both the GSS and NHANES III is that the surveys only ask questions on sexual behavior, not sexual identity. Using sexual behavior data poses a challenge for interpretation: how many same-sex partners should be required before researchers categorize an individual as gay or lesbian? Researchers have taken different approaches to this question. For example, Badgett put individuals in the LGB category if they listed at least as many same-sex partners and opposite-sex partners since the age of 18 (M.V. Lee Badgett 1995; M.V. Lee Badgett 2001). Dan Black *et al.* (2003) ran three sets of analyses, defining LGB differently each time. They defined LGB based on (1) sexual behavior since age 18, (2) sexual behavior in the past year, and (3) sexual behavior in the last five years (Dan Black *et al.* 2003).

The Census provides the largest dataset for analyses of wages. In both the 1990 and 2000 Censuses, individuals had the option of indicating that they lived with a same-sex "unmarried partner." Researchers use that cohabitation status as a proxy for LGB sexual orientation.

Patterns in the Findings

The studies of sexual orientation's impact on wages reveal different patterns for gay men and for lesbians, as summarized in Table 4. The studies support the conclusion that sexual orientation discrimination lowers the wages of gay men. For lesbians, the findings are less clear, since the differential between lesbian and heterosexual women has varied across studies. Some explanations for that variance are considered below. One finding regarding lesbians is clear: lesbians consistently earn less than men. It seems

that gender discrimination has a greater impact on lesbians' wages than sexual orientation discrimination.

Nine studies using different datasets consistently show that gay and bisexual men earned 10% to 32% less than heterosexual men (Sylvia A. Allegretto and Michelle M. Arthur 2001; Badgett 1995; Badgett 2001; Nathan Berg and Donald Lien 2002; Black *et al.* 2000; Black *et al.* 2003; John M. Blandford 2003; Suzanne Heller Clain and Karen Leppel 2001; Marieka M. Klawitter and Victor Flatt 1998). Accounting for differences in occupations between gay/bisexual men and heterosexual men does not influence the wage gap much in either direction.³

However, a recent study of California data finds a somewhat different pattern. This study finds that gay men in California earn 2% to 3% less than heterosexual men (a statistically insignificant difference), and bisexual men earn 10% to 15% less than heterosexual men (Christopher Carpenter 2005). However, these findings seem to be unique to California, as a subsequent study conducted by the same author using NHANES III data, which like the GSS data ask questions about sexual behavior, found a 23%-30% income disadvantage for men who engage in same-sex sexual behavior (Carpenter 2007).

Gay men earn 10% to 32% less than similarly qualified heterosexual men

Table 4: Employment and Income Data for Gay Men from Wage Analyses Studies

Survey	Data Source	Wage Differential	LGB Definition
Allegretto & Arthur (2001)	1990 U.S. Census (5% PUMS)	14.4% penalty for gay unmarried partnered men compared to married heterosexual men; and 2.4% penalty compared to unmarried partnered heterosexual men.	Men with male unmarried partners.
Arabshehani et al. (2007)	2000 U.S. Census (5% PUMS)	9% penalty for gay men.	Men with male unmarried partners
Badgett (1995)	GSS 1989-1991	24% penalty for gay/bisexual men.	At least as many same-sex as different-sex sex partners since age 18.
Badgett (2001)	GSS & NHLS 1989-1994	17% penalty for gay/bisexual men.	At least as many same-sex as different-sex sex partners since age 18.
Berg & Lien (2002)	GSS 1991-1996	22% penalty for gay/bisexual men.	Any same-sex sexual behavior in the past five years.
Black et al. (2000)	1990 U.S. Census (5% & 1% PUMS)	10% to 32% penalty for gay partnered men to married men.	Men with male unmarried partners.
Black et al. (2003)	GSS 1989-1996	13% to 19% penalty for gay men.	Various measures of same-sex sexual behavior.
Blandford (2003)	GSS & NHLS 1991-1996	30% to 32% penalty for gay and bisexual men.	Various measures of same-sex sexual behavior plus marital status
Carpenter (2005)	2001 California Health Interview Survey; GSS 1988-2000	2% to 3% penalty for gay men (not statistically significant) and 10% to 15% penalty for bisexual men.	Self-reported gay, lesbian or bisexual sexual orientation (CHIS); same-sex partners in past five years (GSS).
Carpenter (2007)	1998-1994 NHANES III	23% to 30% penalty for gay men.	Any same-sex sexual behavior.
Clain & Leppel (2001)	1990 U.S. Census (1% PUMS)	22% penalty for men in same-sex couples compared to men not living with partners; and 16% penalty (if college educated) compared to married men.	Same-sex unmarried partners.
Klawitter & Flatt (1998)	1990 U.S. Census (5% PUMS)	13% to 31% penalty for male same-sex couples.	Men with male unmarried partners.

Comparing the wages of lesbians and heterosexual women yields less consistent results. Only one study, limited to the earliest GSS data, finds that being a lesbian or bisexual woman affects wages negatively, but that wage difference was statistically insignificant (Badgett 1995). All subsequent studies show that lesbians do not earn less than heterosexual women (Arabshehani *et al.* 2007; Badgett 2001; Berg and Lien 2002; Black *et al.* 2003; Blandford 2003; Carpenter 2005; Clain and Leppel 2001; Klawitter and Flatt 1998). However, the studies' conclusions vary on whether lesbians earn *more* than heterosexual women.

The studies' different results seem to depend on their definitions of lesbianism (Badgett 2001; Black *et al.* 2003). The studies that define sexual orientation on the basis of recent same-sex behavior (i.e., behavior within the past one to five years) find that lesbians earn more than their heterosexual counterparts, while studies of behavior since age 18 find no earnings advantage for lesbians (Black *et al.* 2003). Studies using

Lesbians consistently earn less than men, regardless of sexual orientation

Census data on unmarried partners in 1990 show no statistically significant difference between earnings of lesbians and heterosexual women who work full-time (Klawitter and Flatt 1998). The fact that lesbians generally do not earn less than heterosexual women does not imply the absence of employment discrimination. First, lesbians might make different decisions than heterosexual women since they are less likely to marry men—who on average have higher wages—or put their careers on hold to have children. As a result, lesbians might invest in more training or actual labor market experience than do heterosexual women. This increase in “human

capital” may mask the effects of discrimination. Unfortunately, it is impossible to separate out those effects in existing data. Second, some evidence suggests that women are less likely to disclose their sexual orientation at work (Badgett 2001). Thus, the findings above might be different had there been a way to measure these factors for lesbians. With better controls, it is possible that we would see that lesbians earn less than heterosexual women with the same actual experience.

Finally, we note that this kind of statistical method has been used in studies of race and sex discrimination to see if differences in other important job outcomes also differ by group membership. In particular, economists and sociologists have analyzed the probability of receiving a promotion, of having a high status occupation, of being employed, and of being unemployed to see if members of stigmatized groups experience a disadvantage. To date, we know of only one such study related to sexual orientation. In a study using Census 2000 data, Arabshehani *et al.* (2007) found that gay men are less likely to be employed than heterosexual men after controlling for age, education, race, and health status, but lesbians are more likely to be employed than are heterosexual women. However, the lesbian employment difference probably resulted from choices made by heterosexual women to withdraw from the labor force rather than from employers favoring lesbians for jobs.

Table 5: Employment and Income Data for Lesbian Women from Wage Analyses Studies

Survey	Data Source	Wage Differential	LGB Definition
Arabshehani et al. (2007)	2000 U.S. Census (5% PUMS)	14% premium for lesbian women.	Women with female unmarried partners
Badgett (1995)	1989-1991 GSS	18% less (evaluating the interaction between GLB and potential experience term at mean – not statistically significant).	At least as many same-sex partners as different-sex sex partners since age 18.
Badgett (2001)	1989-1994 GSS & NHLS	11% premium for lesbian/bisexual women (not statistically significant).	At least as many same sex partners as different-sex partners since age 18.
Berg & Lien (2002)	1991-1996 pooled GSS	30% premium for lesbian/bisexual women.	Any same-sex sexual behavior in the past five years.
Black et al. (2003)	1989-1996 GSS	6% to 27% premium for lesbian women.	Various measures of same-sex sexual behavior.
Blandford (2003)	1991-1996 pooled GSS	17% to 23% premium for lesbian and bisexual women.	Various measures of same-sex sexual behavior plus marital status
Carpenter (2005)	2001 California Health Interview Survey	CHIS: 2.7% penalty (statistically insignificant) for lesbians and 10.6% penalty for bisexual women; GSS: 31% premium for lesbians and 7% penalty for bisexual women (not statistically significant).	Self-reported gay, lesbian or bisexual sexual orientation (CHIS); same-sex partners in past five years (GSS).
Clain & Leppel (2001)	1990 U.S. Census (1% PUMS)	2.2% penalty compared to women without partners or spouses.	Women with female unmarried partners
Klawitter & Flatt (1998)	1990 U.S. Census (5% PUMS)	No statistically significant difference for those working full-time.	Women with female unmarried partners

Measuring the Effects of Antidiscrimination Laws: A Wage-Based Approach

There have been very few attempts to measure the effectiveness of sexual orientation anti-discrimination laws. Klawitter and Flatt (1998) used Census data to compare wages of gays and lesbians in various jurisdictions—some had sexual orientation antidiscrimination laws while others did not. After controlling for individual and location characteristics, the study found no evidence of a direct relationship between antidiscrimination laws and average earnings for people in same-sex couples or on the wage gap between partnered gay men and married heterosexual men (Klawitter and Flatt 1998).

Since many of the laws had not been in force for very long when the 1990 Census was administered, Klawitter and Flatt's study does not necessarily mean that antidiscrimination laws have no effect. In addition, the laws' positive effects may not be quantifiable through wage analyses. For example, the laws may make it easier for gays and lesbians to come out at work, improve intra-office dynamics, or help gays and lesbians to achieve a greater sense of dignity.

Incomes of Transgender People

There have been no published studies to date like those described above analyzing the wage differences between transgender and non-transgender people. The most significant obstacle is the lack of available data. The NHLS, the GSS, and the United States Census do not ask questions about gender identity, so researchers cannot identify transgender people.

Transgender people report high unemployment rates and low earnings, and 22% to 64% report incomes of less than \$25,000 per year

However, a number of convenience samples of transgender people, including some of those summarized in Table 3 above, indicate that large percentages of the transgender population are unemployed and have incomes far below the national average. Although these surveys share the limitations described above—overrepresentation of clients of AIDS service organizations, other social service organizations, people of color, and commercial sex workers—the studies are consistent in their findings. In all, between 6% and 60% of transgender people report being unemployed, and 22% to 64% report incomes of less than \$25,000 per year (see Table 6).

Table 6: Employment and Income Data from Surveys of Transgender People

Survey	Year(s) Data Collected	Sample	Unemployment	Annual income
Bockting <i>et al.</i> (2005)	1997-2002	Transgender People in Minnesota (n = 207)	NA	22% below poverty line
Clements K. <i>et al.</i> (1999)	1997	MTFs and FTMS in San Francisco (n = 515)	19% of FTM 60% of MTF (most common way of "obtain money in past 6 months" was part- or full-time employment for 40%)	
Lombardi <i>et al.</i> (2001)	1996-1997	Transgender people in the U.S. (n = 402)	6%	37% less than \$25,000
Kenagy (2005)	1997	Transgender People in Philadelphia (n = 81)	59% (do not currently have an employer)	56% less than \$15,000
Kenagy and Bostwick (2005)	2000-2001	Transgender People in Chicago (n = 111)	34% (do not currently have an employer)	40% less than 20,000
Minter and Daley (2003)	2002	Transgender people in San Francisco (n = 155)	NA	64% less than \$25,000
Reback <i>et al.</i> (2001)	1998-1999	MTF Transsexuals in Los Angeles County (n = 244)	50%	50% less than \$12,000
San Francisco Bay Guardian and Transgender Law Center (2006)	2006	Transgender people in San Francisco (n = 194)	35% (defined as not included those on SSI or SSDI, but include indicating unemployment insurance, general assistance, other source of income or no income) (only 25% working FT and 16% working PT)	59% less than \$15,300
Sykes (1999)	1998	Transsexuals in Northern California (n = 232)	28%	NA
Xavier <i>et al.</i> (2005)	1999-2000	Transgender People of Color in Washington, D.C. (n = 248)	35% (of the sample over 19)	64% less than \$15,000 (of the sample over 19)
Xavier <i>et al.</i> (2007)	2005-2006	Transgender People in Virginia (N = 350)	9%-24%	39% less than \$17,000

Controlled Experiments

Background

Researchers have looked for ways to assess more directly whether discrimination exists. In controlled experiments, researchers compare treatment of LGB people and treatment of heterosexuals by manufacturing scenarios in which research subjects interact with actual or hypothetical people who are coded as gay or straight. Those interactions are then observed and analyzed for differences. For instance, in some studies researchers distribute profiles of job applicants (including résumés, photographs, and/or other materials) to subjects. Each profile is controlled to reveal the applicant's sexual orientation. In other words, gay and non-gay profiles are designed to be exactly the same, except for the labeling of one or more job applicants or customers as gay. Therefore, researchers can be confident that differential treatment is motivated by discrimination. Researchers then compare the rate of interview offers and other outcomes that might differ by sexual orientation if discrimination occurs.

This method is used extensively in studies of racial housing discrimination and has been applied more frequently in recent years in studies of racial employment discrimination. A review of the academic literature found several controlled experiments that assessed differential treatment on the basis of sexual orientation. Most of these experiments focus on differential treatment in employment; two studies focused on public accommodations.

Studies of Employment

A survey of the published literature on employment discrimination found five audited experiments which showed sexual orientation discrimination; a sixth did not. Because each of the studies were context-specific, they are difficult to compare.

The first known audit experiment was conducted by Barry Adam (1981), who sent out two nearly identical résumés from fictitious law students to Ontario law firms. One résumé was coded as gay by stating that the candidate was active in the "Gay People's Alliance." The gay-coded candidate

received fewer interview invitations. Unfortunately, Adams did not test for statistical significance, thus limiting the persuasiveness of his report. And as discussed later, the measured discrimination effect may have been skewed by bias against social activists.

Following Adam's study, Horvath and Ryan (2003) conducted one of the three employment-focused experiments conducted in the United States to date. They designed résumés for a technical writer position. The résumés were then rated by undergraduate students—not by actual employers. The demographics of the participants—77% of the 236 participants were white women—

Experiments show consistent discrimination against gay and lesbian applicants

were also not representative of the undergraduate population or the larger U.S. population. The students rated the heterosexual man the highest (84.87 on a 100-point scale), followed by the homosexual woman (80.76), the homosexual man (80.38), and then the heterosexual woman (76.2) (Horvath and Ryan 2003). Like the wage studies, gay men and lesbians were disadvantaged relative to heterosexual men, but lesbians were perceived as more qualified than heterosexual women. The small advantage for heterosexual men might have resulted from the fact that college students show less prejudice toward lesbians and gay men than the general population.

Another study by economist Doris Weichselbaumer (2003) found evidence of discrimination against Austrian lesbians when compared with heterosexual women. The study sent responses to job ads in Austria for four applicants: a feminine heterosexual woman, a masculine heterosexual woman, a feminine lesbian, and a masculine lesbian. Conforming to local practice, Weichselbaumer included a photograph, school transcript, reference letters, and a résumé for each applicant. The femininity or masculinity of the applicants was represented in the photographs and in hobbies listed in the résumés. Lesbianism was represented by a résumé listing of past managerial experience within a gay organization. Both masculine and feminine lesbians received fewer interview invitations than heterosexuals (Weichselbaumer 2003). There was no statistically significant difference between the two groups of

lesbians, suggesting that even feminine lesbians experience discrimination in the labor market.

The fourth experiment was conducted by Crow, Fok, and Hartman (1988). Unlike the previous experiments, this study measured bias but not necessarily discrimination. Managers and supervisors in both private and public sector industries of a southern U.S. city were asked to select six out of eight candidates for a fictitious accounting position. The researchers only gave the subjects information on the candidates' race, sex, and sexual orientation, and the subjects were told that all affirmative action guidelines had been fulfilled, leaving them free to discriminate. In other words, this study forced subjects to resort to biases to determine which two candidates to exclude. This experiment found that, regardless of sex and race, homosexuals were less likely to be selected than heterosexuals (Crow 1988). In contrast to wage analyses, this experiment showed that white heterosexual women were the most likely to be selected—more likely than white homosexual women and even white heterosexual men.

In a study published in 2002, Michelle Hebl and colleagues sent eight male and eight female undergraduate and graduate students to apply for jobs at retail stores. The interactions were taped by a concealed recording device. Half of the time the confederates wore a baseball cap with the words "Gay and Proud"; the other half of the time the same confederates wore caps that read "Texan and Proud." The researchers analyzed measures of "formal discrimination": job availability, permission to complete a job application, job callbacks, and permission to use the bathroom. They also analyzed measures of "interpersonal discrimination": interaction duration, negativity perceived by the confederates, employer interest perceived by the confederates, and employer negativity perceived by reviewers of the recorded tapes. The researchers found that, on average, confederates wearing the gay cap did not suffer from formal discrimination, perhaps because the outcome measures captured only a few measures available at the beginning of the job hiring process. But the researchers did find that the gay-labeled applicants experienced interpersonal discrimination. Because all of the stores were in the same mall area of a Texas city, this study's results may not be indicative of broader discriminatory patterns (Hebl *et al.* 2002).

The sixth study, conducted by Van Hove and Lievens (2003) in Belgium, found no significant signs of sexual orientation discrimination. The researchers distributed candidate profiles to human resource professionals in consultancy firms and companies' internal human resource departments. The subjects were given extensive information on both the candidates (personal data, education and professional experience, and personality) as well as an extensive job description (a description of the company, a car parts manufacturer; the job title, Human Resources Manager; the job contents, knowledge, skills, and abilities required; and the benefits offered by the company) (Van Hove and Lievens 2003). The study found that sexual orientation did not have a significant effect on hiring rates.

There are some possible explanations why this Belgian study found no discrimination, unlike the other experimental studies. Commentators have hypothesized that decision-makers are most likely to resort to bias and stereotypes when they have limited information regarding the job candidate and/or the job opening (Van Hove and Lievens 2003; Henry Tosi and Steven Einbender 1985; H. Kristl Davison and Michael Burke 2000). Because this study provided its subjects with so much information—perhaps an unrealistic amount of information—the subjects may have been less inclined to resort to biases than usual. Another explanation for the apparent lack of discrimination is that human resource professionals are not representative of other people who make interviewing and hiring decisions, for example hiring managers, and human resource managers might be particularly attuned to laws forbidding discrimination. Similarly, the fictitious job opening was in the field of human resources, which again, may not be representative of other fields. Finally, the geographic location—Belgium—may be particularly hospitable to gay people; after all, Belgium was the second country to legalize same-sex marriage.

Studies of Public Accommodations

In a study published in 1996, Walters and Curran sent three couples—male/male, female/female, and female/male—and an observer to 20 retail stores in an indoor mall (1996). All couples followed the same script, which directed them to hold hands, smile at each other, and request help from sales staff, etc. The couples and the observer found that, on average, retail staff waited

longer before helping female/female (4 min. 18 sec.) and male/male (3 min. 51 sec.) couples, compared to female/male couples (1 min. 22 sec.) (Walter and Curran 1996). In addition, retail staff talked about the same-sex couples and subjected them to staring, pointing, laughter, and rudeness. When same-sex couples interacted with staff, the above signals of negative feelings emerged 10% to 75% of the time (staff were rude to female/female couples 10% of the time; staff stared at male/male couples 75% of the time) (Walter and Curran 1996). None of the male/female couples were subjected to any of those negative signals.

In a second study, Jones (1996) took the auditing methodology and applied it to another public accommodations context. He sent letters to 320 hotels around the country. The letters were signed by either a same-sex couple or an opposite-sex couple, who requested a room with one bed. Jones found that same-sex couples received less positive responses than opposite-sex couples; the difference was statistically significant (Jones 1996).

Issues Related to Interpretation of Results

While well-designed experiments have provided convincing evidence of differential treatment of LGB as compared with heterosexuals, controlled experiments also have some limitations. They are generally limited to a single context (such as entry-level jobs or retail interactions) or geographic location. They do not work well for studying discrimination in some important contexts, such as access to high status jobs that involve internal hiring processes or the presence of relatively rare skills or experience.

Furthermore, designing controlled experiments can be difficult. One particular challenge is determining how to code the confederates' sexual orientation. Researchers use certain traits to code confederates as either LGB or heterosexual. However, those traits may be coded for more than just sexual orientation. For example, a researcher may choose to code a confederate as gay by having him wear a pin reading "gay and proud." However, that pin may actually also indicate political activism as well as sexual orientation, and some subjects may discriminate on the basis of political activism.

Therefore, the experimental studies provide convincing evidence that sexual orientation discrimination exists, but we cannot use these studies to predict the likelihood of discrimination in other contexts.

Conclusions

Overall, the existing research on sexual orientation discrimination provides consistent and compelling evidence that discrimination against LGBT people exists:

- LGBT individuals have reported experiences of discrimination based on their own sexual orientation and gender identity, both to researchers and, in some cases, to enforcement agencies charged with investigating claims of discrimination.
- Heterosexual people have reported observing discrimination based on sexual orientation.
- Wages of gay men are lower than wages of heterosexual men with the same personal and job characteristics.
- The best available data suggests that transgender people experience very high unemployment rates and that large percentages have very low incomes.
- Employers, sales clerks, and other observers have treated LGB job applicants or customers differently from heterosexuals.

The wage studies and experiments also demonstrate that discrimination is not benign. Lower incomes and difficulty in getting or keeping a job create direct disadvantages for LGBT people who have experienced discrimination in the workplace.

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About the Institute

The Williams Institute on Sexual Orientation Law and Public Policy is a research center at the UCLA School of Law dedicated to the field of sexual orientation law and public policy. It advances law and public policy through rigorous independent research and scholarship.

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The Gay and Transgender Wage Gap

Many Workers Receive Less Pay Due to Sexual Orientation and Gender Identity Discrimination



SOURCE: AP/ Erik S. Lesser

Reva Iman, 42, a homeless transgender woman, at her provided home in Atlanta. Gay and transgender workers need comprehensive federal protections against discrimination in hiring, firing, and wages.

By **Crosby Burns** | April 16, 2012

Not all employees in America are paid the same for the same type of work. Decades of research document the significant gaps in earnings based on gender and race. But today, on Equal Pay Day, it is important to remember that women and people of color are not the only ones who see significant disparities in earnings.

Unfortunately, many gay and transgender workers receive unequal pay for equal work in the United States today.* What's worse, these same workers lack the necessary legal protections currently afforded to other categories of individuals that would help combat and correct pay inequities that exist on the basis of sexual orientation and gender identity.

Given **high rates of discrimination in hiring, firing, and wages** that gay and transgender workers experience on the job, we need stronger laws and policies in place to ensure all workers have equal workplace protections under the law no matter their sexual orientation or gender identity. Below, we document the differences in pay between gay and transgender workers and their heterosexual counterparts and offer policies to ensure they receive the fair pay they deserve.

The gay and transgender wage gap

Recent research and data point to significant disparities in earnings for gay and transgender workers. This is especially the case for gay men and transgender women.

The Williams Institute finds that gay and bisexual men earn **10 percent to 32 percent less** than similarly qualified heterosexual men, in a meta-analysis of 12 studies examining earnings and sexual orientation in the United States. This is true even when controlling for education, race, occupation, and years of work experience.

Williams' findings for lesbian and bisexual women, however, are less clear. According to Williams' analysis, lesbian and bisexual women **earn the same or sometimes more** than heterosexual women. But that's not to say that lesbian workers do not experience gaps in pay. Research indicates that lesbian workers still earn less than both heterosexual and gay men.

Looking at three of the studies that formed the basis of Williams' meta-analysis:

- Lee Badgett (1995) found that gay and bisexual men earned between **11 percent and 27 percent** less than their heterosexual counterparts while finding no statistical difference for lesbian and bisexual women.
- Dan Black, Gary Gates, Seth Sanders, and Lowell Taylor's (2000) research indicates that gay men earned **14 to 16 percent less** than their heterosexual counterparts, while lesbian women actually earned 20 to 34 percent more.
- Sylvia Allegretto and Michelle Arthur (2001) suggest that gay men in partnered same-sex couples earn **15.6 percent less** than heterosexual married men.

Further, Williams' meta-analysis comports with studies of wage earnings among public-sector gay workers. Together, these studies suggest that gay government employees **earn 8 to 29 percent less** than their heterosexual counterparts, indicating that discrimination in earnings in the public sector is no different than discrimination in earnings in the private sector.

Transgender individuals also face significant **wage disparities on the job**. This is especially true for transgender women. One study found that the earnings of female transgender workers fell by nearly one-third following their gender transitions. Interestingly, that same study found that the earnings of male transgender workers slightly *increased* following their transition. As such, transgender men may actually experience a wage advantage rather than a wage penalty.

This research strongly indicates that in addition to facing significant workplace discrimination in hiring and firing based on their gender identity, transgender women experience significant gaps in pay largely attributable to their gender.

Gay and transgender families are economically vulnerable

When gay and transgender workers suffer from pay disparities they have less money in their pockets to pay the mortgage, buy groceries, and pay their utility bills. It is no wonder then (contrary to common stereotypes) that families headed by same-sex couples **earn significantly less** than their heterosexual counterparts. The average household income for same-sex couples raising children is \$15,500, or 20 percent less than heterosexual couples. This means the wage gap for many families headed by same-sex couples contributes to significant disparities in income earnings.

Further, these wage and income gaps in part explain why gay and transgender families are more likely to **live in poverty**. Children being raised by same-sex couples are twice as likely to live in poverty compared to children living in households with heterosexual married parents. Whereas 9 percent of children living with heterosexual married parents are living in poverty, 21 percent of children being raised by male same-sex couples and 20 percent of children being raised by female same-sex couples live in poverty.

Transgender people also face significant economic challenges. **Fifteen percent** of transgender people report making less than \$10,000 per year, a rate of poverty that is nearly four times that of the general population. These socioeconomic disparities are especially acute for families headed by gay or transgender people of color: Thirty-two percent of black male same-sex couples and 28 percent of female same-sex couples live in poverty, compared to just 13 percent of black different-sex married couples.

Gay and transgender workers need workplace protections

Clearly, the wage gap poses a significant threat to the health and wellness of many gay and transgender Americans and their families. In addition to discrimination in earnings, research shows that this population **faces significant discrimination** in hiring and firing based on their sexual orientation and gender identity.

Discrimination against these workers leaves far too many gay and transgender Americans without a job. Discrimination is also **unwise from a business perspective**, since it introduces significant inefficiencies and substantial costs that could have otherwise been avoided absent discriminatory workplace practices.

Policymakers can and should enact a broad range of policies to solve the problem of employment discrimination against the gay and transgender workforce.

First and foremost, we need a comprehensive federal law that ensures nobody is forced out of job, not hired, or paid differently than their co-workers simply because of their sexual orientation or gender identity. Congress should pass the **Employment Non-Discrimination Act**, or ENDA, which would prohibit most employers in the United States from discriminating against workers based solely on their sexual orientation or gender identity, characteristics completely irrelevant to job performance.

Additionally, ENDA would make it illegal to discriminate against gay and transgender workers with respect to pay and benefits. ENDA would thus help combat wage discrimination and give legal recourse to gay and transgender employees who receive unequal pay for equal work.

Similarly, President Barack Obama can and should issue **an executive order** barring federal contractors from discriminating on the basis of sexual orientation and gender identity. Current regulations already prohibit contractors from discriminating on the basis of **race, color, sex, national origin, and religion**. It is imminently sensible for the president to immediately issue this executive order, which will help reduce and combat all forms of workplace discrimination, including wage discrimination.

Lawmakers in Congress should also consider targeted legislation aimed specifically at eliminating the wage gap for gay and transgender workers. Prior to the passage of the Civil Rights Act, which provided women with a large range of workplace protections, Congress enacted the Equal Pay Act of 1963 aimed at abolishing the gender wage gap. Congress can follow this pattern for gay and transgender workers. Even without passing ENDA, Congress can pass legislation aimed at eliminating wage disparities based on sexual orientation and gender identity in a manner similar to the Equal Pay Act.

These laws and policies are incredibly necessary to ensure fair and equal treatment of gay and transgender workers in the United States. ENDA is especially crucial to ensuring that these gay and transgender workers nationwide have equal protections under the law.

Until ENDA is passed, however, it will remain legal to fire, not hire, or provide unequal pay to gay and transgender workers in a majority of states. Gay and transgender workers need comprehensive federal protections, and they need them sooner rather than later.

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* Unless otherwise specified, “gay” is used in this column as an umbrella term to describe individuals that identify as gay, lesbian, or bisexual.

See also:

- [The Top 10 Facts About the Wage Gap](#) by Audrey Powers and Sarah Jane Glynn
- [Infographic: The Gender Pay Gap](#) by Matt Separa
- [The New Breadwinners: 2010 Update](#) by Sarah Jane Glynn
- [The Gender Wage Gap Double Whammy](#) by Sarah Jane Glynn
- [Pay Equity and Single Mothers of Color](#) by Sophia Kerby
- [Unequal Pay Day for Black and Latina Women](#) by Julie Ajinkya
- [10 Facts About Latino Women and Pay Inequity](#) by Vanessa Cárdenas
- [Gender Equality for Green Jobs Worldwide](#) by Rebecca Lefton and Jorge Madrid with Lejla Sadiku
- [The Health Insurance Compensation Gap](#) by Jessica Arons and Lindsay Rosenthal

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ECONOMIC OPPORTUNITY

More than one in four transgender adults have lost at least one job due to bias, and more than three-fourths have experienced some form of workplace discrimination.¹ Biased refusal to hire, privacy violations, harassment, and even physical and sexual violence on the job are common occurrences, and experienced at even higher rates by transgender people of color. Many report changing jobs to avoid discrimination or the risk of discrimination. Extreme levels of unemployment and poverty lead many to become involved in underground economies—such as sex and drug work—in order to survive.

While 16 states, nearly 150 local jurisdictions, and hundreds of employers have adopted laws and policies to prohibit this discrimination, more than half the nation still lives without these critical protections. And while transgender people face unemployment at even higher rates than the rest of the U.S. workforce,² they can also face discrimination in the public jobs programs meant to connect them with jobs.

In recent years, courts and federal agencies have increasingly taken the view that discrimination against transgender people is prohibited by existing laws against sex discrimination³. This updated under-

1 Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 53. Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force (2011).

2 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 55.

standing of sex discrimination laws has the potential to be a powerful tool to combat employment bias, and NCTE has and will continue to work to more firmly establish this understanding of the law and the critical protection it can provide. Ultimately, however, passing a federal law to prohibit gender identity discrimination in the most specific terms is essential to ensuring that employers understand and consistently follow the law, and therefore to eliminating anti-trans discrimination.

Policy steps

- Congress should pass the Employment Non-Discrimination Act (ENDA), which would prohibit discrimination in employment based on gender identity and sexual orientation.
- The President should issue an Executive Order prohibiting federal contractors and subcontractors from discriminating on the basis of gender identity and sexual orientation.
- The Equal Employment Opportunity Commission (EEOC) should investigate and mediate complaints from transgender people based on sex discrimination under Title VII of the Civil Rights Act of 1964.
- Each federal agency should issue a policy directive stating that it will ensure that federal employees will not be discriminated against on the basis of gender identity and that transgender discrimination claims will be processed according to Title VII procedures.
- The Occupational Safety and Health Administration (OSHA) should issue guidance clarifying that employers must provide all workers with full access to sanitary facilities consistent with their gender identity.

Economic Opportunity

- The Department of Homeland Security, Department of Justice, and other agencies should adopt uniform policies providing for the classification of transgender law enforcement and security officers on the basis of their gender identity for purposes of gender-specific job duties.
 - The Office of Personnel Management should ensure that Federal Employees Health Benefits plans provide coverage for medically necessary transition-related care for federal employees and their partners and dependents.
 - The Department of Labor should adopt clear national guidelines to prohibit discrimination and ensure fair treatment for transgender people at all One-Stop Career Centers.
- The Department of Labor should adopt clear national guidelines to prohibit discrimination and ensure fair treatment for transgender people in all Job Corps programs.
 - The Department of Labor should identify, promote and fund best practices for helping transgender people enter the workforce.
 - The Federal Aviation Administration (FAA) should revise its medical certification procedures to reflect current medical science and eliminate unnecessary obstacles for transgender pilots and others who need FAA medical certification for their jobs.

Transgender Equality in the Federal Workforce

The United States government is the nation's largest employer, and it has made huge advancements in providing equal opportunity for transgender workers. In June 2009, President Obama issued a memorandum directing federal agencies to take all available steps to ensure equality for LGBT federal workers. In 2010 and 2011, the U.S. Office of Personnel Management (OPM) answered this call by amending the federal government's equal employment opportunity (EEO) policy and issuing detailed guidance to all federal agencies on supporting workplace transitions. NCTE worked to ensure this guidance addressed equal restroom access, dress codes, personnel records, and other critical issues for trans employees. OPM has worked with federal agencies to ensure equal employment opportunity for trans people, and numerous agencies have updated their internal EEO policies and conducted workplace training on transgender issues. These steps represent a strong example of what can and must be accomplished in every workplace.

NCTE and allies are working in 2012 to solidify and extend this progress. Despite new nondiscrimination policies, trans federal workers are still subject to a uniquely discriminatory and baseless across-the-board exclusion of medically necessary transition-related care from the health benefits they've earned. These discriminatory exclusions persist even as they are being increasingly rejected by other large employers, with 33% of companies surveyed for the 2012 HRC Corporate Equality Index providing inclusive benefits compared to less than 9% in 2009. We are also working to address persistent discrimination in some federal security and law enforcement positions and to ensure that policies fully respect trans workers' rights in these sectors. Across the federal government, we continue to press agencies to fully update their internal EEO policies and to raise awareness of trans workers' rights, to ensure that the nation's largest employer is also a leader in equal opportunity for all.

The business case for LGBT
workplace policies



The Costly Business of Discrimination

The Economic Costs of Discrimination and the Financial Benefits of Gay and Transgender Equality in the Workplace

Crosby Burns March 2012

Center for American Progress



The Costly Business of Discrimination

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and the Financial Benefits of Gay and Transgender
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Introduction and summary

There's a price to be paid for workplace discrimination—\$64 billion. That amount represents the annual estimated cost of losing and replacing more than 2 million American workers who leave their jobs each year due to unfairness and discrimination.¹

A significant number of those workers are gay² and transgender individuals who have been treated unfairly simply because of their sexual orientation and gender identity. According to a recent survey, fully 42 percent of gay individuals say they have experienced some form of employment discrimination at some point in their lives. Transgender workers face even higher rates of workplace discrimination and harassment. An astonishing 90 percent of transgender individuals report experiencing some form of harassment, mistreatment, or discrimination on the job, or taking actions such as hiding who they are to avoid it. This includes 47 percent who said they had experienced an adverse job outcome such as being fired, denied employment, or not receiving a deserved promotion because of their gender identity.³

Unfortunately it remains perfectly legal in a majority of states to fire someone because they are gay or transgender. Only 21 states and the District of Columbia have outlawed employment discrimination on the basis of sexual orientation, and only 16 states and the District of Columbia have done so on the basis of gender identity. Congress must pass the Employment Non-Discrimination Act, or ENDA, to provide gay and transgender workers uniform and comprehensive employment protections nationwide.

Until then far too many gay and transgender workers enter into the ranks of the unemployed at a time when all families are struggling to stay afloat. But discrimination is not only a problem for gay and transgender workers. Workplace discrimination also imposes significant financial harm on businesses, introducing inefficiencies and costs that cut into profits and undermine businesses' bottom line.

Businesses that discriminate based on a host of job-irrelevant characteristics, including race, ethnicity, gender, age, disability, and sexual orientation and gender identity put themselves at a competitive disadvantage compared to businesses that evaluate individuals based solely on their qualifications and capacity to contribute.

Considering the high rates of discrimination facing the gay and transgender workforce today, discrimination based on sexual orientation and gender identity represents a real threat to the profitability and financial health of businesses large and small throughout the United States.

Specifically discrimination against employees based on their sexual orientation and gender identity negatively impacts the economic performance of businesses in the following ways:

- **Recruitment:** In the business community the new reality is one that puts a premium on talented labor. Consequently, American businesses must make hiring decisions based solely on a candidate's skills and abilities that directly relate to performance on the job if they are to outperform the competition. When employers hire individuals based on job-irrelevant characteristics such as sexual orientation and gender identity, businesses are left with a substandard workforce that diminishes their ability to generate healthy profits.
- **Retention:** Retaining employees is equally important to a company's financial strength. Discrimination, however, forces otherwise qualified gay and transgender employees out of a job and into the ranks of the unemployed. This introduces numerous turnover-related costs since employers must then find, hire, and retrain employees to replace those who have left due to workplace discrimination. This takes significant amounts of time, money, and resources that could have instead been spent on primary business operations. According to a recent study, to replace a departing employee costs somewhere between \$5,000 and \$10,000 for an hourly worker, and between \$75,000 and \$211,000 for an executive making \$100,000 a year.⁴
- **Job performance and productivity:** Sexual orientation and gender identity discrimination in the workplace needlessly compromise maximum labor productivity and workforce output. Discrimination and hostility in the workplace prevent employees from performing their core functions on the job. Moreover, it introduces unnecessary costs by increasing absenteeism, lowering productivity, and fostering a less motivated, less entrepreneurial, and less committed workforce.



Recruitment



Retention



Job performance and productivity

- **Marketing to consumers:** Discrimination can be costly not only in terms of labor supply but also in terms of consumer demand. When companies discriminate and allow unfairness to go unchecked in the workplace, consumers increasingly react by actively choosing to do business elsewhere. This is certainly true of gay and transgender consumers who are especially responsive to corporate social responsibility. Companies simply cannot afford to lose a share of this market that wields a cumulative spending power of nearly \$1 trillion.



Marketing to consumers

- **Litigation:** Workplace discrimination exposes businesses to potentially costly lawsuits. Allowing discrimination against gay and transgender employees can be especially harmful in states that have outlawed gay and transgender workplace discrimination. Businesses, however, are also increasingly liable for discrimination suits even in states that have not outlawed gay and transgender discrimination, making discrimination economically unwise for companies in all 50 states. In 2010 the top 10 private plaintiff employment discrimination lawsuits cost firms more than \$346 million.⁵



Litigation

Given the substantial costs associated with discrimination, Congress and other federal policymakers should take swift action to help combat workplace discrimination against gay and transgender workers. Doing so would help remove inefficiencies in our recovering economy by making sure that otherwise qualified employees are not unnecessarily forced into unemployment based on characteristics completely divorced from their job performance.

But absent federal policy on workplace protections, employers seeking to enhance their financial standing and gain a crucial advantage over the competition can and should take the commonsense steps necessary to ensure a workplace free of discrimination. To do so employers should institute a series of internal human resource policies that prohibit discrimination and harassment against gay and transgender employees. Businesses will realize significant cost savings when they implement and enforce these policies.

In fact companies that don't protect and support gay and transgender workers are increasingly out of step with most of corporate America. Fully 85 percent of Fortune 500 companies have nondiscrimination policies that include sexual orientation, and 49 percent include gender identity. Higher up on the Fortune ladder, 96 percent of Fortune 50 companies have nondiscrimination policies that include sexual orientation, and 74 percent include gender identity.

Employers, however, can and should do more than institute inclusive nondiscrimination policies to realize the significant financial benefits of a gay- and transgender-friendly workplace. Employers should also take proactive steps to promote a positive and inclusive workplace for all of their employees, which, as we detail later in this report, will bring a substantial amount of cash into company coffers. In addition to nondiscrimination policies, employers can and should offer equal health insurance benefits for employees with same-sex partners. Employers can and should also offer health insurance that provides transgender employees the medically necessary care they require. By actively implementing a host of workplace policies such as these—most at zero or negligible cost—employers will reap the significant financial rewards of a qualified, productive, and talented workforce.

Absent these policies, however, employment discrimination will continue to weaken firm performance, productivity, and profits. Inefficient hiring and firing practices will result in a substandard workforce. Hostility on the job will depress overall workforce output. Unfairness can push away large and attractive consumers in the marketplace. And litigation can require significant time, money, and resources that could have been otherwise directed to primary business operations.

In today's economic climate, discrimination is an unnecessary and costly distraction. Businesses simply cannot afford to discriminate against gay and transgender individuals while simultaneously outperforming the competition. America's economic crisis is aggravated when employers allow personal prejudice to trump their businesses' financial interests. That's why businesses should take the commonsense steps necessary to ensure that all employees are judged based on their capabilities and skills, not on characteristics irrelevant to job performance. Leveling the playing field for gay and transgender employees makes businesses more competitive, more profitable, and is ultimately the right thing to do.

To more thoroughly examine this issue of workplace discrimination aimed at gay and transgender Americans, as well as offer recommendations and solutions that are both employee and employer friendly, we have broken this paper into the following broad sections.

First, we detail how workplace discrimination against gay and transgender employees is economically unwise in terms of recruitment, retention, job performance and productivity, consumer marketing, and litigation.

In the second section, we look at the gamut of workplace policies that level the playing field for gay and transgender employees and how businesses small and large agree that implementing and maintaining these policies makes good business sense.

Lastly, we look at best practices and how businesses can leverage the aforementioned gay and transgender workplace policies to support a more qualified, productive, and profitable workforce.

The economics of discrimination

Discrimination is toxic to profit margins. Every year unfairness on the job wastes billions of dollars by forcing otherwise qualified individuals out of the workplace, suppressing overall job performance, and closing businesses off to lucrative consumer markets.

Discrimination costs businesses cold hard cash, and it can manifest in the workplace at all levels of employment in a variety of forms. Employment discrimination can occur based on a host of characteristics that are completely divorced from an employee's performance on the job. These characteristics include an individual's race, color, ethnicity, sex, gender, age, disability, national origin, religion, veteran's status, or pregnancy status. Discrimination can even occur based on an employee's genetic information such as choosing not to hire someone because his or her family has a history of breast cancer.

Nobody is immune from discrimination, and that is especially true for gay and transgender employees in the American workforce. Fully 42 percent of gay workers say they have experienced some form of employment discrimination at some point in their lives. Transgender workers face even higher rates of workplace discrimination and harassment—an astonishing 90 percent of transgender individuals report experiencing some form of harassment, mistreatment, or discrimination on the job, or taking actions such as hiding who they are to avoid it. This includes 47 percent who said they had experienced an adverse job outcome such as being fired, denied employment, or not receiving a deserved promotion because of their gender identity.⁷

Moreover, gay and transgender people are perhaps the largest demographic of Americans to lack comprehensive legal protections that shield them from discrimination on the job. Without legal recourse, discrimination continues to be a real and present problem for gay and transgender workers, forcing many into the ranks of the unemployed and contributing to the socioeconomic disparities facing this community.

“Economic theory implies that employers who discriminate are at a competitive disadvantage relative to firms that follow a less discriminatory policy.”⁶



DELL INC.

“...we’ll continue our efforts advocating for gay, lesbian, bisexual, and transgender equality. It’s part of our global diversity efforts, which aren’t just corporate goals, rather they are a critical component of our leadership and business success.”

Gil Casellas, vice president of corporate responsibility

TB DPB GI SO

Discrimination not only inflicts significant financial pain on victims and their families, but it also significantly detracts from a business’s bottom line. (See “Discrimination and baseball—A case study” in sidebar below.) While businesses are increasingly placing a premium on recruiting the best and the brightest talent, firms that discriminate based on sexual orientation and gender identity will make inefficient hiring and firing decisions that result in a sub-standard workforce. Discrimination and hostile work environments also force gay and transgender people out of jobs, introducing a host of turnover-related expenses that could have been directed toward primary business expenses. Discrimination suppresses productivity and job performance, exposes firms to costly litigation, and closes firms off from new and lucrative consumer markets.

In short, discrimination is a costly business.

KEY:

- SO** Sexual orientation nondiscrimination policies
- GI** Gender identity nondiscrimination policies
- DPB** Domestic partner benefits
- TB** Transgender inclusive health benefits

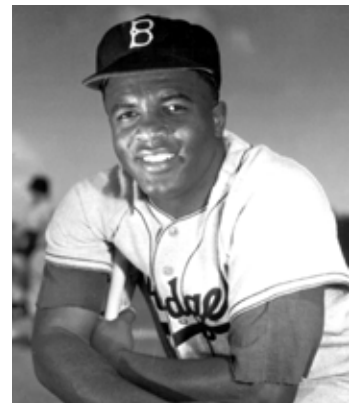
Discrimination and baseball

A case study

In 1974 economists James Gwartney and Charles Haworth investigated discrimination and its impact on firms’ profits and performance. But instead of looking at traditional “firms” such as American manufacturers and service industries, they looked to America’s favorite pastime: baseball.⁸

Although Jackie Robinson broke Major League Baseball’s color line in 1947, the sport was all too often racially segregated through the late 1950s. From

[continued on next page](#)



Brooklyn Dodger infielder Jackie Robinson poses in May 1952. (AP Photo)

1947 through 1956—the period examined by Gwartney and Haworth in their study—many teams were all white and explicitly excluded black players from joining their ranks. Yet other teams did not segregate on the basis of race, and instead integrated black players with white players. This segregation-integration dichotomy provided the two economists with a natural experiment to evaluate what role discrimination played in the world of baseball and beyond.

What did they find? Gwartney and Haworth’s study revealed that teams that chose not to discriminate gained a competitive advantage over those teams that chose to segregate on the basis of color. “Low-discriminating” teams were able to acquire higher-quality players, had higher attendance at their games, and won more games than “high-discriminating” teams.

Rather than judge players by the color of their skin, low-discriminating teams judged players on how well they played baseball. In doing so, integrated teams were able to assemble the most skilled group of baseball players available, maximizing their teams’ potential for athletic and economic success.

What was true for baseball in the 1940s and ‘50s rings true for businesses in today’s global economy. Employers that allow discrimination to go unchecked put themselves at a competitive disadvantage to employers that value workers based solely on their job performance. Discrimination is a toxic inefficiency that introduces unnecessary costs that ultimately weakens a company’s bottom line. This is true whether workplace unfairness occurs based on someone’s race, gender, age, sexual orientation, or gender identity.



Employment discrimination cripples employers’ ability to recruit talent

Discriminatory businesses put themselves at a competitive disadvantage compared to businesses that value equal opportunity and inclusion in the workplace. This is because discrimination excludes qualified employees who can contribute to their bottom line. Even in our recovering economy, businesses in certain sectors are experiencing significant labor shortages and are struggling to attract and recruit high-caliber employees. This is true in both traditionally blue-collar labor markets such as farming, mining, and shale drilling, and in traditionally white-collar labor markets such as accounting, technology, engineering, and marketing.⁹



GOLDMAN SACHS GROUP, INC.

“We strive for excellence. To achieve it we must have the best people, and the best people are drawn from the broadest pool of applicants. The people we need can be found only by looking across the full spectrum of gender, ethnicity, national origin, sexual orientation, [and] gender identity.”

[Diversity and inclusion statement](#)

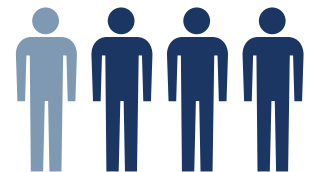


Businesses across the economic spectrum must therefore compete for qualified and skilled labor to strengthen their competitiveness. To attract an optimal workforce, employers must ensure they are hiring from the largest possible pool of qualified labor in their industry. Discrimination, however, will unnecessarily limit the pool of potential candidates for employment by excluding some based on job-irrelevant factors such as sexual orientation and gender identity. When this happens businesses unnecessarily preclude themselves from finding the best and brightest employees.

In hiring and interviewing, discrimination similarly introduces inefficiencies by asking hiring managers to evaluate candidates on nonwork-related characteristics. When this occurs, less qualified individuals are hired, resulting in a suboptimal workforce. Hiring a less qualified employee, for example, simply because he or she is straight means a company will not realize the higher returns it would have had if it had hired a more qualified individual who happened to be gay. The fact that hiring one high-performing worker has the equivalent worth of hiring three mediocre workers underscores that making the wrong hiring decision can cost companies serious cash.¹⁰

Discrimination can also adversely impact recruitment practices when companies discriminate against their existing employees. Understandably victims of employment discrimination will discourage others from seeking employment with the offending employer. The Level Playing Institute found that one in four individuals who experienced unfairness on the job say their experience strongly discourages them from recommending their employer to other potential employees.¹¹

Further, if a company’s discriminatory behavior becomes widely publicized, many fair-minded job seekers—gay or straight, transgender or not—will likely choose not to submit an application for employment with that company. In fact they would very likely apply with a competitor.



One in four individuals who experienced unfairness on the job say their experience strongly discourages them from recommending their employer to other potential employees.



Employee discrimination decreases retention rates and introduces turnover-related costs

Retaining existing employees is crucial for developing a capable, efficient, and profit-maximizing workforce. Failing to retain qualified employees, on the other hand, introduces unnecessary turnover-related costs that could have been otherwise directed toward primary business operations.

Employment discrimination results in higher turnover rates by either forcing out employees based on nonwork-related characteristics or by creating a hostile work climate that compels those employees to leave on their own. Unnecessary employee turnover forces employers to spend a significant amount of money recruiting, staffing, and training employees to replace the departing employee. Specific costs include hiring temporary help, advertising costs to announce job openings, background checks, reference checks, drug testing, cost of overtime pay, relocation costs, and salary increases to attract new talent. For highly skilled employees and high-level management, severance pay and signing bonuses can also contribute to high turnover costs.

Turnover costs that result from employment discrimination are significant. According to Peter Hom, professor of management at Arizona State University’s S.P. Carey School of Business, the costs of replacing a departing employee were somewhere between 93 percent and 200 percent of the departing employee’s salary.¹² These estimates comport with one study that calculated the recruiting and staffing costs associated with replacing a departing employee somewhere between \$5,000 and \$10,000 for an hourly worker, and between \$75,000 and \$211,000 for an executive who makes an annual salary of \$100,000.¹³ These estimates indicate that turnover-related costs have increased over the past decade with our economy shifting more toward industries that require highly skilled workers.

Discrimination against gay and transgender workers certainly contributes to these turnover-related costs. Due to discriminatory work environments, gay and transgender employees experience higher-than-average turnover rates. Gay men and women, for example, leave their employers due to workplace unfairness at twice the rate of straight white males.¹⁴ The failure to adequately retain gay and transgender employees results in substantial retention-related costs for businesses across the country.



JOHNSON & JOHNSON

“We believe that attracting, developing and retaining a base of employees that reflects the diversity of our customers is essential to our success.”

[Our People & Diversity](#)



Turnover-related costs



Hourly worker:
Costs between **\$5,000 and \$10,000** to replace



Executive making \$100,000 salary per year:
Costs between **\$75,000 and \$211,000** to replace

Companies that fail to retain qualified employees will also lose on the investments they have made in the departing employee. Discrimination drives out valuable human resources possessing valuable organizational and operational knowledge. Training and developing new employees to attain the same level of knowledge and skills will take a significant amount of time and money on behalf of the employer. Moreover, turnover due to discrimination will deal a double blow should a competitor hire the departing employee and capitalize on his or her skills and knowledge of the industry—skills and knowledge in which the discriminatory employer had invested. (see “IBM—A Case Study”)

IBM

A case study

For some companies the failure to retain gay and transgender employees goes far beyond the costs associated with high turnover. IBM, for example, learned the hard way that forcing people out of the job based on their gender identity can cost millions of dollars in unrealized profits:

Lynn Conway underwent sex-reassignment surgery in 1968 and was fired by IBM for being transsexual. Before her termination, Conway had invented a method by which computer processors make multiple calculations simultaneously and dynamically, which consequently led to the creation of supercomputers that can take enormous amounts of data and compile them to look for patterns. In the 1970s Conway went on to work for the Memorex Corp. at the Xerox Palo Alto Research Center, where her innovations influenced chip design worldwide. Conway has since won many awards and high honors, including election as a member of the National Academy of Engineering, the highest professional recognition an engineer can receive. Conway is currently a professor and associate dean of the College of Engineering at the University of Michigan.¹⁵

IBM inexplicably fired Conway based on her gender identity despite the fact that she was a highly skilled employee in a technologically complex sector of the economy. Replacing Conway required IBM to invest treasured company resources into finding, hiring, and training an adequate replacement. But more importantly, IBM lost significant profits by forcing out an employee who would revolutionize an entire industry with her innovations. IBM now includes gender identity in its nondiscrimination policy and is known as a leader in fostering a welcoming and inviting workplace for gay and transgender employees:

[IBM] ensures that people who are gay, lesbian, bisexual or transgender feel safe, welcomed and valued within the global walls of our business. Our goal is to assemble the most talented workforce in our industry, and to use the skills of that diverse team to respond to the needs of our clients. The contributions that are made by [gay and transgender] IBMers accrue directly to our bottom line and ensure the success of our business. — Ted Childs, vice president, Global Workforce Diversity¹⁶

Further, a company that gains a reputation for workplace discrimination will drive away the growing number of individuals in the labor market who value fairness on the job and a positive workplace climate. When it comes to equality in the

workplace, 8 in 10 straight and nontransgender adults agree or strongly agree that how an employee does his or her job should be the standard for judging an employee, not their sexual orientation.¹⁷

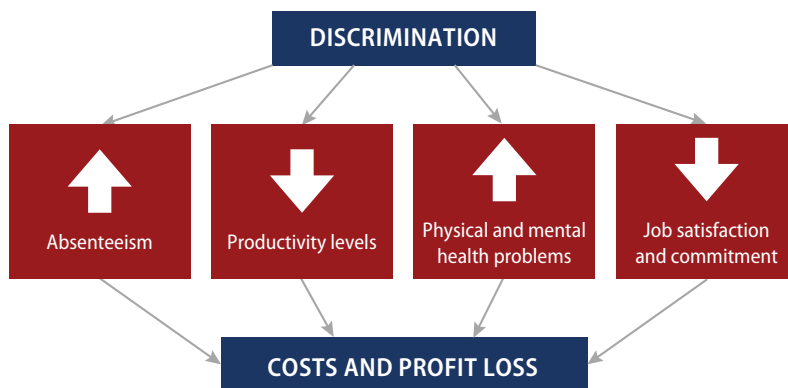
Given this support, large numbers of individuals in the workforce would not be pleased to hear that their current or prospective employer discriminates against gay or transgender individuals. A significant portion of the workforce would look down upon a workplace where coworkers make gay jokes around the water cooler; where transgender coworkers experience harassment from their colleagues; or where individuals are denied promotions simply because they are gay. Some of these fair-minded employees will reevaluate their position with their current employer, and some will leave to go to work for a competitor, leaving their previous employer with a costly vacancy that must be filled.



Employee discrimination stifles job performance and productivity

Employment discrimination is economically unwise even if it never results in the loss of a skilled worker. Employees who work for discriminatory employers are unable to fully focus their energy on performing their core responsibilities on the job. Employees who do not feel valued or fear discrimination in the workplace experience a host of negative job attributes that adversely impact their job performance. Employees who fear discrimination exhibit higher rates of absenteeism,¹⁸ are less committed to their current employer,¹⁹ receive fewer promotions,²⁰ and report more physical and mental health problems than those who were less fearful of discrimination.²¹

Discrimination stifles job performance



J.P.Morgan

JPMORGAN CHASE & CO.

“We have a strong commitment to diversity, to inclusion, to meritocracy. Ours is a service business, so it’s all about the quality of the people we hire. In order to attract and retain the best talent, we have to create the most equitable environment we can.”

[Sandy Van Gilder](#),
senior vice president and
head of diversity

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LOCKHEED MARTIN CORP.

“Lockheed Martin is committed to providing the most supportive and inclusive environment for all employees. Ensuring a positive, respectful workplace and robust set of benefits for everyone is critical to retaining employees and helping them develop to their fullest potential.”

Ken Disken, senior vice president

The relationship between discrimination and job performance certainly holds true for gay and transgender workers who continue to experience high rates of employment discrimination and who report high levels of hostility in the workplace. Can you imagine the impact on a lesbian employee who overhears her colleagues sharing offensive jokes about gay people, or that same employee being subjected to a boss who uses a derogatory term to describe gay individuals?

In hostile environments such as these, gay and transgender individuals must constantly censor themselves out of fear of unfairness and discrimination. Further, it is not hard to understand why gay and transgender employees would be less committed to their employer, more dissatisfied with their job, and less productive as a result of a hostile work environment. And when their work suffers, so too does the company’s profitability. In aggregate, one study estimates that hostile work environments cost companies \$1.4 billion in lost output each year resulting from a reduction in gay and lesbian workers’ productivity.²²

Controlled experiments have shown that hostile work environments for gay and transgender workers can also impact the productivity of their straight and nontransgender counterparts as well. When gay and transgender workers are unable to bring their full selves to work due to a discriminatory work environment, it is likely that the job performance of their straight and nontransgender peers also significantly suffers.²³

One study estimates that hostile work environments cost companies \$1.4 billion in lost output each year resulting from a reduction in gay and lesbian workers’ productivity.



CVS CAREMARK

“By considering all the diverse talents and traits that our current and potential colleagues bring to our business ... whether it’s a difference of age, gender, family status, race, ethnicity, religion, disability, sexual orientation, appearance, thought, or mannerisms, we recognize the importance of these differences in making us a better company and meeting the needs of the diverse customers we serve.” [Diversity statement](#)



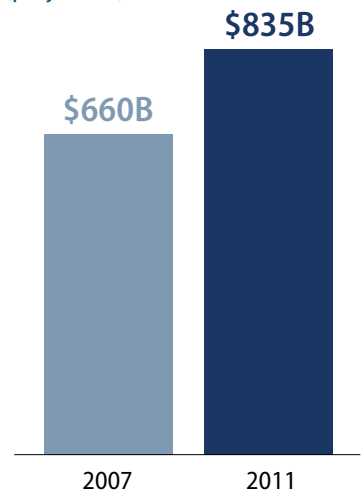
Workplace discrimination limits access to consumer markets

Companies that discriminate against gay and transgender people unnecessarily close themselves off to an economic powerhouse of consumers in the marketplace. Gay and transgender individuals have a cumulative buying power of nearly \$1 trillion. In 2007 gay consumers spent \$660 billion on goods and services. In 2011 that number was projected to rise to \$835 billion, a 21 percent increase in just four years.²⁴ More broadly the gay consumer market has a sizeable footprint worldwide and accounts for 6 percent of all sales across the globe.²⁵ Given their spending power no company can afford to ignore the profitable gay and transgender consumer market.

Hiring and firing employees because they are gay or transgender will hurt businesses’ ability to appeal to gay and transgender consumers. One of the most important reasons businesses look to hire from a diverse pool of applicants is that the diversity of a workforce must reflect the diversity of consumers in order to most effectively tap into those consumer markets.²⁶ To penetrate the gay and transgender consumer market, companies must have gay and transgender employees since those employees best understand the everyday needs and preferences of gay and transgender buyers. Conversely, when companies make firing and hiring decisions based on sexual orientation and gender identity, they are crippling their ability to reach out, tap into, and capitalize on the gay and transgender consumer market.

Gay consumer buying power

The amount gay consumers spent on goods and services, 2007 and 2011 (projection)



Discrimination not only limits firms' ability to appeal to new gay and transgender consumers; it will actively push away existing consumers as well. Gay and transgender individuals are increasingly making purchasing decisions based on how businesses treat gay and transgender employees as well as their broader engagement with the community. Specifically gay and transgender consumers often avoid stores and brands that discriminate against gay and transgender employees, fail to put those employees on equal footing with their straight and nontransgender counterparts, or engage antigay and antitransgender organizations.²⁷ The gay and transgender community has even flexed its considerable market power by boycotting companies such as Target Corp. and Chick-fil-A for engaging in discriminatory antigay behavior.²⁸

Discrimination may alienate consumers in less overt ways as well. One study found that many employees who experienced unfairness at work indicate that they would not recommend the goods and services provided by their employer.²⁹ So when a lesbian is fired from her job, for example, she'll most likely tell her friends and family to not patronize her former employer.

Similarly, when companies do not treat their gay and transgender employees equally, the damage on the consumer side is not limited to gay and transgender individuals. Antigay corporate practices alienate the growing ranks of fair-minded and inclusive consumers who are attuned to businesses' treatment of gay and transgender people and issues.

In these ways discriminating against gay and transgender employees have impacts that trickle down to straight and nontransgender consumers.

Costly legal ramifications of workplace discrimination

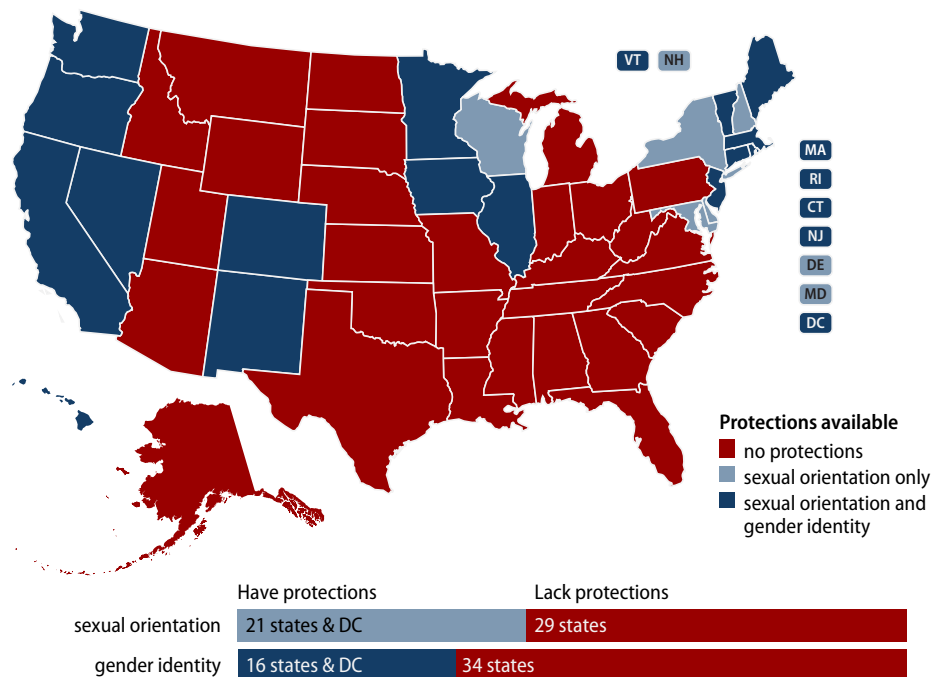
Employment discrimination exposes firms to potentially costly litigation. The top 10 private plaintiff employment discrimination lawsuits in 2010 alone cost firms \$346.4 million, a fourfold increase from the year before.³⁰

Allowing discrimination against gay and transgender employees to go unchecked can be especially harmful in states that have outlawed employment discrimination on the basis of sexual orientation and gender identity. Currently 21 states and the District of Columbia prohibit workplace discrimination on the basis of sexual orientation. Sixteen of those states and the District of Columbia do so on the basis

The top 10 private plaintiff employment discrimination lawsuits in 2010 alone cost firms \$346.4 million, a fourfold increase from the year before.

Gay and transgender employment protections by state

States prohibiting gay and transgender discrimination in employment, housing, and public accommodations (including health care)



of gender identity. In these jurisdictions gay and transgender victims of workplace discrimination have a clear legal recourse to sue employers when they fail to maintain a hostile-free workplace environment devoid of discrimination based on sexual orientation and gender identity. Litigation often results in costly attorney and court fees, time spent away from the business, and unwanted media attention. These costs are usually significant regardless of the outcome of the case.

In addition firms are liable for discrimination even in states that have not outlawed discrimination against gay and transgender employees. Gay and transgender victims of employment discrimination may file Title VII employment discrimination claims based on sex and gender employment discrimination under federal law. Such cases have been increasingly successful over the past decade and have cost businesses substantial time and money to litigate. As such, companies put themselves at a financial disadvantage when they do not combat transgender workplace discrimination, even in states where gender identity is not an explicitly protected class.³¹

Discrimination and Don't Ask Don't Tell

Under the military's now-defunct ban on openly gay soldiers, otherwise known as "Don't Ask, Don't Tell," our nation learned the hard way that discrimination is wasteful, inefficient, and costly. Since the policy's inception in 1993, our military discharged over 14,000 otherwise qualified soldiers from the armed forces. Many of these soldiers held mission-critical skills and included pilots, combat engineers, and Arab linguists.³² Moreover, this policy not only hurt our national security but also our fiscal security. The cost of discharging and replacing gay and lesbian soldiers, as well as losing the financial investment made in training those soldiers, stripped serious cash from our nation's coffers, costing American taxpayers \$363.8 million over the last two decades.³³

Our military and our national security suffered by forcing these individuals out of the military based on their sexual orientation, a characteristic that has no bearing on their ability to do their jobs and

complete their missions. Alternatively, removing this policy from the books has enhanced our military's ability to recruit and retain qualified soldiers who want to serve their country. According to Admiral Robert Papp, Commandant of the U.S. Coast Guard and member of the Joint Chiefs of Staff—"Allowing gays and lesbians to serve in the Coast Guard openly...remove[d] a significant barrier to those Coast Guardsmen who [were] capably serving, but who [had] been forced to hide or even lie about their sexual orientation."³⁴

Don't Ask Don't Tell was a disaster. It sanctioned discrimination and in doing so, weakened our national security, our financial stability, and our common values of honesty, fairness, and justice. Just as policymakers voted to end discrimination against gay people in the military, policymakers should do the same for Americans in the public and private civilian workforce as well.

Lessons learned

Discrimination against the gay and transgender workforce results in hiring inefficiencies and introduces unnecessary costs for businesses that reverberate throughout the entire economy. For businesses discrimination is wasteful, costly, and inefficient. It results in substandard recruitment, retention, workplace productivity, and consumer marketing, ultimately putting severe limitations on a company's profit potential.

As businesses struggle to stay afloat and as our economy continues its recovery, businesses small and large more than ever must recognize that workplace discrimination represents a serious threat to their financial vitality and competitiveness. Considering the size of the gay and transgender workforce, as well as the high rates of discrimination based on sexual orientation and gender identity in the American workplace, discrimination against gay and transgender employees is certainly a major and a significant threat to a company's performance and profitability.

The economics of fairness

In our recovering economy businesses must do all they can to ensure discrimination does not create artificial barriers to securing the best, brightest, and most productive employees the market has to offer.

Employers seeking to enhance their financial standing and gain a crucial advantage over the competition should ensure that discrimination has no place at any level of employment. By instituting a series of low-cost commonsense workplace policies, businesses can minimize discrimination against gay and transgender workers and realize numerous cost savings as a result.

But there's more to the story. Employers should not only work to prevent discrimination in the workplace to avert profit loss; they should also take proactive steps to promote a positive and inclusive workplace for all of their employees. By actively implementing a host of workplace policies—most at zero or negligible cost—employers will reap significant financial rewards by getting the very most out of their human capital.

FORD MOTOR COMPANY

“Ford continues to attract a highly skilled committed workforce that reflects a broad spectrum of culture ... and sexual orientations. ... diversity is one of our founding principles, an important part of our business strategy today and key to our future success. ... in the end, our company is more successful and all our employees benefit.”

[Rosalind Cox, manager diversity and worklife planning](#)

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Policies that level the playing field

Given the range of inefficiencies and costs associated with employment discrimination against gay and transgender workers, companies have a vested financial interest in preventing discrimination based on sexual orientation and gender identity. Implementing, maintaining, and enforcing nondiscrimination policies that include sexual orientation and gender identity is the most important step businesses can take to promote workplace equality while protecting their bottom lines from the costs of discrimination.

To fully capitalize on the talents of the gay and transgender workforce, however, employers must do more than simply prohibit discrimination. Employers must actively work to level the playing field for gay and transgender employees to get the very most out of their workers. Fortunately employers have numerous tools at their disposal to do so, especially in terms of equal benefits. Employers, for example, can and should offer health insurance benefits to gay employees and their families (often referred to as “domestic partner benefits”) if they offer those benefits to straight employees and their families. Further, companies should ensure their employer-sponsored health insurance plans cover all medically necessary care for their transgender employees, including health care related to gender transition. (see “Transition-Related Health Care”) These and other workplace policies are outlined below:

Gay- and transgender-inclusive workplace policies

Nondiscrimination policies

- Develop nondiscrimination policies that include sexual orientation and gender identity
- Incorporate sexual orientation and gender identity into antiharassment action plans
- Include gay and transgender issues into diversity training regimens
- Develop policies for transgender employees to safely and comfortably transition on the job

continued on next page



MICROSOFT CORP.

“We value the ideas and leadership of all our employees. An inclusive approach is crucial to our business.”

[Steve Ballmer, chief executive officer, Microsoft Corporation](#)



Benefits

- Offer health insurance benefits to employees' same-sex spouses and domestic partners
- Offer health insurance benefits that also explicitly cover all dependent children
- Ensure parity for gay and transgender employees in other benefits, including retirement and savings benefits, relocation assistance, bereavement and sick leave, life insurance, adoption assistance, and employee memberships and discounts
- Offer transgender-inclusive health care benefits, including comprehensive care related to gender transition, and ensure that employee health insurance policies do not discriminate in benefits or coverage on the basis of gender identity or transgender status

Outreach

- Recruitment outreach to prospective employees at gay and transgender job fairs
- Corporate engagement and philanthropy at gay and transgender community events

These and other policy changes go a long way in signaling that a company offers a safe and welcoming space to gay and transgender employees and places that company in a position to reap significant financial rewards for employers as a result. That is why America's largest and most successful companies have instituted these policies, often directly drawing the connection between workplace fairness and profit margins.

Top businesses support inclusive workplace policies

America's largest and most successful companies have recognized the inherent value in supporting their gay and transgender employees. Their equal employment policies protect their gay and transgender employees from discrimination and harassment on the job. They fully recognize families headed by same-sex couples by offering their employees' partners and their children the full range of benefits they currently offer to straight employees and their families, including crucial health insurance benefits. Perhaps most importantly, these companies work to infuse their corporate culture with the values of fairness and inclusion for all workers, gay or straight, transgender or not. And they do so not only because it is the right thing to do but also because they are in the business of turning a profit.



BANK OF AMERICA CORP.

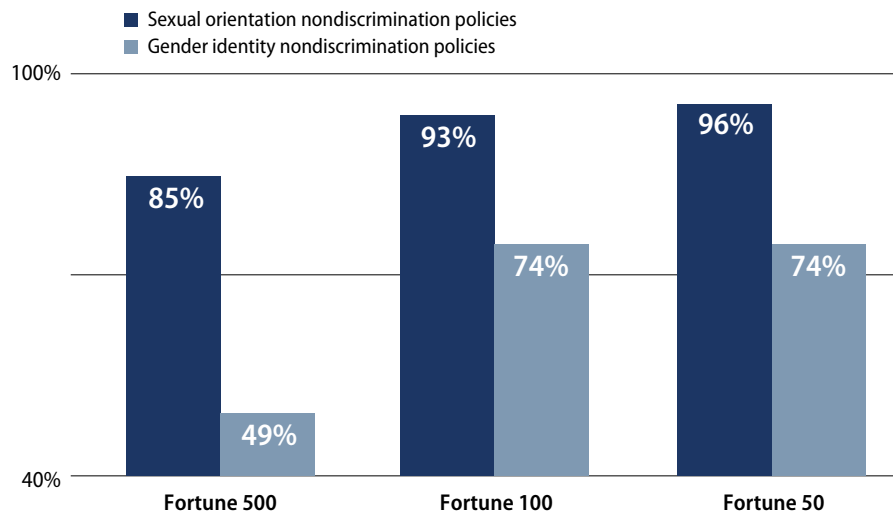
"Encouraging a diverse, inclusive workplace gives you the business advantage of understanding and meeting the needs of diverse customers, clients and shareholders."

Gerri Thomas, diversity and inclusion executive



Gay and transgender policies at *Fortune* companies

The more successful a company is, the more likely it is inclusive of gay and transgender employees. That's no coincidence.



Source: http://sites.hrc.org/documents/CorporateEqualityIndex_2012.pdf

Looking at the Human Rights Campaign's annually released Corporate Equality Index, or CEI, which measures corporate America's commitment to gay and transgender equality in the workplace, we see that the more profitable a company, the more likely it is to have gay- and transgender-friendly policies on its books.³⁵

Eighty-five percent of Fortune 500 companies have enacted nondiscrimination policies that include sexual orientation, and 49 percent include gender identity. Looking at the very top of the Fortune ladder, the proportion of companies offering employment protections in the Fortune 100 skyrockets to 93 percent for sexual orientation and 74 percent for gender identity. For Fortune 50 companies, 96 percent have sexual orientation nondiscrimination policies, and 74 percent have gender identity nondiscrimination policies.

With respect to benefits 60 percent of Fortune 500 companies, 86 percent of Fortune 100 companies, and 90 percent of Fortune 50 companies offer equal health insurance benefits to gay employees and their families.

Companies are also increasingly recognizing the need to ensure that employer-sponsored insurance plans are fully inclusive of transition-related care for transgender employees. The number of Fortune 1000 companies offering such benefits jumped from 85 in 2010 to 207 in 2011.

Transition-related health care

Many transgender people with health insurance today are still unable to access the full spectrum of medically necessary care they need. Most health insurance plans explicitly exclude coverage of any services related to gender transition even when the same or comparable services are routinely covered for other medical purposes for people who are not transgender, and these exclusions are frequently expanded in practice to also include care unrelated to transition. A transgender man, for example, who breaks his arm may be denied coverage for medical care through existing loopholes excluding people who have transitioned.

These exclusions have no basis in medical science and create a dangerous gap in access to quality and affordable care for

transgender people. Moreover, they are out of date. The 2011 Corporate Equality Index indicates that inclusion of coverage for transgender individuals in private insurance plans is increasingly common at companies around the country.

Most importantly, offering these services has proven to be cost effective for employers seeking to ensure a welcoming and hospitable workplace that attracts the best and brightest individuals. This is why companies like Google, AT&T, Aetna, and many others offer health care plans that are fully inclusive of their transgender employees.³⁶ Other employers should follow this industry trend of ensuring that the health insurance plans they offer to their employees do not include exclusions restricting access to care for transgender individuals.

Why have America's largest and most profitable companies instituted these gay and transgender-friendly workplace policies? A recent study from the Williams Institute shows that more than 90 percent of the country's largest companies directly state that diversity policies and inclusive benefits packages have a positive financial impact on their business:

Overall, we find that almost all of top 50 Fortune 500 companies and the top 50 federal government contractors (92 percent) state that, in general, diversity policies and generous benefit packages are good for their business. In addition, the majority (53 percent) have specifically linked policies prohibiting sexual orientation and gender identity discrimination, and extending domestic partner benefits to their employees, to improving their bottom line.³⁷

Across the board more and more companies are recognizing the financial returns of gay- and transgender-friendly workplace policies. The higher a company is on the financial food chain, the more likely it is to have enacted and maintained the host of policies that create a fair workplace for their gay and transgender employees. And these companies do so not only because it is the right thing to do, but because they are in the business of producing healthy profits for their investors. This comports with a recent study showing that companies have seen their stock

prices rise following the implementation of their sexual orientation and gender identity nondiscrimination policies.³⁸ The market rewards workplace fairness.

Big businesses are not the only ones who believe gay- and transgender-workplace policies make good business sense. According to a Center for American Progress poll of small businesses, a clear majority of small businesses already have sexual orientation and gender identity nondiscrimination policies.³⁹ Seven out of 10 small businesses prohibit discrimination on the basis of sexual orientation, and 6 out of 10 small businesses already prohibit discrimination on the basis of gender identity.⁴⁰ Similarly, 75 percent of small businesses already offer equal partner benefits to their gay employees or would do so if employees asked.⁴¹

Gay and transgender workplace policies are cost effective

Opponents of fairness incorrectly argue that gay- and transgender-friendly policies have prohibitive costs that outweigh the numerous benefits of these policies. An examination of these policies, however, shows that the vast majority of these policies have extremely small or often no costs associated with their implementation and maintenance. Even when a cost is associated with a policy such as extending health benefits to same-sex partners and spouses, those costs are negligible in the short term and are mitigated by the high returns realized in the medium and long term.⁴² This is why big businesses have increasingly begun to implement these policies and why small businesses almost never cite costs as a deterrent to adopting those policies.

Nondiscrimination policies are inexpensive

Most small businesses report that there have been absolutely no costs associated with the initial inclusion of sexual orientation in their nondiscrimination policies.⁴³ Sixty-seven percent said there were zero costs associated with the initial inclusion of sexual orientation within their nondiscrimination policies. Of the 25 percent of companies that said there were costs associated with implementation, 65 percent said those costs represented less than 1 percent of annual operating costs. Small businesses report comparably low-cost figures for the initial inclusion of gender identity in their nondiscrimination policies.

Even fewer of these small businesses cited costs associated with maintaining their company's sexual orientation nondiscrimination policy. Eighty percent said there were no costs associated with maintaining their policy prohibiting discrimination against gay workers. Only 12 percent said there were costs associated with

J.P.Morgan

JPMORGAN CHASE & CO.

"As a global organization serving a diverse client base, building and sustaining an inclusive workforce makes economic sense. At J.P. Morgan we see diversity as a competitive advantage. ... this is why we work hard and invest in attracting and retaining a diverse workforce."

[Diversity statement](#)



its maintenance. Looking at just this 12 percent, 68 percent said those costs represented less than 1 percent of annual operating costs. Small businesses report comparably low-cost figures associated with maintaining gender identity in their nondiscrimination policies.⁴⁴

But what about those small businesses that do not have these policies on their books? Of those small businesses that do not specifically prohibit discrimination based on sexual orientation, only 2 percent said costs deterred them from offering protections to gay employees. Only 4 percent cited costs as a deterrent to prohibiting discrimination on the basis of gender identity. Most of these businesses said that they simply never thought to adopt these policies or that they did not have gay or transgender employees currently in their workplace.⁴⁵

Equal partner benefits are inexpensive

While short-term costs are associated with offering equivalent health insurance benefits to gay employees and their family members, employers report that the utilization rate for these benefits is extremely low, as are the costs themselves. When companies offer these benefits, an average of 1 percent of eligible employees elect coverage for a domestic partner. In addition to the low utilization rate, 88 percent experience an impact of less than 2 percent. This is equivalent to the costs associated with benefits for straight employees and their eligible dependents.⁴⁶

Looking solely at small businesses, most that offer health care benefits to straight employees and their family members either already offer those benefits to gay employees and their family members, or would do so if a gay employee asked for those benefits. For the few businesses that do not or would not offer equal health insurance benefits to gay employees and their family members, costs were the least cited deterrent to doing so. Only 4 percent cite costs as a reason for not offering parity in health insurance benefits to gay employees and their families. Instead, most of these small-business owners say they simply do not have employees in same-sex partnerships.⁴⁷

Employers report no moral or religious concerns with nondiscrimination or benefits

Some erroneously argue that businesses that do not have gay and transgender-friendly policies choose not to have those policies out of religious or moral concerns. CAP's survey of small businesses, however, shows that religious or moral issues were some of the least cited reasons for not implementing policies that level the playing field for gay and transgender employees. Only 9 percent of small businesses without these policies said that moral or religious beliefs deterred them from having a



PEPSICO

"While a diverse workforce is important, we must also create an inclusive environment where everyone—regardless of race, gender, physical ability or sexual orientation—feels valued, engaged, and wants to be part of our growth. It is only through inclusion that we will fully unleash innovation and growth for our business."

[PepsiCo annual report](#)



The gay and transgender workforce

Gay and transgender Americans are an integral part of our country's labor force. There are an estimated 8 million gay individuals and an estimated 700,000 transgender individuals in the United States today, though the actual number of gay and transgender Americans is likely much higher.⁴⁸ Gay Americans are found in every congressional district and are found in more than 99 percent of all counties in the United States.⁴⁹

Beyond its size the gay and transgender labor force also fills unique and important roles that contribute to the vitality of our economy. While gay and transgender workers exist throughout the country, they tend to concentrate in urban areas where international businesses are usually located. The public policy think tank The Williams Institute breaks gay and transgender employment down by sector:

Individuals in same-sex couples in the U.S. are more likely to work in the private sector: 74 percent of individuals in same sex couples work in the private sector, compared to 71 percent of married [straight] individuals; 16 percent of individuals in same-sex and married [straight] couples work in the public sector; and 11 percent of individuals in same-sex couples are self-employed, compared to 12 percent of married [straight] individuals.⁵⁰

Further, gay and transgender Americans exhibit many of the characteristics that employers value in prospective and current employees such as ambition, motivation, and eagerness for career advancement. According to the Center for Work-Life Policy, 88 percent of gay and transgender workers said they are “willing to go the extra mile for their company,” 71 percent said they were “ambitious,” and 66 percent were “eager to be promoted.” Moreover, these responses were comparable and sometimes higher than their straight and nontransgender respondents.⁵¹

nondiscrimination policy that included sexual orientation.⁵² Even fewer (7 percent) said moral or religious beliefs deterred them from including gender identity in their nondiscrimination policy. More often, these businesses said they did not have these policies because they did not have any gay or transgender employees.⁵³ In fact, many of these businesses said that if they did hire such employees, they would likely institute gay- and transgender-inclusive nondiscrimination policies, as well as offer equal health benefits to those employees and their families.

Lessons learned

Most big businesses and most small businesses recognize that discrimination is a distraction from optimal and efficient business operations. Businesses small and large acknowledge that gay- and transgender-friendly workplace policies make good business sense. Most have implemented a range of policies aimed at making the workplace a fairer and more inclusive space for gay and transgender employees and most have done so at little to no cost. In fact these businesses realize that policies that level the playing field for gay and transgender employees yield numerous cost savings and financial benefits. In the following section, we look at how these policies help businesses become more profitable and gain a crucial advantage over the competition.

Best practices

Companies will gain a competitive edge when they actively signal to their employees their commitment to fairness in the workplace and foster a safe and welcoming corporate culture for all. This is true for both businesses large and small. Specifically, companies can leverage gay- and transgender-inclusive policies to promote both fairness and profitability.

A fair and inclusive workplace gives companies a competitive edge in the following areas:

- Recruitment and retention
- Productivity and job performance
- Consumer and supplier markets
- Litigation



Recruiting and retaining the best and the brightest

Recruiting and retaining the best and the brightest employees is crucial to establishing a solid financial framework for any company looking to turn a profit. This is why America's largest and most successful companies cast a wide net when recruiting potential employees and why they actively work to retain qualified and skilled employees once they are hired. It is also why those same companies take proactive steps to create an inclusive and welcoming corporate culture that appeals to all employees, including those that are gay and transgender.

In terms of recruitment adopting nondiscrimination policies that include sexual orientation and gender identity is a critical first step to ensure that nobody is automatically disqualified for employment because they are gay or transgender. Making potential recruits aware of this policy on job applications and other recruitment materials will signal a company's commitment to hiring the most qualified employees regardless of sexual orientation or gender identity.

Employers should further train their hiring staff and make them aware of potential biases in the hiring process.

Taking similar steps internally will also ensure existing employees remain with their current employer. It is important for employers to foster a welcoming and inclusive corporate culture, making it known that discrimination against gay and transgender people will not be tolerated in the workplace. Incorporating gay- and transgender-specific issues in diversity training regimens and human resource guidelines are crucial aspects of creating this culture.

Taking these and other commonsense steps will maximize an employer's ability to recruit and retain the best and brightest the market has to offer. In fact businesses that actively welcome gay and transgender employees are rewarded by experiencing an increase in applications from qualified gay and transgender professionals who tend to actively look for gay- and transgender-friendly employers. Further, companies that institute these policy changes report higher levels of retention and lower levels of turnover among gay and transgender employees, avoiding the gamut of turnover-related costs when gay and transgender individuals are forced out of a job.

This is why companies such as General Electric have taken proactive steps to ensure discrimination plays no role in the recruitment process, including discrimination against gay and transgender candidates: "Having an environment in which fair employment practices are implemented and executed helps GE compete for and attract a high quality and increasingly diverse workforce."⁵⁴

Three workplace policies in particular are especially effective at recruiting and retaining qualified gay and transgender employees:

- Equal and inclusive health insurance benefits
- Gay- and transgender-inclusive nondiscrimination policies
- Diverse working environment that includes gay and transgender employees

Equal work, equal benefits

Employee benefits are a crucial component of employee compensation. Benefits can include retirement savings benefits, dental and vision insurance, employee memberships and discounts, and relocation assistance, among many other possible workplace benefits. Benefits packages comprised 31 percent of total



IBM

"Our goal is to assemble the most talented workforce in our industry, and to use the skills of that diverse team to respond to the needs of our clients. The contributions that are made by GLBT [gay, lesbian, bisexual, and transgender] IBMers accrue directly to our bottom line and ensure the success of our business."

Ted Childs, vice president,
global workforce diversity





GENERAL ELECTRIC

"It's very important for us to have an inclusive culture where everyone feels comfortable that they can get any job when they walk through the door and people can prosper in this company...that's been true about gender and about race and it's going to be true in the future about gay and lesbian rights."

Jeffrey Immelt, former chairman and chief executive of GE, on offering domestic partner benefits to gay and lesbian employees

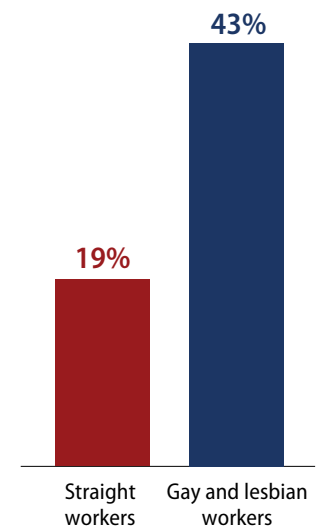
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compensation for workers in the private sector in December 2011. The most important benefit an employer can offer its employees in terms of compensation is health insurance benefits for employees and their family members. Health insurance benefits usually account for more than any other benefit offered.⁵⁵

Employer-sponsored health insurance benefits become all the more important considering the high costs of privately purchased health insurance. Employer-sponsored health insurance is generally cheaper than privately purchased health insurance. In 2007 the average deductible for a family plan in the individual market was \$2,753, more than twice the average deductible of a comparable plan purchased through an employer. Moreover, employer-sponsored insurance and privately purchased health insurance rarely offer comparable coverage.⁵⁶

Health insurance benefits are an important component of employment compensation to all workers, but they are especially important to gay and transgender employees. In fact offering employees health insurance benefits for their same-sex partners and other dependents is one of the most important ways a company can effectively recruit and retain qualified gay employees. Compared to 19 percent of straight workers, 43 percent of gay and lesbian workers said they would have stayed with their former employer had they been offered better benefits.⁵⁷ A similar study found that half of gay and transgender employees who left their employer due to unfairness reported that if their employer had offered more or better benefits, they would have remained.⁵⁸ And yet another study found that 7 out of 10 workers said their benefits package was the reason they joined their company, and 8 out of 10 said their benefits package was the reason they remained with their current employer.⁵⁹

Better benefits =
Better retention



Compared to 19 percent of straight workers, **43 percent** of gay and lesbian workers said they would have stayed with their former employer had they been offered better benefits.



LOCKHEED MARTIN CORP.

“We felt this [extending domestic partner benefits to its employees] was a good business decision that will contribute to our success in the future. We want to attract and retain talented employees.” Megan Meriman, Lockheed Martin spokesperson



In addition to equal health benefits for same-sex couples, many businesses recognize that offering transgender-inclusive health insurance plans is increasingly necessary to attract and retain talent. These plans have proven to be cost-effective for employers seeking to ensure a welcoming and hospitable workplace that attracts the best and brightest individuals.

Businesses themselves recognize that offering equivalent and inclusive health insurance benefits to gay and transgender employees and their families is key to optimal recruitment and retention. A 2005 Hewitt Associates study of businesses found that the primary reason they offered health insurance benefits to gay employees and their families was to attract and retain employees.⁶⁰ Additionally, over the past decade the number of businesses offering equal health insurance benefits for gay employees and their eligible dependents has increased every year, representing a growing recognition that equal health benefits are necessary to recruit the best and the brightest.⁶¹

Nondiscrimination policies

Employment protections based on sexual orientation or gender identity send a strong message to gay and transgender job seekers. If a transgender engineer goes to fill out an application for employment and sees “gender identity” among the list of protected categories in the employer’s equal employment opportunity policy, that job seeker is more likely to submit an application and contribute to the pool of applicants from which the employer selects. Alternatively when companies do not have gender identity among their list of protected categories, the same engineer is

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GENERAL MOTORS CORP.

“General Motors is proud to be a part of this ever-growing group of businesses that recognize that nondiscrimination policies and practices help attract and retain talented employees.”

[Rod Gillum, vice president for corporate responsibility and diversity](#)

TB GI SO

less likely to submit an application knowing that his or her transgender status is not subject to the same employment protections as others.

Survey after survey of gay and transgender workers tells us that inclusive nondiscrimination policies are crucial to attracting qualified gay and transgender workers. Sixty-seven percent of gay and transgender employees say that it is extremely or very important to work for a company that has nondiscrimination policies that include sexual orientation. Only 49 percent of straight and nontransgender people thought similarly.⁶² The presence or absence of these nondiscrimination policies also impacts an employer’s ability to retain qualified employees. Gay and lesbian professionals and managers, for example, cite workplace unfairness as the only reason they left their employer almost twice as often as heterosexual Caucasian men.⁶³

It also appears that the best places to work are those that value a work environment free of discrimination. Every single company on *Fortune* magazine’s list of the “100 Best Companies to Work For” includes sexual orientation in their nondiscrimination policy.⁶⁴ More than half of these companies include gender identity in their nondiscrimination policy.⁶⁵ These companies realize that prohibiting discrimination against gay and transgender workers is a vital component of attracting and keeping top talent in the marketplace.

Diversity

Diversity is an important business strategy for any business looking to enhance profit margins. A diverse workforce breeds innovation and creativity and promotes effective problem solving among groups of employees. (see “Capitalizing on diversity”) Additionally, having a diverse workforce throughout a company’s ranks also helps attract the best and brightest employees, and this is certainly true

Every single company on *Fortune* magazine’s list of the “100 Best Companies to Work For” includes sexual orientation in their nondiscrimination policy. More than half of these companies include gender identity in their nondiscrimination policy.

for gay and transgender employees. More so than their straight and nontransgender counterparts, gay and transgender employees value diversity when looking for a job or deciding to remain with an employer:

- Eighty-one percent of gay and transgender workers say that it is important that they work for a company that promotes and develops senior managers who come from diverse backgrounds compared to 61 percent of straight and nontransgender workers.⁶⁶
- Seventy-nine percent of gay and transgender workers say that it is important that they work for a company whose senior executives welcome, hire, and encourage a diverse workforce compared to 66 percent of straight and nontransgender workers.⁶⁷

Capitalizing on diversity

Diversity is a core business strategy, and gay and transgender workers are an increasing and important part of that strategy. Diversity enables employers to bring together workers from different backgrounds, each equipped with a unique set of skills and experiences that help them contribute on the job. Moreover, having a diverse workforce unleashes a host of positive outcomes that benefit businesses' bottom lines.

Heterogeneous workplaces are better able to adapt, problem-solve, and innovate compared to homogenous workplaces.⁶⁸ By hiring and maintaining a diverse workforce, studies show that businesses can also capitalize on a more productive and creative workforce that encourages collaboration and teamwork rather than stasis on the job.⁶⁹

Having employees from a variety of backgrounds will also give businesses new opportunities to appeal to an increasingly diverse consumer market. Similarly, a diverse workforce yields more opportunities in the supply chain. One study out of the University of Vancouver, for example, found that more inclusive and diverse businesses have less difficulty finding cost-efficient suppliers in the market.

According to David Austin, chief diversity officer at AIG:

[Diversity] is crucial. Without diversity, we don't have innovation. ... you look at companies who have people from different backgrounds and you come up with different solutions. Whether you are increasing diversity of your employees, [or] your products, or your services, or your clients, or your suppliers, making sure that you have new and creative ideas is what's important. There's a huge business case. Of course, and I know we all agree, diversity is the right thing to do, but there is a huge business case for diversity at the corporation.⁷⁰

Gay and transgender individuals bring unique experiences to the table that help contribute to unique innovative solutions to complex business problems. American urban studies theorist Richard Florida argues that gay and transgender individuals make up a large part of the "creative class," a fast-growing and highly educated group whose members place high value on individuality, creativity, and difference of opinion. Florida has found that growth in this segment of the workforce is associated with an increase in corporate profits and economic growth.⁷¹ Companies will realize significant financial gains from fostering a diverse workforce that includes gay and transgender workers at all levels of employment.

- Forty-seven percent of gay and transgender workers say that it is important that they work for a company that supports community nonprofit organizations that represent the diversity of the workforce compared to 35 percent of straight and nontransgender workers.⁷²

To attract the best and the brightest gay and transgender employees, employers should actively seek a diverse workforce and promote a diversity of experiences and backgrounds in the workplace.



Optimizing workplace productivity and job performance

Finding, hiring, and retaining the best and the brightest remains a key priority for businesses seeking to maximize profit margins. In addition to achieving optimal recruitment and retention levels, employers have another incentive to implement gay- and transgender-friendly workplace policies throughout their company—enhancing worker productivity and job performance.

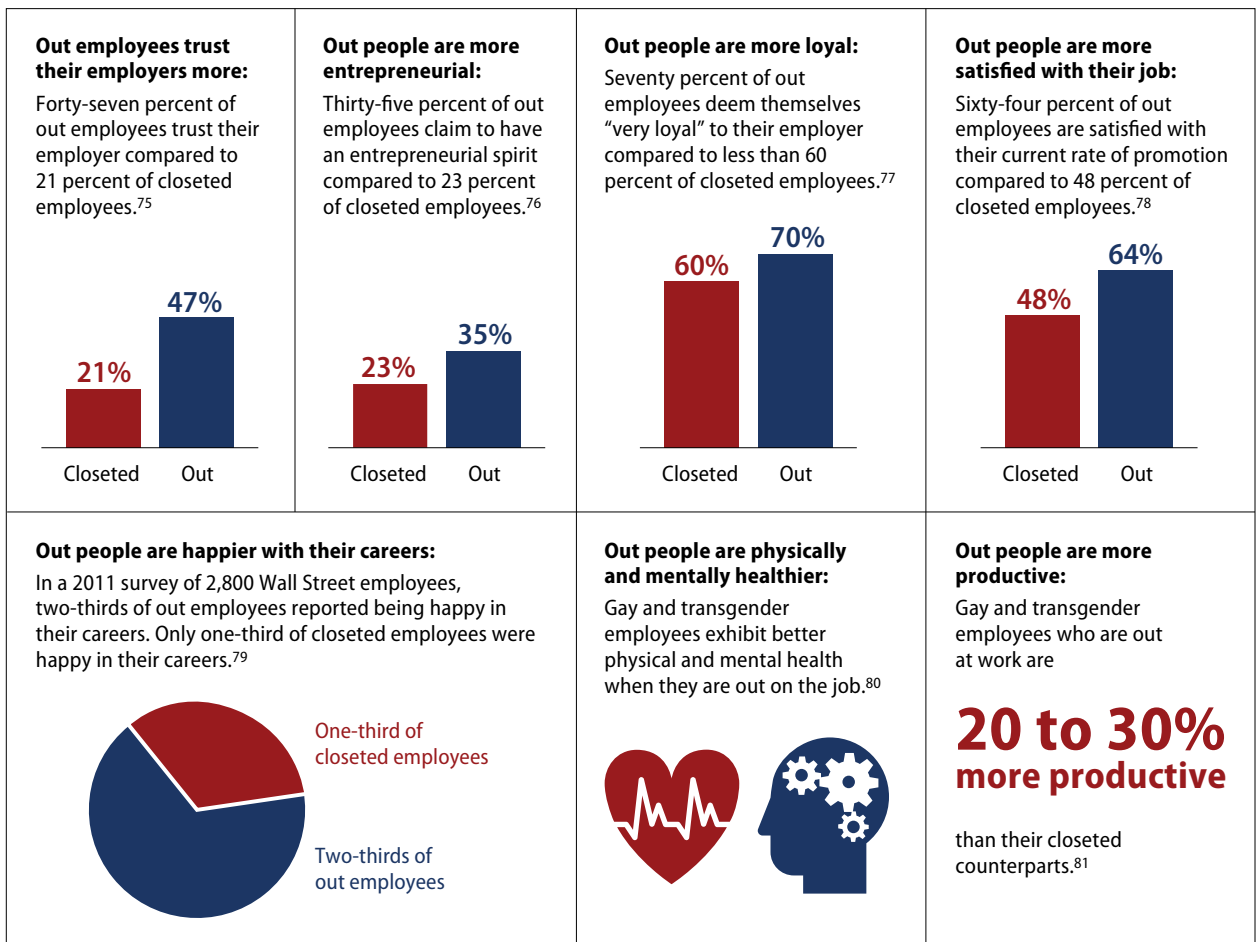
Employees who feel secure on the job and valued in the workplace are better able to fully engage themselves with their work. These employees report higher productivity levels, increased job satisfaction, higher attendance rates, and a stronger commitment to their career compared to employees who fear discrimination in the workplace.⁷³

To optimize the productivity of their workforce, employers must therefore proactively implement policies that make their workers feel valued and secure in the workplace to fully capitalize on their human resources. Small—but important—policy changes can send strong signals to gay and transgender employees as well as to the rest of the workforce that accomplish this goal. Including sexual orientation and gender identity into existing equal employment opportunity programs, for example, will clearly indicate that discrimination and harassment against gay and transgender employees will not be tolerated. Ensuring gay employees and their family members have equal access to health insurance benefits will further demonstrate an employer's commitment to a safe and inclusive workplace for all. And verifying that employer-sponsored health plans are transgender inclusive will boost employee health and make the workplace a more transgender-friendly environment, all while being cost effective.

Policy changes such as these make a dramatic difference in gay and transgender employees' performance on the job. More specifically, businesses can unleash the full potential of their gay and transgender employees when those employees feel

comfortable enough to talk freely and openly about their sexual orientation or gender identity should they choose to do so.

According to the Center for Work-Life Policy, there are business consequences “for those hiding their sexual orientation. ... they are more likely to feel that they are stalled [and] more likely to distrust the organization. And they are more likely to feel isolated.”⁷⁴ The center’s study finds that as a consequence, such workers are less productive and more likely to leave the company. Alternatively, employers will get the most out of their employees when they are out to their coworkers and supervisors. Being able to acknowledge one’s sexual orientation is beneficial in the following ways:



Trusting, entrepreneurial, satisfied, happy, healthy, and productive are all positive and profit-yielding qualities that employers seek in their employees. For gay and transgender employees, it is easy to understand why being out on the job would

increase these positive qualities. These employees can freely talk about that trip they recently took with their partner rather than their “friend.” They can have a picture of their family on display in their cubicle rather than keeping it tucked away in a drawer. Most importantly, they can work in a climate where they are free to talk about their personal lives instead of constantly censoring themselves out of fear of unfairness and discrimination.

But while many gay and transgender employees are out on the job, others choose to not disclose their sexual orientation or gender identity to most, if any, of their colleagues. Approximately 51 percent of gay and transgender employees hide their identity to most at work,⁸² with 28 percent not open to anyone with whom they work. Only 27 percent of gay and transgender employees are open to all of their colleagues.⁸³ These statistics match similar estimates by the Center for Work-Life Policy, which found that 52 percent of gay and transgender employees are out on the job, and 48 percent conceal their identity on the job.⁸⁴

Given the host of positive attributes associated with gay and transgender employees that are open about their sexual orientation and gender identity, employers can and should take steps to create welcoming and inclusive workplace climates for all employees. These steps include gay- and transgender-inclusive nondiscrimination policies and equal health care benefits for gay employees and their family members. These workplace policies will encourage more gay and transgender employees to come out of the closet, maximize per-capita productivity, and optimize profit margins as a result. Companies that have not instituted gay- and transgender-friendly workplace policies, however, will fail to reap the financial rewards of a motivated and productive workforce.

Inclusiveness increases overall job performance

Some argue that openly gay and transgender employees will actually result in a less hospitable work environment by making straight and nontransgender employees feel uncomfortable in the workplace, thereby undermining overall morale and performance on the job. Surveys, social experiments, and real-life examples from the business world show this is undisputedly false. When gay and transgender employees work in environments where they do not have to hide their sexual orientation and gender identity from their coworkers, everybody’s productivity is enhanced, including straight and nontransgender colleagues.

Surveys consistently show that straight and nontransgender workers simply do not care if they are working side by side with a gay or transgender individual.

MORGAN STANLEY

“By empowering our people and prospective employees to bring their full selves to the table, we leverage differences to drive best-in-class business results and enhance the development of our talented professionals. Our proud commitment to LGBT [lesbian, gay, bisexual and transgender] diversity fully incorporates each of these foundational Morgan Stanley principles.”

[Jeffrey Siminoff,](#)
[global head of diversity](#)
[and inclusion](#)



Ninety-three percent of straight adults indicated in one survey that they would react positively or neutrally if a coworker told them they were gay or lesbian. Only 8 percent said they would react negatively.⁸⁵ Considering the strong support among young adults for gay and transgender individuals, comfort around gay and transgender employees is likely to increase over time, and discomfort is likely to decrease. The argument that straight workers would feel uncomfortable working with gay and transgender employees simply does not have merit and is in fact blatantly false.

Additionally, two studies recently published in the *Journal of Experimental Social Psychology* link poorer job performance with uncertainty about a coworker's sexual orientation. These twin studies paired straight males with male partners who were either explicitly gay or whose sexual orientation was more ambiguous. Experimenters at the University of California, Los Angeles, then asked each pair to complete a task that required a high degree of interaction between the two partners. The researchers found overall pairs performed significantly better when the straight participants were aware of their partner's sexual orientation and did significantly worse when there was ambiguity. These two studies strongly suggest that job performance is enhanced for both gay and straight individuals when working in an inclusive and open atmosphere.⁸⁶



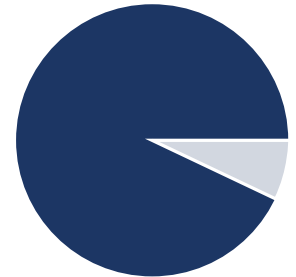
Attracting new consumer and supplier markets

Recruiting talented gay and transgender employees, retaining those employees, and ensuring they are performing at optimal levels enhances profitability and diminishes unnecessary costs associated with employment discrimination. These labor-supply factors provide companies with strong financial incentives to cultivate a welcoming and inclusive culture for their gay and transgender employees. Additionally, consumer-demand factors further provide companies with financial incentives to institute gay- and transgender-friendly policies in the workplace.

Gay and transgender consumer clout

The gay and transgender consumer market wields a cumulative spending power of nearly \$1 trillion per year in the United States. Tapping into this consumer market has proven extremely profitable, not just because gay and transgender consumers have significant aggregate buying power but also because they are an especially brand-loyal cohort of consumers. Gay and transgender consumers, for example, are 25 percent more likely than straight and nontransgender consumers to stick with a brand even when its price increases.⁸⁷ They are also 33 percent more likely to ask for brands by name rather than a generic good (“Nike” versus “running shoe”).⁸⁸

Everybody favors fairness



Ninety-three percent of straight adults indicated in one survey that they would react positively or neutrally if a coworker told them they were gay or lesbian.

Brand loyalty ensures a consistent stream of revenues from consumers who remain committed to specific products. This is why companies invest millions of dollars in marketing campaigns attempting to secure brand-loyal customers. Additionally, studies show that brand-loyal customers are more likely to buy larger quantities of goods and stick with brands even given a price increase.⁸⁹ Companies reap significant financial rewards from gay and transgender consumers given their brand commitment.

To appeal to this brand-loyal group of consumers, companies must ensure that they have gay and transgender employees to appeal to gay and transgender consumers. This means enacting gay- and transgender-inclusive nondiscrimination policies and enforcing those policies on a day-to-day basis. Prohibiting discrimination and actively ensuring gay and transgender representation at all levels of employment will help businesses appeal to and attract this economically powerful consumer market. Similarly, this will better enable businesses to appeal to the most cost-effective business partners in their supply chain.

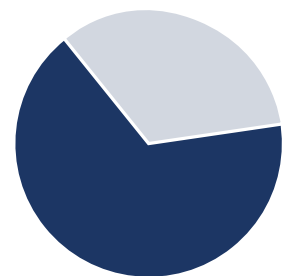
Gay and transgender consumer behavior

Gay and transgender consumers also make purchasing decisions based on how companies engage the gay and transgender community and treat gay and transgender employees. Gay and transgender adults report that they would be very or somewhat likely to remain loyal to a brand they believed to be friendly and supportive to the gay and transgender community. Sixty-six percent of gay and transgender adults said they would purchase goods from businesses friendly to their community even when less friendly companies offer lower prices or are more convenient.⁹⁰

Additionally, 74 percent of gay and transgender adults say that they are likely to support companies that support gay and transgender causes or nonprofits. Of that 74 percent, 41 percent say they are extremely or very likely to patronize these companies. Further, 23 percent of gay and transgender adults report switching products because a competing company openly supported gay- and transgender-related causes.⁹¹

An even more important factor than supporting gay- and transgender-related causes is providing an equal and supportive workplace environment for gay and transgender employees. Eighty-seven percent of gay and transgender adults say that they are likely to buy from brands that provide equal benefits to their employees, including those that are gay or transgender. Of that 87 percent, 49 percent of gay and transgender adults said that they are extremely likely or very likely to consider buying from these companies.⁹²

Gay and Transgender buying power



Sixty-six percent of gay and transgender adults said they would purchase goods from businesses friendly to their community even when less friendly companies offer lower prices or are more convenient.

Gay and transgender policies at the federal government

As the largest employer in the United States, the federal government has led the way in ensuring a fair and equitable workplace for gay and transgender employees.

In 1998, President Clinton issued an executive order barring discrimination in federal employment based on sexual orientation. President Obama further enhanced the federal government's ability to recruit the best and the brightest when he prohibited discrimination against transgender workers in 2010.⁹³ These were two crucial steps that signaled to gay and transgender workers as well as to all Americans that taxpayer dollars would not be used to discriminate against qualified employees.

Unfortunately, discriminatory laws like the so-called "Defense of Marriage Act" (DOMA) prevent the federal government from offering the full-range of employment benefits to gay employees, specifically health insurance benefits for same-sex partners or spouses. Nevertheless, President Obama has leveraged his authority to extend other benefits to gay and transgender federal employees and their families where permissible by law. These benefits include child care services, relocation expenses, and other family assistance services.⁹⁴ Our government understands that in order to secure the best and most qualified talent, it must treat all of its employees—gay or straight, transgender or not—equally and fairly in the workplace.

Marketing to gay and transgender consumers

Businesses can tap into the powerful gay and transgender consumer market through targeted advertising to the community. Gay and transgender individuals are especially responsive to gay- and transgender-specific marketing campaigns. In 2011 47 percent of gay and transgender adults said they were more likely to switch to a company that uses advertising addressed to "a gay audience with gay imagery and people and speaks to me as a gay person." This is compared to 40 percent who agreed with this statement when asked in 2007.⁹⁵ Moreover, nearly 4 out of 10 gay and transgender individuals prefer to purchase products from businesses that advertise in gay and transgender media markets.⁹⁶



Avoiding costly litigation

Businesses that prohibit discrimination against their gay and transgender employees will realize significant cost savings by insulating themselves from potential discrimination litigation. As mentioned earlier litigation is time consuming and costly. Moreover, it is easily avoidable. By instituting gay- and transgender-inclusive nondiscrimination policies, companies can signal to their entire workforce that discrimination will not be tolerated. More importantly, companies must vigorously maintain and enforce those policies to fully mitigate the risk of litigation. This includes incorporating gay and transgender issues into existing human resources and diversity guidelines, as well as responding immediately to reports of workplace discrimination and harassment based on someone's sexual orientation or gender identity.

Conclusion

In today's economy gay and transgender discrimination in the workplace is more than a distraction—it is costly. Ensuring that everyone be given a fair shot at making a living in this country regardless of race, color, ethnicity, age, sex, national origin, religion, disability status, sexual orientation, and gender identity is an inviolate principle.

Yet discrimination threatens the economic security and emotional wellbeing for far too many gay and transgender workers and their families, and the damage doesn't end there. For businesses, discrimination limits a company's ability to recruit and retain high-quality workers, as well as diminishes the overall productive capacity of their workforce. For our economy as a whole, discrimination based on sexual orientation and gender identity prevents the aggregate labor market from unleashing its full potential, restraining overall economic growth at a time when our economy is slowly recovering from one of the worst recessions in U.S. history.

More than ever we need to optimize our human capital to remove inefficiencies like discrimination from the market to bolster economic growth. America's economic crisis is aggravated when employers allow personal prejudice to trump their businesses' financial interests. Businesses large and small simply cannot discriminate against gay and transgender workers and at the same time maximize profits and outperform the competition.

To make our economy stronger and more efficient, state and federal lawmakers should enact the necessary policy reforms to combat discrimination in the workplace against gay and transgender workers. And for their part businesses themselves should take the commonsense steps necessary to ensuring employees are judged based on their capabilities and skills and not on characteristics irrelevant to job performance. Leveling the playing field for gay and transgender employees will make businesses more competitive and more profitable.

And ultimately, it is the right thing to do.

About the author

Crosby Burns is a Research Associate for the LGBT Research and Communications Project at the Center for American Progress in Washington, D.C. Burns has helped develop CAP's strategic policy and communications agenda to advance equality and fairness for LGBT Americans through congressional and administrative action. He has led CAP's efforts to combat discrimination based on sexual orientation and gender identity by advocating for laws and policies that extend legal employment protections to the gay and transgender workforce. While at CAP, Burns has documented discrepancies in the higher education financial aid system that impact gay and transgender applicants for financial aid, as well as applicants with same-sex parents. Burns also has monitored the "Don't Ask, Don't Tell" repeal process to ensure a swift and efficient implementation of repeal.

Prior to joining CAP, Burns worked at the U.S. Department of Justice, where he helped investigate mergers and acquisitions in the telecommunications and media markets. He holds a B.A. in political science and psychology from the University of California, Berkeley. His work has been covered in *The New York Times*, *The Hill*, *the Chronicle of Higher Education* and *Inside Higher Education*, and will soon be published in the *Journal of Homosexuality* and the Harvard Kennedy School's *LGBTQ Policy Journal*.

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The Center for American Progress is a nonpartisan research and educational institute dedicated to promoting a strong, just, and free America that ensures opportunity for all. We believe that Americans are bound together by a common commitment to these values and we aspire to ensure that our national policies reflect these values. We work to find progressive and pragmatic solutions to significant domestic and international problems and develop policy proposals that foster a government that is “of the people, by the people, and for the people.”

Center for American Progress



Discrimination and dollars

Gay and transgender employment discrimination imposes significant financial harm on businesses, introducing inefficiencies and costs that cut into profits and undermine businesses' bottom lines.

ECONOMIC COSTS OF DISCRIMINATION



Recruitment

When employers hire individuals based on job-irrelevant characteristics such as sexual orientation and gender identity, businesses are left with a substandard workforce that diminishes their ability to generate healthy profits.



Retention

Discrimination needlessly forces out otherwise qualified gay and transgender individuals from employment, introducing significant turnover related costs to replace the departing employee — costs that could have instead been spent on primary business operations.



Job performance and productivity

Discrimination and hostility toward gay and transgender workers represents an unnecessary distraction that prevents them from performing their core functions on the job.



Marketing to consumers

When companies discriminate and allow unfairness to go unchecked in the workplace, they risk alienating the gay and transgender consumer market, a market that wields a cumulative spending power of nearly \$1 trillion.



Litigation

Workplace discrimination exposes business to potentially costly lawsuits, especially in states that have outlawed gay and transgender workplace discrimination.

Retention costs



ONE IN FOUR INDIVIDUALS who experienced unfairness on the job say their experience strongly discourages them from recommending their employer to other potential employees.

Turnover-related costs



HOURLY WORKER:
Costs between \$5,000 and \$10,000 to replace a departing worker.

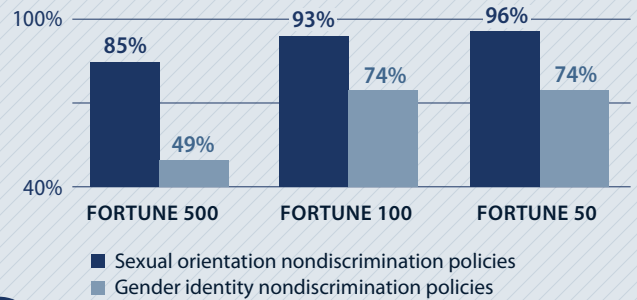


EXECUTIVE MAKING \$100,000 SALARY:
Costs between \$75,000 and \$211,000 to replace a departing worker.

VS

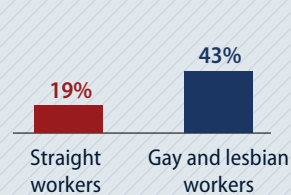
FINANCIAL BENEFITS OF FAIRNESS

COMPANIES THAT DON'T PROTECT AND SUPPORT GAY AND TRANSGENDER WORKERS ARE INCREASINGLY OUT OF STEP WITH MOST OF CORPORATE AMERICA:



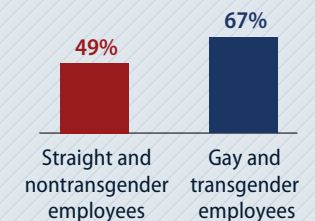
EVERY SINGLE COMPANY on *Fortune* magazine's list of the "100 Best Companies to Work For" includes sexual orientation in their nondiscrimination policy. **MORE THAN HALF** of these companies include gender identity.

Better benefits = Better retention



Compared to 19 percent of straight workers, **43 PERCENT** of gay and lesbian workers said they would have stayed with their former employer had they been offered better benefits.

Nondiscrimination policies are important



SIXTY-SEVEN PERCENT of gay and transgender employees say that it is important to work for a company that has nondiscrimination policies. Only 49 percent of straight and nontransgender individuals thought similarly.

Fair policies promote job performance



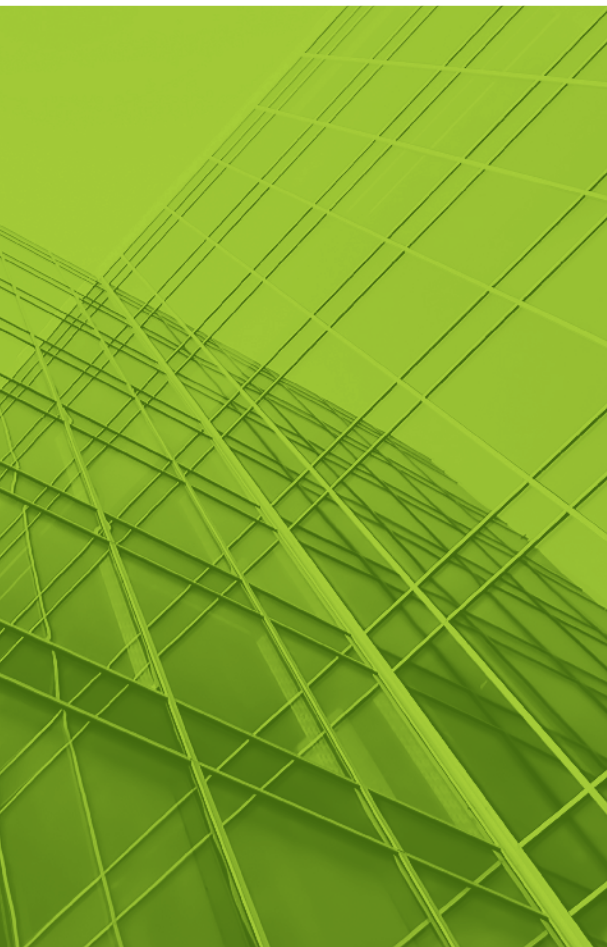
WHEN GAY AND TRANSGENDER PEOPLE ARE WELCOME ON THE JOB, they are more productive, trusting, loyal, entrepreneurial, and satisfied with their career. They are also physically and mentally healthier.

CORPORATE EQUALITY INDEX 2012



HUMAN
RIGHTS
CAMPAIGN
FOUNDATION

Rating American Workplaces on Lesbian,
Gay, Bisexual and Transgender Equality



99%
PROHIBIT
DISCRIMINATION
BASED ON
SEXUAL
ORIENTATION

80%
PROHIBIT
DISCRIMINATION
BASED ON
GENDER
IDENTITY

89%
OFFER
DOMESTIC
PARTNER
HEALTH
INSURANCE

33%
OFFER
TRANSGENDER-
INCLUSIVE
HEALTH CARE
COVERAGE PLAN

66%
COMPETENCY
TRAINING,
RESOURCES OR
ACCOUNTABILITY
MEASURES

83%
LGBT EMPLOYEE
RESOURCE
GROUP OR
DIVERSITY
COUNCIL

81%
ENGAGE IN
A PUBLIC
COMMITMENT
TO THE LGBT
COMMUNITY

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CORPORATE EQUALITY INDEX 2012

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2002 2003 2004 2005 2006 2007 2008 2009 2010 2011

The Human Rights Campaign Foundation's Corporate Equality Index is celebrating its 10th anniversary, capping a decade of remarkable progress. Since 2002, the HRC Foundation's work with the CEI has transformed workplace policies in many of the nation's major corporations, allowing lesbian, gay, bisexual and transgender employees to work productively and free of discrimination.

New ground was broken in 2002 when the HRC Foundation embarked on a strategy to change the lives of LGBT employees by creating an index that would assess how corporate America was treating LGBT employees. The trail that was blazed together with corporate partners has shone across boardrooms and on factory floors throughout the United States and beyond – demonstrating where successful business is being done, LGBT equality has become the norm.

By 2011, as the direct result of the collaborative partnerships the HRC Foundation has fostered with businesses across the country, that number ratcheted up to 337 major businesses – representing employers of nearly nine million U.S. workers – who earned a 100 percent rating and the coveted “Best Places to Work for LGBT Equality” designation.

Three years ago, the HRC Foundation launched on an ambitious project to raise the bar on a set of key CEI rating criteria so that a 100 percent score would reflect the best in class practices of LGBT inclusion in the workplace.

This year's CEI tells a powerful story of American businesses working to meet that higher bar. **A remarkable 190 businesses succeeded in scoring 100 percent.** This rating reflects equal health care coverage for all LGBT employees and their families, including full parity for domestic partner benefits not only in basic medical coverage, but in dependent care, retirement and other benefits that affect families' financial and medical well-being. The 100 percent rating signifies groundbreaking coverage for medically necessary care of transgender individuals – a community that has historically been categorically denied medical coverage.

This year's CEI also rated businesses' demonstrated commitment to a robust LGBT organizational competency program that enhances an inclusive work environment, a public commitment to the LGBT community in the form of philanthropy, support for LGBT equality under the law, supplier diversity and other efforts aimed at broadly engaging with our community.

LGBT people are an integral part of the American workforce and, similarly, the benefits and protections of employment are crucial to our community as we continue to work for full inclusion. This report represents huge strides for LGBT people. I hope you find it as hopeful and inspiring as I do and that it can be used to improve your own workplace.

I want to thank the many people, organizations and individuals who have had the courage and perseverance that has fueled the decade of progress reflected in our 10th CEI report.

Sincerely,



Joe Solmonese, President
Human Rights Campaign Foundation



Executive Summary

Corporate Equality Index by the Numbers: A Decade of Progress

The past decade of the Corporate Equality Index represents enormous change in the ways corporate America has prioritized the protection, recruitment and retention of LGBT employees. The largest and most successful U.S. businesses have proven – across industry and geography – that LGBT workplace equality is good for business.

In the first year of the CEI a decade ago, 13 businesses achieved a top score of 100 percent.

Now, in this first year of businesses being evaluated by the New CEI criteria, 190 businesses achieved a top rating of 100 percent.

In its debut year in which 319 participants were rated, the CEI noted that most of the largest U.S. employers fell within the middle of the ratings bell curve: workplace protections on the basis of sexual orientation, domestic partner health care benefits and some internal inclusion practices were becoming more common but transgender inclusion lagged.

Serving as a road map for businesses trying to earn a perfect rating, the CEI report enumerated the best practices for ideal employers among the LGBT community. Now in its 10th year, the CEI has moved the needle of change for previously average-rated employers, with a majority of the 636 participating employers this year ranking above 80 percent.

The CEI paved the way for early industry leaders in LGBT workplace inclusion to inspire rapid change among competitors. In the 2006 CEI, the HRC Foundation surveyed the American Lawyer 200, a listing of the 200 largest law firms in the country, for the first time, bringing participation from seven firms to 29. Over 130 of the top 200 law firms now participate in the CEI, and the opportunity for firms to rank as best in class for LGBT workplace inclusion drove them to become the most represented industry among the 100 percent-rated participants, with 55 law firms reaching this top tier in 2012.

Year after year, participants have successfully used the CEI guideposts and HRC Foundation staff as resources to push themselves towards the gold standards captured by the CEI criteria. The CEI standards have most dramatically shifted the way the largest U.S. businesses have incorporated transgender protections and benefits in the workplace. In 2002, only 5 percent of participants included “gender identity” in their non-discrimination policy. Today, 80 percent of participants have implementing this basic, yet crucial, protection for employees.

Fortune 500	2002	2006	2012
Sexual Orientation in Non-Discrimination Policy	61%	88%	86%
Gender Identity in Non-Discrimination Policy	3%	25%	50%

Even among non-participants, the CEI has helped create market norms where LGBT workplace equality is essential to staying relevant among competitors. The evolution of workplace protections among the Fortune 500 in the past decade reflects the progress seen among participating companies in the CEI, further demonstrating the improved landscape in which LGBT employees now work.

Making the Grade
(Raw Numbers)
Score Range

● 2002
● 2012

100



85-95



70-80



55-65



40-50



25-35



10-20



0-5



100% by Industry

	2002	2012
Law Firms		55
Banking and Financial Services	1	22
Consulting and Business Services		14
Retail and Consumer Products	1	14
Food, Beverages and Groceries		12
Insurance		7
Health care	1	6
Manufacturing		6
Computer Hardware and Office Equipment	4	5
Hotels, Resorts and Casinos		5
Pharmaceuticals		5
Computer Software		4
Energy and Utilities		4
Automotive		3
Chemicals and Biotechnology		3
Computer and Data Services		3
Internet Services and Retailing		3
Telecommunications	1	3
Aerospace and Defense		2
Airlines	1	2
Apparel, Fashion, Textiles, Dept. Stores	1	2
Entertainment and Electronic Media		2
High-Tech/Photo/Science Equip.	2	2
Home Furnishing		1
Mail and Freight Delivery		1
Mining and Metals		1
Miscellaneous		1
Oil and Gas		1
Transportation and Travel	1	1

Progress at the Fortune-Ranked Companies

This year marked the sixth time the Fortune 1000 list of the largest publicly traded companies was invited to take part in the Corporate Equality Index survey. The Fortune 500 list has been invited each year since 2002.

A record 277 of the Fortune 500-ranked businesses have official CEI ratings based on submitted surveys (as compared to

263 last year), with an average rating of 78. Eighty-eight of the Fortune 500-ranked businesses achieved a 100 percent rating, with ten of the top 20 Fortune-ranked businesses at this top score.

Eighty-six percent of the Fortune 500 include “sexual orientation” in their non-discrimination policies and 50 percent include “gender identity.” The majority of the total Fortune 500 – 60 percent – offer equivalent medical benefits between spouses and partners and 19 percent offer transgender-inclusive health care benefits, including surgical procedures.

Ten of the top 20 Fortune-ranked companies received 100% ratings	Fortune1000	2012 CEI Score
Wal-Mart Stores Inc.	1	60
Exxon Mobil Corp.	2	-25
Chevron Corp.	3	100
General Electric Co.	4	60
Bank of America Corp.	5	100
ConocoPhillips	6	55
AT&T Inc.	7	100
Ford Motor Co.	8	100
JPMorgan Chase & Co.	9	100
Hewlett-Packard Co.	10	100
Berkshire Hathaway Inc.	11	15
Citigroup Inc.	12	100
Verizon Communications Inc.	13	20
McKesson Corp.	14	60
General Motors Co.	15	80
AIG	16	85
Cardinal Health Inc.	17	100
CVS Caremark Corp.	18	75
Wells Fargo & Co.	19	100
International Business Machines Corp. (IBM)	20	100

Businesses Commitment to LGBT Employees	All Fortune 500	Fortune 500 Participants	Fortune 500 Non-Responders
Sexual Orientation in Non-Discrimination Policy	86%	98%	70%
Gender Identity in Non-Discrimination Policy	50%	77%	14%
Domestic Partner Health Benefits	60%	95%	15%
Transgender-Inclusive Benefits	19%	34%	0%
Organizational Competency Practices	36%	64%	0%
Public Commitment to the LGBT Community	46%	82%	0%
Average Score	50	78	13

2012 Corporate Equality Index Rating System and Methodology

Launched a decade ago, the HRC Foundation Corporate Equality Index has served as a road map and progress report for major U.S. businesses' adoption of inclusive policies, practices and benefits for lesbian, gay, bisexual and transgender employees.

In addition to growing the number of highly-rated employers, the CEI has seen success in the reach of the survey. **The number of employers rated from the first CEI to the present has expanded from 319 to 636**, encompassing all major industry sectors and geographic regions of the U.S.

In just under a decade, the CEI has become the foremost benchmark for businesses to gauge their level of LGBT workplace inclusion against competitors.

What Businesses Are Rated

The largest and most successful U.S. employers are invited to participate in the CEI and are identified through the following lists:

- **Fortune magazine's 1,000 largest publicly traded businesses (2010 Fortune 1000)** and
- **American Lawyer magazine's top 200 revenue-grossing law firms (2010 AmLaw 200).**

Additionally, any private-sector, for-profit employer with 500 or more full-time U.S. employees can request to participate.

How Ratings Are Used

The CEI is the primary source of data for two key HRC Foundation resources aimed at LGBT and allied consumers, employees, shareholders and prospective employees. They are:



- **HRC Foundation Employer Search**, a free online database of thousands of private and public sector U.S. employers available at www.hrc.org/employersearch.
- **Buying for Workplace Equality 2012**, a consumer-oriented guide based on CEI ratings, available at www.hrc.org/buyersguide. Coinciding with the start of the winter holiday and shopping season, the guide is distributed via print, online and smartphone applications to thousands of LGBT consumers – estimated to have a cumulative spending power of \$743 billion, according to Witeck-Combs market research. This accessible reference has given over 1 million consumers easy access to the CEI ratings corresponding to recognizable consumer brands. ▶

'BEST PLACES TO WORK'

Businesses that achieve a rating of 100 percent in this report are recognized as "Best Places to Work for LGBT Equality" and are welcome to use this distinction in their recruitment and marketing efforts.



LGBT consumers are estimated to have a cumulative spending power of \$743 billion

Witeck-Combs



The Evolution of the Criteria

The HRC Foundation is committed to maintaining a rigorous, fair, attainable and transparent CEI rating system. Apart from the survey process itself, HRC Foundation staff work year-round to develop tools for employers to meet the criteria through online resources and direct consultation. Resources for each of the criteria are available at www.hrc.org/workplace.

The HRC Foundation continually examines the criteria and gathers input to guide the future of the criteria. Changes to the CEI criteria are necessary to account for:

1. **The changing landscape of legal protections for LGBT employees and their families, both federally and from state to state, and**
2. **Emerging best practices to meet the needs of LGBT employees and ensure that LGBT employees are treated fairly in the workplace.**

The HRC Foundation is committed to providing at least 12 months' advance notice of any criteria changes.

Criteria Evolution Timeline

2002

The first CEI rated employers strictly on seven criteria which remain the basis for today's scoring system. The original criteria were guided in part by the Equality Principles, 10 touch points for businesses demonstrating their commitment to equal treatment of employees, consumers and investors, irrespective of their sexual orientation and gender identity or expression.

2004

The HRC Foundation released the second version of the criteria, with greater weight given to comprehensive domestic partner benefits and to transgender-inclusive health care coverage options. **These criteria went into effect in 2006 and remained in effect through 2010** (for the CEI 2011 report).

2009

The HRC Foundation announced the third version of the criteria, with comprehensive requirements for partner benefits, transgender-inclusive benefits, organizational competency on LGBT issues and employers' public commitment to equality for the broader LGBT community. **These criteria went into effect in 2011** (for the CEI 2012 report).



New Criteria

There were **four main objectives of the criteria** changes effective for this year's 2012 CEI:

- **Provide equal benefits for same-sex partners and spouses**
- **End benefits discrimination for transgender employees and dependents**
- **Demonstrate firm-wide organizational competency on LGBT issues**
- **Demonstrate firm-wide public commitment to the LGBT community**

The **yellow** text below indicates new or revised criteria effective in this CEI 2012 report.

Criteria 1	Equal employment opportunity policy includes:	
	a. Sexual orientation	15 points
	b. Gender identity or expression	15 points

Criteria 2	Employment benefits	
	a. Equivalent spousal and partner benefits	15 points
	<ul style="list-style-type: none"> ● Equivalent medical benefits <ul style="list-style-type: none"> ○ Includes parity between employees with different-sex spouses and same-sex partners or spouses in the provision of the following benefits: <i>COBRA; dental; vision; legal dependent coverage</i> 	
	b. Other “soft” benefits – includes parity between employees with different-sex spouses and same-sex partners or spouses in the provision of the following benefits: <i>bereavement leave; employer-provided supplemental life insurance for a partner; relocation/travel assistance; adoption assistance; qualified joint and survivor annuity for partners; qualified pre-retirement survivor annuity for partners; cash balance; rollover and hardship options; retiree health care benefits; and employee discounts</i>	10 points
	c. Transgender-inclusive health insurance coverage	10 points
	Equal health coverage for transgender individuals without exclusion for medically necessary care <ul style="list-style-type: none"> ● Insurance contract explicitly affirms coverage and contains no blanket exclusions for coverage. ● Insurance contract and/or policy documentation is based on the World Professional Association for Transgender Health (WPATH) Standards of Care 	

New Criteria continues on next two pages ►

- Plan documentation must be readily available to employees and must clearly communicate inclusive insurance options to employees and their eligible dependents.
- Benefits available to other employees must extend to transgender individuals. The following benefits should all extend to transgender individuals, including for services related to gender transition (e.g., medically necessary services related to sex affirmation/ reassignment):
 - Short-term medical leave
 - Mental health benefits
 - Pharmaceutical coverage (e.g., for hormone replacement therapies)
 - Coverage for medical visits or laboratory services
 - Coverage for reconstructive surgical procedures related to sex reassignment
 - Coverage of routine, chronic or urgent non-transition services
 - Plan language ensuring “adequacy of network” or access to specialists should extend to transition-related care (including provisions for travel or other expense reimbursements)
- Dollar maximums on this area of coverage must meet or exceed \$75,000.

To secure full credit for benefits criteria, each benefit must be available to all benefits-eligible U.S. employees. In areas where more than one health insurance plan is available, at least one inclusive plan must be available.

Criteria 3**Organizational LGBT competency****a. Competency training, resources or accountability measures****10 points**

Businesses must demonstrate a firm-wide, sustained and accountable commitment to diversity and cultural competency, including at least three of the following elements:

- New hire training clearly states that the nondiscrimination policy includes sexual orientation and gender identity and provides definitions or scenarios illustrating the policy for each
- Supervisors undergo training that includes sexual orientation and gender identity as discrete topics (may be part of a broader training), and provides definitions or scenarios illustrating the policy for each
- Integration of sexual orientation and gender identity in professional development, skills-based or other leadership training that includes elements of diversity and/or cultural competency
- Senior management/executive performance measures include LGBT diversity metrics
- Gender transition guidelines with supportive restroom/ facilities, dress code and documentation guidance
- Anonymous employee engagement or climate surveys conducted on an annual or biennial basis allow employees the option to identify as LGBT
- Data collection forms that include employee race, ethnicity, gender, military and disability status – typically recorded as part of employee records – include optional questions on sexual orientation and gender identity

b. Employee group –or– Diversity council**10 points**

Criteria 4 Public commitment**15 points**

LGBT-specific efforts, including **at least three of the following: recruiting, supplier diversity, marketing or advertising, philanthropy or public support for LGBT equality under the law.** Businesses must demonstrate ongoing LGBT-specific engagement that extends across the firm, including at least three of the following:

- LGBT employee recruitment efforts
- Supplier diversity program with demonstrated effort to include certified LGBT suppliers
- Marketing or advertising to LGBT consumers (e.g., advertising with LGBT content, advertising in LGBT media or sponsoring LGBT organizations and events)
- Philanthropic support of at least one LGBT organization or event (e.g., financial, in-kind or pro bono support)
- Demonstrated public support for LGBT equality under the law through local, state or federal legislation or initiatives

Criteria 5 Responsible citizenship**-25 points**

No known activity that would undermine LGBT equality

- Employers will have 25 points deducted from their score for a large-scale official or public anti-LGBT blemish on their recent records. Scores on this criterion are based on information that has come to the HRC Foundation's attention related to topics including but not limited to: undue influence by a significant shareholder calculated to undermine a business' employment policies or practices related to its LGBT employees; directing corporate charitable contributions to organizations whose primary mission includes advocacy against LGBT equality; opposing shareholder resolutions reasonably aimed at encouraging the adoption of inclusive workplace policies; revoking inclusive LGBT policies or practices; or engaging in proven practices that are contrary to the business's written LGBT employment policies

If at any time after losing points on this criterion an employer changes course and satisfies the HRC Foundation's noted concerns, it will re-evaluate the criterion for that employer. The rating change may not be reflected until the following year's CEI report, depending on the situation.

CEI 2012 Perfect Score**100 points**

Questions pertaining to these criteria were included in the CEI 2010 and 2011 surveys to help prepare participants for the changes. In addition, a preliminary 2012 scorecard was provided to participants. The CEI 2012 survey and report is the first to use the 2012 criteria.



How We Obtain the Information The Corporate Equality Index Survey

The primary source of information for the Corporate Equality Index rating each business receives is the CEI survey sent every year to previous and prospective respondents.

Invitations for the CEI 2012 survey were mailed in early June 2011 and due back at the beginning of September 2011. If a business had not previously participated in the CEI, surveys were sent to the chief executive officer or managing partner of the firm, as well as the highest-level executive responsible for human resources or diversity when it was possible to obtain their contact information. If a business had previously participated in the CEI, surveys were first sent to the individuals responsible for prior submissions.

The web-based survey included links to sample policies and other guidance on the HRC Foundation website. While many questions on the survey are required for participation in the CEI, others are informational questions that gauge trends and best practices among all businesses or particular industries. HRC Foundation staff provided additional assistance and advice throughout the process and reviewed submitted documentation for appropriate language and consistency with survey answers. Businesses were able to check their preliminary ratings as they progressed through the online survey and were invited to provide HRC Foundation staff with any additional information or updates before this report went to print.

The information required to generate CEI ratings for businesses is largely considered proprietary and is difficult to ascertain from public records alone. In addition to the self-reporting provided through the CEI survey, the HRC Foundation employs several methods to assess business practices. A team of researchers investigates and cross-checks the policies and practices of the rated businesses and the implications of those policies and practices for LGBT workers, including any connections with organizations that engage in anti-LGBT activities. Employers are not rated until all appropriate information has been gathered and verified to the extent possible.

In total, the sources used include:

- **The HRC Foundation's CEI survey;**
- **Securities and Exchange Commission filings to track connections between public companies' significant shareholders and any organizations or activities that engage in anti-LGBT activities (such connections are footnoted in this report, but do not necessarily change a business's rating);**
- **Internal Revenue Service 990 tax filings for business foundations' gifts to anti-LGBT groups;**
- **Case law and news accounts for allegations of discrimination on the basis of sexual orientation and/or gender identity or expression that have been brought against any of these businesses;**
- **Individuals or unofficial LGBT employee groups that report information to the HRC Foundation; and**
- **The HRC Foundation Workplace Project, which since 1995 has collected information on U.S. employers and today maintains the most accurate and extensive database of business policies that affect LGBT workers and their families.**

**Non-Responders:
Official and
Unofficial Ratings**

If a business was found to have a connection with an anti-LGBT organization or activity, the HRC Foundation contacted the business and provided an opportunity to respond and ensure, to the best of its ability, that no such action would occur in the future. Businesses unwilling to do so are penalized 25 points from their overall rating through Criterion 5.

The HRC Foundation may rate businesses that have not submitted a survey this year if the business had submitted a survey in previous years and the information is determined to be accurate, or if the HRC Foundation has obtained sufficient information to provide an individual rating. In both cases, the HRC Foundation notifies the business of the rating and asks for any updates or clarification.

A total of 1,737 received invitations to take part in the survey.

- Of that number, 481 submitted surveys, and **636 were officially rated**. Last year, a total of 1,567 businesses were sent invitations, 477 submitted surveys and 618 were rated.
- Thirty-six businesses participated for the first time this year, increasing the total number of rated businesses.

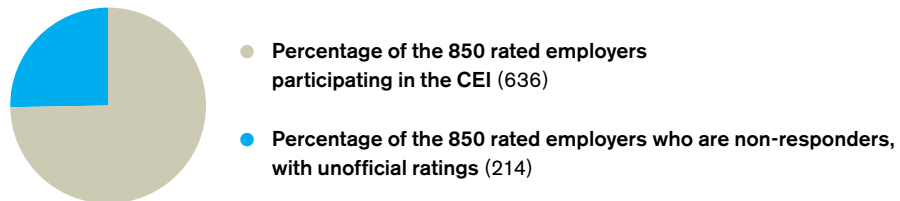
The HRC Foundation has spotlighted those Fortune 500 companies that, after repeated invitations, have never responded to the annual CEI survey. **These 214 Fortune 500 companies are noted in grey in Appendix B and C along with unofficial CEI ratings.**

HRC Foundation commends those employers that have committed to work towards equality through the public and transparent process of the CEI survey and we invite these 214 companies to do the same.

In total, the CEI 2012 officially rates **277** Fortune 500 businesses, **65** Fortune 1000 businesses, **134** AmLaw 200 firms and **160** additional major businesses.

An additional **214** Fortune 500 businesses have unofficial ratings, bringing the total to **850** rated businesses.

Findings in the following sections are based on the **636 officially rated businesses.**

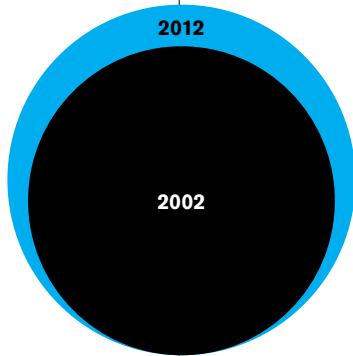


A Note About Ratings

This being the first year of the new criteria evaluation system, all ratings are listed as current without a listing of previous years' rankings to better convey the progress achieved under the new standard rather than a comparison to former years' activities.

Findings





99%

**Sexual Orientation
in Non-Discrimination Policy**

92%

Non-Discrimination Policies

Currently federal law bars workplace discrimination on the basis of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability and genetic information. There are no federal laws barring workplace discrimination on the basis of sexual orientation and gender identity.

Some states have passed laws and ordinances to establish workplace protections for lesbian, gay, bisexual and transgender employees, **but it remains legal in 29 states to discriminate against job applicants and employees because of their sexual orientation, and in 34 states because of their gender identity.**

Despite this patchwork of state laws, private employers have implemented fully inclusive non-discrimination policies at rates that are leaps and bounds ahead of lawmakers.

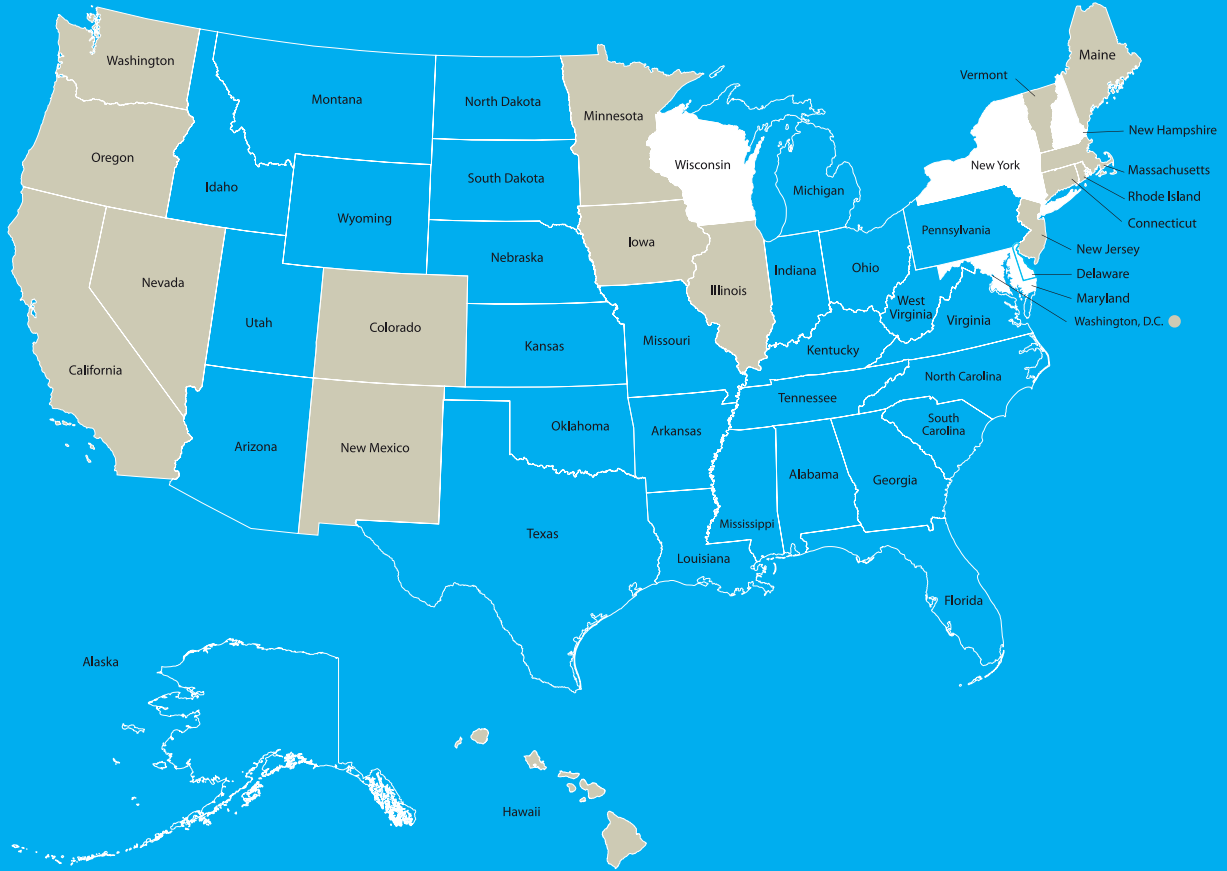
Sexual Orientation

Criterion 1a

**BUSINESSES THAT PROHIBIT DISCRIMINATION
BASED ON SEXUAL ORIENTATION**

99%

**of CEI-rated employers provide employment protections
on the basis of sexual orientation.**



Statewide Employment Laws & Policies

- **States that prohibit discrimination based on sexual orientation and gender identity (16 states and the District of Columbia)** California (1992, 2003), Colorado (2007), Connecticut (1991, 2011) District of Columbia (1977, 2006), Hawaii (2011), Illinois (2006), Iowa (2007), Maine (2005), Massachusetts (1989, 2011), Minnesota (1993), New Jersey (1992, 2007), New Mexico (2003), Nevada (1999, 2011), Oregon (Jan. 2008), Rhode Island (1995, 2001), Vermont (1991, 2007) and Washington (2006)

- **States that prohibit discrimination based on sexual orientation (21 states and the District of Columbia)** In addition to the states above: Delaware (2009), Maryland (2001), New Hampshire (1998), New York (2003) and Wisconsin (1982)

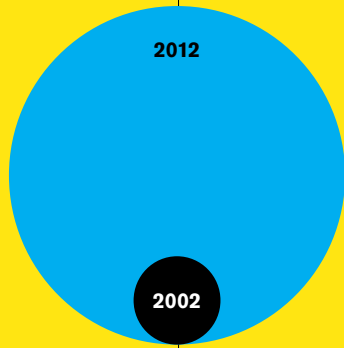
Gender Identity

Criterion 1b **BUSINESSES THAT PROHIBIT DISCRIMINATION
BASED ON GENDER IDENTITY**

80% of CEI-rated employers provide employment protections on the basis of gender identity or expression – the highest figure to date.

The proportion of employers offering these protections has increased dramatically since the first CEI 2002 when just 5 percent of rated businesses included gender identity in their non-discrimination policies. Now eight in ten rated businesses afford workplace protections on the basis of gender identity.





80%

**Gender Identity
in Non-Discrimination Policy**

5%



Health Insurance Benefits

Aside from actual wages paid, health insurance benefits accounts for roughly 20 percent of employees' overall compensation. Thus, for many employees, equal benefits are an issue of equal pay for equal work.

When denied equal coverage, the cost to LGBT workers and their families is profound. The HRC Foundation rates and gives guidance on two key components of equal health insurance benefits:

- **Parity between benefits for different-sex spouses and same-sex partners and**
- **Transgender-inclusive health insurance coverage of medically necessary treatment and care.**

Partner benefits remain an overall low-cost, high-return benefit for businesses. More recently, employers have begun to comprehensively address health insurance coverage for transgender individuals, and most have experienced little to no premium increases as a result.

The HRC Foundation looks to employers to provide equal benefits to LGBT employees and their families across the complete package of benefits offered, not just basic health care coverage. The HRC Foundation does not penalize an employer if a particular benefit is not offered to any employees.

Partner Benefits

Offering partner benefits is a low-cost way for employers to remain competitive by attracting and retaining LGBT and other fair-minded employees — the majority of employers offering the benefits experience a total financial impact of less than 1 percent of total benefits cost.

The HRC Foundation provides extensive resources relating to domestic partner benefits on its website at www.hrc.org/benefits.

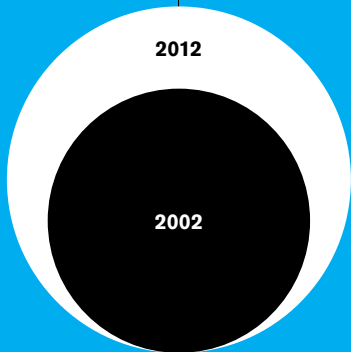
Criterion 2a **BUSINESSES THAT OFFER DOMESTIC PARTNER HEALTH INSURANCE**

89%

of CEI-rated employers provide medical and comprehensive health benefits such as dental, vision, dependent medical and Consolidated Omnibus Budget Reconciliation Act (COBRA)-equivalent continuation coverage.

COBRA/ COBRA-like Continuation Coverage

Job loss is devastating for all employees and their families. For LGBT employees and their families, the loss of a job can have a doubly devastating impact since the federal mandates under the Consolidated Omnibus Budget Reconciliation Act do not cover same-sex partners and their dependents. However, the majority of CEI-rated employers have implemented COBRA-equivalent coverage to ensure that LGBT workers and their families can still access continued health care coverage. Eighty-nine percent of CEI-rated businesses offer this benefit.



89%

Of the employers providing partner health insurance, 64% provide them to both same- and different-sex partners of employees.

Businesses Offering Domestic Partner Health Benefits

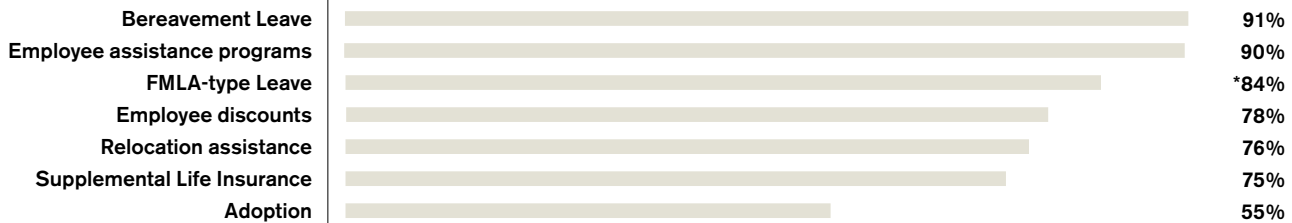
69%

Criterion 2b **BUSINESSES THAT OFFER AT LEAST THREE OTHER ‘SOFT’ BENEFITS FOR DOMESTIC PARTNERS**

59%

of CEI-rated employers have complete parity in spousal and partner access to “soft” benefits (when such benefits are offered at all) such as bereavement leave, employee assistance programs, employee discounts and relocation assistance.

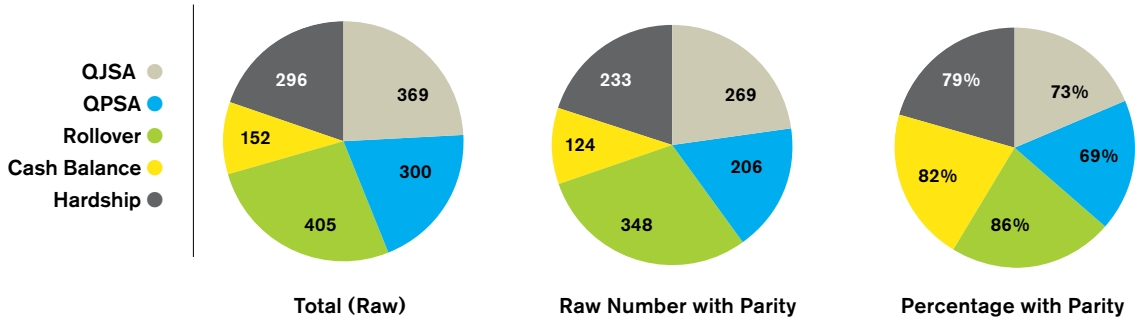
Those individual benefits with the highest rates of parity include:



*NOT SCORED DUE TO FEDERAL MANDATES.

Retirement Benefits

It is estimated that by the year 2012, 100 million Americans will be age 50 and older. The retiring population of LGBT workers is no different from their peers in wanting to ensure financial security and access of accrued benefits to their families.



Since the passage of the 2006 Pension Protection Act, the HRC Foundation ramped up its educational efforts to ensure CEI-rated employers both understood and followed the changes that went into effect under this law.

The PPA allows non-spouse beneficiaries, including employees' partners, to roll their inherited retirement benefits directly to an individual retirement account or annuity (an "IRA"). The Worker, Retiree and Employer Recovery Act of 2008 contained technical corrections to the PPA – as a result, all qualifying retirement plans were required to implement the non-spouse rollover provision as of Jan. 1, 2010. The PPA also allows for hardship withdrawals from a retirement plan for any designated beneficiary of the participant's plan, such as a domestic partner, parent or sibling.

Businesses were asked about their retirement plan distribution options. Eighty-six percent of those employers with rollover provisions have made the necessary adjustment to equally extend rollover benefits to same-sex partners, and 79 percent equally extend hardship options.

The HRC Foundation continued to survey employers with defined benefit plans (pensions) on whether they provided survivor options for domestic partners of employees, either in the form of Qualified Joint and Survivor Annuities or Qualified Pre-retirement Survivor Annuities. A total of 58 percent of participating employers indicated that they offer defined benefits to their employees; 73 percent of those with pensions offer QJSAs to their employees' domestic partners, while 69 percent offer QPSAs.

Of those employers offering a cash balance pension plan, 82 percent extend the benefit equally to spouses and partners.

Retiree Health Care Benefits

Of the CEI-rated employers offering retiree health care coverage, 44 percent of CEI-rated employers extend retiree healthcare coverage to domestic partners.

Transgender-Inclusive Benefits

Beginning in 2006, the HRC Foundation included specific rating criteria pertaining to transgender-inclusive health care coverage – those medically necessary services and treatments that are part of a gender transition as well as more general access to health care coverage for transgender individuals.

Historically, transgender people have been categorically denied health care coverage for medically necessary treatment, irrespective of whether treatment is related to sex reassignment/affirmation.

Up until the last few years, nearly all U.S. employer-based health insurance plans contained “**transgender exclusions**” that limited insurance coverage for this population. Such exclusions to coverage may appear as the following:

- **Services for, or leading to, sex transformation surgery.**
- **Gender Transformation: treatment or surgery to change gender including any direct or indirect complications or aftereffects thereof.**
- **Expenses for, or related to, sex change surgery or to any treatment of gender identity disorders.**
- **Transsexual surgery including medical or psychological counseling and hormonal therapy in preparation for, or subsequent to, any such surgery.**

In addition to denying coverage of medically necessary transition care, broad exclusions such as these can result in the denial of routine, emergency or other non-transition related health care coverage and thus result in devastating financial, health and wellness burdens.

Since 2006, the HRC Foundation has asked CEI survey participants to examine their insurance policies for transgender exclusions and to ensure that at least one of five general categories of insurance coverage was available without exclusion:

- **short-term leave,**
- **counseling by a mental health professional,**
- **hormone therapy,**
- **medical visits to monitor hormone therapy and**
- **surgical procedures.**

Of the employers that met this criterion, the majority obtained credit through short-term leave

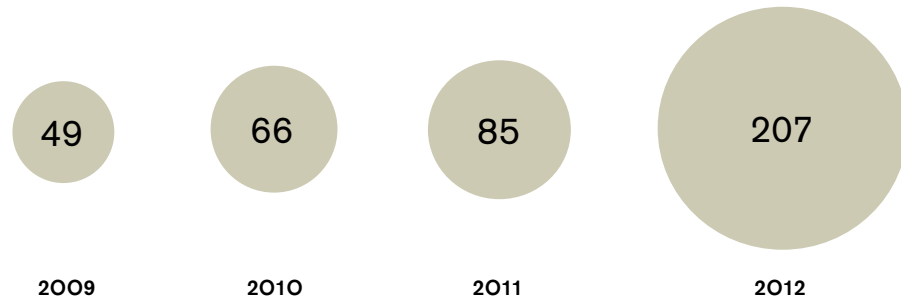
coverage – which generally does not fall under health insurance and its exclusions – or mental health counseling, which can also fall outside of the health insurance plan or, if covered by the health insurance plan, can fall outside the scope of more limited transgender exclusions.

Beginning with the 2009 CEI, HRC Foundation staff conducted more detailed reviews of plan documentation submitted for the survey in tandem with ramped up efforts to engage businesses in re-negotiating their plan contracts to eliminate these exclusions of care and explicitly affirm coverage for medically necessary care. Participants were required to provide supporting documentation showing that the coverage is available without exclusion, such as:

- **a complete list of exclusions (typically found only in the plan contract itself) that does not indicate a transgender exclusion;**
- **clinical guidelines and/or contract language indicating that treatment would be considered medically necessary (usually under circumstances resembling current or previous versions of the World Professional Association for Transgender Health - Standards of Care); or**
- **other plan documents or employee communications indicating medically necessary treatments would be covered.**

Through the intensive educational and consultative efforts to address health care and insurance disparities for the transgender population and their families, including: outreach to leading health insurance companies direct consultation with both fully and self-insured employers to modify their health care plans and collection and dissemination of cost and utilization data from leading businesses, the HRC Foundation led a five-fold increase in the number of major U.S. employers affording transgender-inclusive health care coverage, from 49 in the 2009 CEI to more than 200 in the 2012 CEI.

The number of major employers offering transgender-inclusive health care coverage



Criterion 2c **BUSINESSES THAT OFFER AT LEAST ONE TRANSGENDER-INCLUSIVE HEALTH CARE COVERAGE PLAN** ►

33% of this year's rated businesses afford transgender-inclusive health care coverage options through at least one firm-wide plan.

**Businesses
That Offer
at Least One
Transgender-
Inclusive
Health care
Coverage Plan**



- 3M Co.
- A.T. Kearney Inc.
- AAA Northern California, Nevada & Utah Insurance Exchange
- Abercrombie & Fitch Co.
- Accenture Ltd.
- Aetna Inc.
- Akin, Gump, Strauss, Hauer & Feld LLP
- Alcatel-Lucent
- Alcoa Inc.
- Alston & Bird LLP
- American Express Co.
- Ameriprise Financial Inc.
- AMR Corp. (American Airlines)
- Aon Corp.
- Apple Inc.
- AT&T Inc.
- Automatic Data Processing Inc.
- Avaya Inc.
- Avon Products Inc.
- Bain & Co. Inc.
- Baker & McKenzie LLP
- Bank of America Corp.
- Bank of New York Mellon Corp., The (BNY Mellon)
- Barclays Capital
- Barnes & Noble Inc.
- Best Buy Co. Inc.
- Bingham McCutchen LLP
- BlackRock
- Blue Cross Blue Shield of Florida Inc.
- Blue Cross Blue Shield of Minnesota
- BMO Bankcorp Inc.
- Booz Allen Hamilton Inc.
- Boston Consulting Group
- Bristol-Myers Squibb Co.
- Broadridge Financial Solutions Inc.
- Brown Rudnick LLP
- Brown-Forman Corp.
- Bryan Cave LLP
- Caesars Entertainment Corp.
- Campbell Soup Co.
- Capital One Financial Corp.
- Cardinal Health Inc.
- CareFusion Corp.
- Cargill Inc.
- Carlton Fields PA
- Chapman and Cutler LLP
- Charles Schwab Corp., The
- Chevron Corp.
- Choate, Hall & Stewart LLP
- Choice Hotels International Inc.
- Chrysler LLC
- Chubb Corp.
- Cisco Systems Inc.
- Citigroup Inc.
- Clifford Chance US LLP
- Clorox Co.
- Coca-Cola Co., The
- Comerica Inc.
- Corning Inc.
- Covington & Burling LLP
- Credit Suisse USA Inc.
- Crowell & Moring LLP
- Cummins Inc.
- Davis Wright Tremaine LLP
- Debevoise & Plimpton LLP
- Delhaize America Inc.
- Dell Inc.
- Deloitte LLP
- Deutsche Bank
- Dewey & LeBoeuf LLP
- Diageo North America
- DLA Piper
- Dorsey & Whitney LLP
- Dow Chemical Co., The
- Dykema Gossett PLLC
- E. I. du Pont de Nemours and Co. (DuPont)
- Eastman Kodak Co.
- eBay Inc.
- Edwards Angell Palmer & Dodge LLP
- Eli Lilly & Co.
- EMC Corp.
- Ernst & Young LLP
- Exelon Corp.
- Faegre & Benson LLP
- Federal Home Loan Mortgage Corp. (Freddie Mac)
- Fenwick & West LLP
- Ford Motor Co.
- Fried, Frank, Harris, Shriver & Jacobson LLP
- Gap Inc.
- Genentech Inc.
- General Mills Inc.
- General Motors Co.
- Gibson, Dunn & Crutcher LLP
- GlaxoSmithKline plc
- Goldman Sachs Group Inc., The
- Google Inc.
- Group Health Cooperative
- Group Health Permanente
- Herman Miller Inc.
- Hewlett-Packard Co.
- Hinshaw & Culbertson LLP
- Hogan Lovells US LLP
- Hyatt Hotels Corp.
- ING North America Insurance Corp.
- Intel Corp.
- International Business Machines Corp. (IBM)
- Intuit Inc.
- Jenner & Block LLP
- Johnson & Johnson
- JPMorgan Chase & Co.
- K&L Gates LLP
- Kellogg Co.
- Kimpton Hotel & Restaurant Group Inc.
- Kirkland & Ellis LLP
- KPMG LLP
- Kraft Foods Inc.
- Levi Strauss & Co.
- Limited Brands Inc.
- Littler Mendelson PC
- Lockheed Martin Corp.
- Marsh & McLennan Companies Inc.
- McDermott Will & Emery LLP
- McKinsey & Co. Inc.
- Medtronic Inc.
- MetLife Inc.
- Microsoft Corp.
- MillerCoors LLC
- Mitchell Gold + Bob Williams
- Morgan Lewis & Bockius LLP
- Morgan Stanley
- Morrison & Foerster LLP
- Nationwide
- Navigant Consulting Inc.
- Nike Inc.
- Nixon Peabody LLP
- Nordstrom Inc.
- Northern Trust Corp.
- Office Depot Inc.
- Oracle Corp.
- Orbitz Worldwide Inc.
- Orrick, Herrington & Sutcliffe LLP
- Owens Corning
- Patterson Belknap Webb & Tyler LLP
- Paul Hastings LLP
- Paul, Weiss, Rifkind, Wharton & Garrison LLP
- Pearson Inc.
- PepsiCo Inc.
- Perkins Coie LLP
- Pfizer Inc.
- PG&E Corp.
- Pillsbury Winthrop Shaw Pittman LLP
- PricewaterhouseCoopers LLP
- Prudential Financial Inc.
- Raytheon Co.
- Replacements Ltd.
- Robins, Kaplan, Miller & Ciresi LLP
- Rockwell Automation Inc.
- Ropes & Gray LLP
- Schiff Hardin LLP
- Sears Holdings Corp.
- Sedgwick, Detert, Moran & Arnold LLP
- Sempra Energy
- Seyfarth Shaw LLP
- Shearman & Sterling LLP
- Sheppard, Mullin, Richter & Hampton LLP
- Shook, Hardy & Bacon LLP
- Sidley Austin LLP
- Simpson, Thacher & Bartlett LLP
- Sodexo Inc.
- Southern California Edison Co.
- Sprint Nextel Corp.
- Squire, Sanders & Dempsey LLP
- Staples Inc.
- Starwood Hotels & Resorts Worldwide
- State Farm Group
- Sun Life Financial Inc. (U.S.)
- Supervalu Inc.
- Sutherland Asbill & Brennan LLP
- Symantec Corp.
- TD Bank, N.A.
- Teachers Insurance and Annuity Association - College Retirement Equities Fund
- Tech Data Corp.
- Thompson Coburn LLP
- Thomson Reuters
- Tiffany & Co.
- Time Warner Inc.
- TJX Companies Inc., The
- Toyota Financial Services Corp.
- Toyota Motor Sales USA Inc.
- Troutman Sanders LLP
- U.S. Bancorp
- UBS AG
- Unilever
- United Continental Holdings Inc.
- United Parcel Service Inc. (UPS)
- United Technologies Corp.
- UnitedHealth Group Inc.
- Volkswagen Group of America Inc.
- Wachtell, Lipton, Rosen & Katz LLP
- Walt Disney Co., The
- Wells Fargo & Co.
- Whirlpool Corp.
- White & Case LLP
- Wilmer Cutler Pickering Hale & Dorr LLP
- Winston & Strawn LLP
- Xerox Corp.
- Yahoo! Inc.

Organizational Competency

Criterion 3a **COMPETENCY TRAINING, RESOURCES OR ACCOUNTABILITY MEASURES**

66%

of CEI-rated employers offer a robust set of practices (at least three efforts) to support organizational LGBT diversity competency.

Diversity Training Programs

Diversity training programs are important mediums through which an employer elaborates on its expectations of fair treatment to its employees and opportunities to clearly state their individual business case for diversity and inclusion. Trainings may be in-person or web-based modules; credit is given to employers that include definitions or scenarios of how “sexual orientation” and “gender identity or expression” are included in the employer’s non-discrimination policy as discrete subjects within broader training or as standalone training.

While some employers meet this requirement with basic new-hire training, others have developed fully integrated diversity and inclusion programs that combine lessons on diversity with other trainings that are skills or policy-based. For example, a training focused on the professional development of new managers may cover a range of topics including job-related software skills, ethics training, and organizational values with respect to promoting diversity and inclusion. Fifty-one percent of this year’s rated businesses indicated that they offer such integrated training programs.

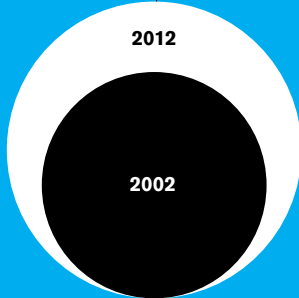
Another growing trend in organizational competency is around senior leadership performance evaluations that include diversity and inclusion efforts. Eighteen percent of CEI-rated employers allow senior leaders to submit LGBT-focused diversity efforts as part of their annual review of overall leadership on diversity and inclusion goals.

Gender Transition Guidelines

A record 208 major employers submitted gender transition guidelines – the vast majority of which were adopted from the HRC Foundation’s template guidelines (available at www.hrc.org/workplace) which are a tool for human resources and managers to understand the needs of transitioning employees along with their co-workers and/or clients.

From tips on how to have respectful and informative conversations about the topic of transitioning in the workplace to the administrative changes to one’s personnel and workplace documents, these guidelines clearly delineate responsibilities and expectations of transitioning employees, their supervisors, colleagues and other staff.





74%

Businesses with Inclusive Diversity Training

54%



Counting LGBT Employees: Optional Self-Identification Questions

Thirty-five percent of CEI participants allow employees to voluntarily disclose their sexual orientation and gender identity on anonymous surveys or confidential Human Resource records.

Unlike other diversity categories such as race and gender, employers are not required by law to collect data on the LGBT people they employ.

But, as the business maxim states: "If you can't measure it, you can't manage it."

Adding LGBT demographic questions to internal surveys allows employers to better understand where they have LGBT employees, how they perceive their work environment and their engagement levels. Depending on the intended use of the data and the survey norms of the employer, LGBT metrics may be part of anonymous employee engagement or satisfaction surveys or, in more limited instances, confidential HR surveys.

Some employers attempt to gauge their numbers of LGBT employees through employee group participation or domestic partner benefits enrollment, but these methods are inherently limited.

Many employers have begun to quantify the extent to which their LGBT-inclusion efforts have yielded positive results in terms of recruitment and retention of LGBT employees and develop proactive diversity and inclusion programming.

35% of CEI-rated employers offer employees question options to voluntarily disclose their sexual orientation and gender identity on anonymous surveys or confidential HR records.

Criterion 3b **LGBT EMPLOYEE GROUPS & DIVERSITY COUNCILS**

Having a formally recognized employee resource group (also known as an employee network groups or affinity group) for LGBT workers is a cornerstone of visible LGBT workplace inclusion.

LGBT ERGs can foster a sense of community within an employer's walls as well as provide leadership opportunities for LGBT employees to better their own work environments. In addition, the reach of many ERGs extends beyond the everyday affairs of an employer to policymaking, representing the employer at professional events and external activities, participating in prospective employee recruitment efforts, mentoring, and other retention-focused programming.

Employers usually provide these groups with a budget and access to resources such as meeting rooms and e-mail networks. The groups provide a clear line of communication between employees and management, ensuring that policies and practices have their intended effect.

LGBT ERGs empower employees as change agents, and also help to provide a sense of safety and acceptance for LGBT employees within the workplace.

Recognizing the differences in businesses rated in the CEI, Criterion 3b can also be met with an organization-wide diversity council or working group with a mission that specifically includes LGBT diversity.

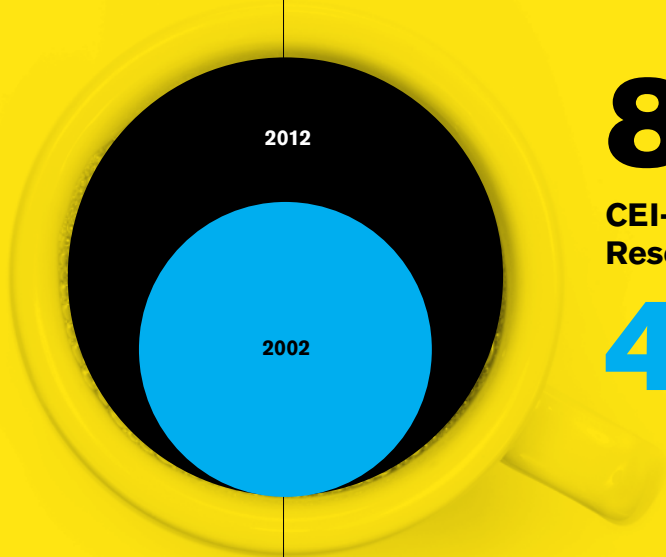
**Businesses That
Have Employer-
Supported Employee
Resource Groups
OR Firm-Wide
Diversity Councils**

83%

of CEI-rated employers have an employee resource group or diversity council that includes LGBT issues. Sixty-four percent of rated employers have employee groups, 76 percent have diversity councils and 58 percent of rated employers have both.

Employee Resource Groups' ability to change policy within an organization is often enhanced by an active executive champion for the group. Ninety-six percent of employee groups rated in the CEI are sponsored by an executive champion. A majority (53 percent) of executive champions identify as allies, while 30 percent reported being openly LGBT.

While an LGBT ERG's mission is rooted in LGBT workplace inclusion and equality, its membership is not limited to those who readily identify as LGBT. Of those companies with an officially recognized LGBT employee group, 78 percent reported being expressly for LGBT and allied employees. ERGs have embraced allies as members of the full LGBT community, as allies bring their own unique voice and vantage point to workplace equality.



83%

CEI-Rated Employers with a LGBT Employee Resource Group or Diversity Council

40%

Public Commitment

Criterion 4 **BUSINESSES THAT POSITIVELY ENGAGE THE EXTERNAL LGBT COMMUNITY**

81% of CEI-rated businesses report some form of public engagement with the LGBT community, through marketing, advertising and recruitment efforts or philanthropic contributions to LGBT organizations.

This 81 percent of participants represents at least three discreet engagement efforts per business. An additional eight percent of companies reported engaging the wider LGBT community through one or two efforts.

The CEI recognizes employers that “come out” and demonstrate their commitment to LGBT inclusion by publicly engaging with the broader LGBT community. Efforts such as positive, direct marketing and advertising, philanthropic activities, event sponsorships, legislative support and supplier diversity send a clear message to current and prospective LGBT employees that they are not only accepted by the organization, but valued.

Marketing or Advertising

Many businesses engage LGBT consumers directly through local or national marketing and advertising in LGBT media. LGBT-specific messages in general media and sponsorships of LGBT organizations or events reflect how consumer-facing businesses are vying to capture a portion of the ever-growing LGBT marketplace. For example, businesses supporting Pride celebrations are establishing connections with LGBT consumers in strategic geographic markets.

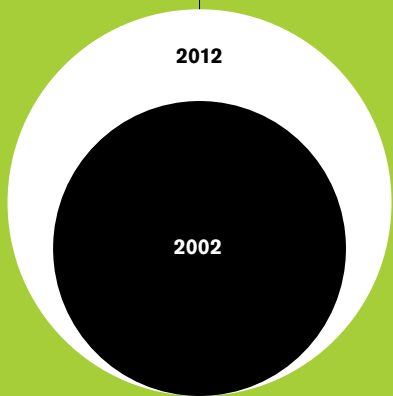
Philanthropic Support

Corporate philanthropic activities ranging from financial support to in-kind donations of products or services can bolster a business's profile in the LGBT community. Corporate giving to organizations promoting LGBT health, education or political efforts further demonstrates this commitment to broader LGBT equality. Typically, these efforts have a strategic connection to the core mission of a business, such as a law firm's pro bono legal support of organizations tasked with direct legal representation of LGBT individuals.

Recruiting Efforts

A new generation is entering into the work force with more expectations of fairness than previous cohorts. Beyond touting employment non-discrimination policies and inclusive benefits, employers are more actively recruiting LGBT workers.

Increasingly, businesses are engaged with professional recruiting events for LGBT students and professionals, such as the annual Lavender Law conference and Reaching Out MBA career expo, which each draw hundreds of graduate student attendees, corporate sponsors, and recruiters. Employers' presence at these and other events sends a clear message to potential employees that LGBT diversity is part of company culture, and that LGBT candidates are valued as the best and the brightest across industries, geographies and trades.



81%

Public Commitment for the LGBT Community

60%



This past year there was major business support for relationship recognition at the state level, as more than 40 major businesses and business leaders signed their names in support of marriage equality in New York state.

LGBT Equality Under the Law

Businesses are increasingly acting on their commitment to LGBT inclusion outside of their four walls, and into the public arena in support of pro-equality legislative efforts at the federal and state level.

More than 80 major businesses comprise both of HRC's major Business Coalitions: the Business Coalition for Benefits Tax Equity and The Business Coalition for Workplace Fairness. These two groups of leading U.S. employers have signified their support of federal legislative efforts to end discrimination of LGBT employees and treat them the same as all other workers across the country.

This past year also witnessed major business support for relationship recognition at the state level, as 40-plus major businesses and business leaders signed their names in support of marriage equality in New York state. Additionally, 70 major businesses, cities and professional associations filed an amicus brief in the Gay & Lesbian Advocates & Defenders' Defense of Marriage Act (DOMA) challenge, *Gill v. Office of Personnel Management*. The brief added a crucial business voice to the case, demonstrating how the Defense of Marriage Act is bad for business, creating administrative and financial burdens for both employer and employee.

Supplier Diversity

Supplier diversity programs ensure that the procurement process includes specific opportunities for minority-owned businesses, including women-owned, veteran-owned and, more recently, LGBT-owned businesses.

Supplier diversity initiatives have existed in the business community for at least three decades, going back to the inception of such nation wide groups as the National Association of Women Business Owners and the National Minority Business Council, both founded in the early 1970s to promote the inclusion of these under-utilized entrepreneurial groups. Furthermore, there are federal initiatives such as the Center for Veterans Enterprise that is designed to assist U.S. veterans in launching and thriving in private business. These initiatives intend to give more equitable opportunities to those would-be small business owners who are more likely to face social and practical barriers to success.

The National Gay and Lesbian Chamber of Commerce began certifying LGBT-owned small businesses in 2002, a process that requires substantiation of majority LGBT ownership in a business and verification of a business' good standing in the community.

Supplier diversity initiatives are a win-win relationship for both the LGBT-owned small businesses and the businesses that contract them. By courting LGBT-owned businesses, 25 percent of this year's rated companies and law firms demonstrated their commitment to LGBT inclusion and now reap the benefits of working with businesses in the diverse communities in which they operate.

Supplier Standards

In another show of steadfast support for the LGBT community, 56 percent of CEI participants noted that they require suppliers to prohibit discrimination based on the protections in their own inclusive non-discrimination policy. A majority of businesses are responsibly engaging suppliers and vendors to ensure that their own standards for diversity and inclusion are upheld in all business-to-business operations. Requiring suppliers' adherence to established non-discrimination policies provides an engagement opportunity for business that typically rely on other businesses for goods or services, rather than consumers, to demonstrate their overarching commitment to the LGBT community.

Going Global: LGBT Workplace Inclusion Abroad

The majority of U.S.-headquartered businesses surveyed in the CEI – 66 percent of rated employers – have operations outside of the United States, including many countries where homosexuality is criminalized or where there are no legal protections against discrimination on the basis of sexual orientation or gender identity. As in previous years CEI participants were asked about, but not scored on, their levels of LGBT inclusion within their global operations.

From the responses, the trend line is clear: Whether a business has one office in Canada or locations in 180 countries around the world, the globalization of workforces has led U.S.-based firms to make their policies, benefits and inclusion efforts more consistent across international boundaries.

Eighty-five percent of employers report that their non-discrimination policies apply across each of their global operations, and 42 percent have distinct global codes of conduct or employment standards that are inclusive of both sexual orientation and gender identity. While global policies or codes of conduct are important, individual human resource policies are often decentralized, making it critical that there be clear non-discrimination policies in every operating location.

Twenty-three percent report bolstering their non-discrimination policies with training on sexual orientation and gender identity issues in their top five locations outside of the United States.

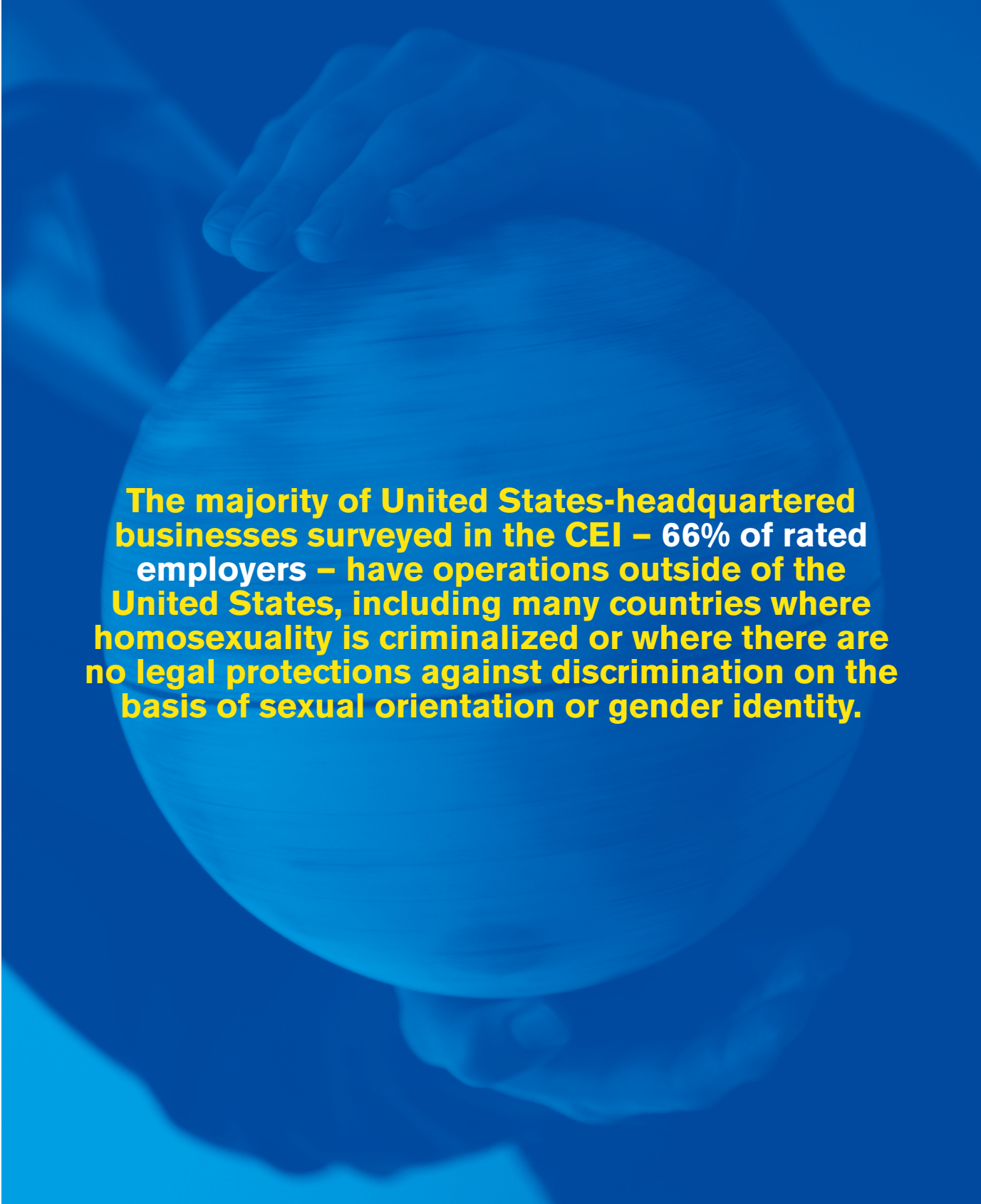
One-half of global businesses in this year's survey offer domestic partner health care benefits in all overseas locations, while transgender-inclusive health benefits are offered in all locations by only 10 percent of global companies.

In many regions, insurance providers do not yet provide either transgender-inclusive benefits or benefits to employees' same-sex partners. Companies can leverage change by negotiating for these benefits – not only for their American LGBT employees on assignment abroad, but also for their LGBT foreign national employees who may rely exclusively on local insurance products and health care systems.

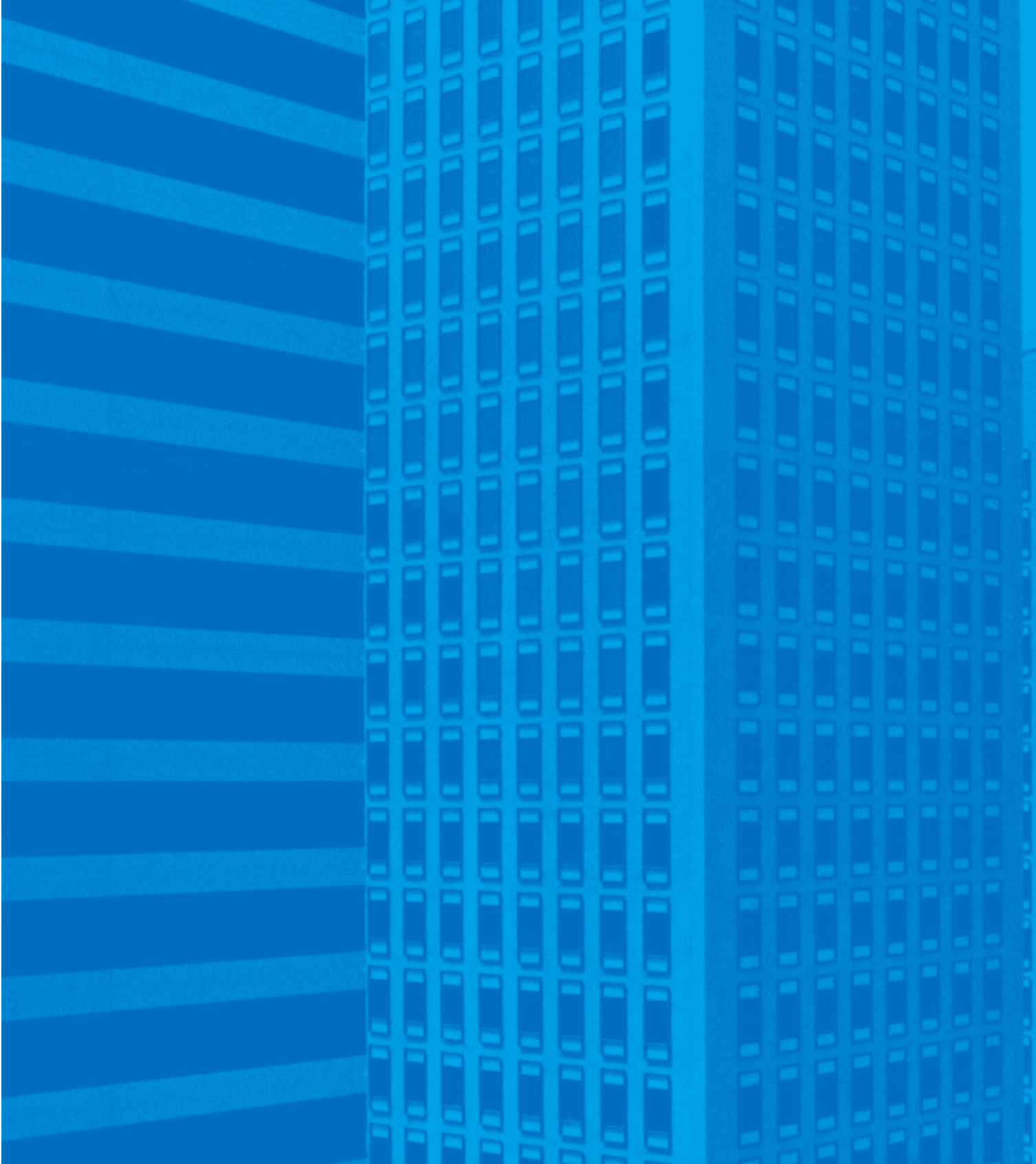
A key sign of visible LGBT inclusion and an asset for many employers is the presence of an established LGBT employee resource group. Twenty percent of responding internal businesses report such established ERGs are in place overseas and an additional 32 percent report that employees around the globe are given an opportunity to join a resource group that may be based in another location but have online or other programming.

Few companies have specific protocols in place for ensuring the safety of LGBT employees and families who are relocated to countries where local attitudes and laws make safety a matter of concern. The HRC Foundation has identified a key opportunity to educate employers on these matters via relocation guidelines aimed at: helping employers understand how LGBT employees may be affected by local laws, visa requirements for family members, or the negative consequences of refusing a posting that may not be safe for the employee due to issues related to sexual orientation or gender identity.

As more and more U.S.-based employers are operating overseas and looking to the HRC Foundation for best practices, the CEI will be leveraged as a benchmarking tool on the promotion of full LGBT workplace equality, both domestically and abroad.



The majority of United States-headquartered businesses surveyed in the CEI – 66% of rated employers – have operations outside of the United States, including many countries where homosexuality is criminalized or where there are no legal protections against discrimination on the basis of sexual orientation or gender identity.



Appendices

Appendix A

Corporate Equality Index: Employers With Ratings of 100 Percent

Corporate Equality Index Rating Criteria	1a	Prohibits Discrimination Based on Sexual Orientation (15 points)
	1b	Prohibits Discrimination Based on Gender Identity or Expression (15 points)
	2a	Offers Partner Health/Medical Insurance (15 points)
	2b	Has Parity Across Other “Soft” Benefits for Partners (10 points) (half credit for parity across some, but not all benefits)
	2c	Offers Transgender-Inclusive Health Insurance Coverage (10 points)
	3a	Firm-wide Organizational Competency Programs (10 points)
	3b	Has Employer-Supported Employee Resource Group OR Firm-Wide Diversity Council (10 points) Would Support ERG if Employees Express Interest (half credit)
	4	Positively Engages the External LGBT Community (15 points) (partial credit of 5 points given for less than 3 efforts)
	5	Responsible Citizenship Employers will have 25 points deducted from their score for a large-scale official or public anti-LGBT blemish on their recent records (-25 points)

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
3M Co.	St. Paul, MN	●	●	●	●	●	●	●	●	●	●	100	106	
A.T. Kearney Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		
AAA Northern California, Nevada & Utah Insurance Exchange	Walnut Creek, CA	●	●	●	●	●	●	●	●	●	●	100		
Abercrombie & Fitch Co.	New Albany, OH	●	●	●	●	●	●	●	●	●	●	100	651	
Accenture Ltd.	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Aetna Inc.	Hartford, CT	●	●	●	●	●	●	●	●	●	●	100	63	
Akin, Gump, Strauss, Hauer & Feld LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	100		31
Alcatel-Lucent	Murray Hill, NJ	●	●	●	●	●	●	●	●	●	●	100		
Alcoa Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	127	
Alston & Bird LLP	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100		49
American Express Co.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	88	
Ameriprise Financial Inc.	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100	288	
AMR Corp. (American Airlines)	Fort Worth, TX	●	●	●	●	●	●	●	●	●	●	100	120	
Aon Corp.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	298	
Apple Inc.	Cupertino, CA	●	●	●	●	●	●	●	●	●	●	100	56	
AT&T Inc.	Dallas, TX	●	●	●	●	●	●	●	●	●	●	100	7	
Automatic Data Processing Inc.	Roseland, NJ	●	●	●	●	●	●	●	●	●	●	100	265	
Avon Products Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	228	
Bain & Co. Inc.	Boston, MA	●	●	●	●	●	●	●	●	●	●	100		
Baker & McKenzie LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		1
Bank of America Corp.	Charlotte, NC	●	●	●	●	●	●	●	●	●	●	100	5	
Bank of New York Mellon Corp., The (BNY Mellon)	New York, NY	●	●	●	●	●	●	●	●	●	●	100	274	
Barclays Capital	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Barnes & Noble Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	372	
Best Buy Co. Inc.	Richfield, MN	●	●	●	●	●	●	●	●	●	●	100	45	
Bingham McCutchen LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	100		24
Blue Cross Blue Shield of Florida Inc.	Jacksonville, FL	●	●	●	●	●	●	●	●	●	●	100		
Blue Cross Blue Shield of Minnesota	Eagan, MN	●	●	●	●	●	●	●	●	●	●	100		
BMO Bankcorp Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		
Booz Allen Hamilton Inc.	McLean, VA	●	●	●	●	●	●	●	●	●	●	100		
Boston Consulting Group	Boston, MA	●	●	●	●	●	●	●	●	●	●	100		
Bristol-Myers Squibb Co.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	114	
Brown Rudnick LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	100		162
Brown-Forman Corp.	Louisville, KY	●	●	●	●	●	●	●	●	●	●	100	729	
Bryan Cave LLP	St. Louis, MO	●	●	●	●	●	●	●	●	●	●	100		48
Caesars Entertainment Corp.	Las Vegas, NV	●	●	●	●	●	●	●	●	●	●	100	264	
Campbell Soup Co.	Camden, NJ	●	●	●	●	●	●	●	●	●	●	100	299	
Capital One Financial Corp.	McLean, VA	●	●	●	●	●	●	●	●	●	●	100	144	
Cardinal Health Inc.	Dublin, OH	●	●	●	●	●	●	●	●	●	●	100	17	
Cargill Inc.	Wayzata, MN	●	●	●	●	●	●	●	●	●	●	100		
Carlton Fields PA	Tampa, FL	●	●	●	●	●	●	●	●	●	●	100		157
Chapman and Cutler LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		173
Charles Schwab Corp., The	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	465	
Chevron Corp.	San Ramon, CA	●	●	●	●	●	●	●	●	●	●	100	3	
Choate, Hall & Stewart LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	100		170
Choice Hotels International Inc.	Silver Spring, MD	●	●	●	●	●	●	●	●	●	●	100		
Chrysler LLC	Auburn Hills, MI	●	●	●	●	●	●	●	●	●	●	100		

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Chubb Corp.	Warren, NJ	●	●	●	●	●	●	●	●	●	●	100	176	
Cisco Systems Inc.	San Jose, CA	●	●	●	●	●	●	●	●	●	●	100	58	
Citigroup Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	12	
Clifford Chance US LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Clorox Co.	Oakland, CA	●	●	●	●	●	●	●	●	●	●	100	384	
Coca-Cola Co., The	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100	72	
Corning Inc.	Corning, NY	●	●	●	●	●	●	●	●	●	●	100	391	
Covington & Burling LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	100	44	
Credit Suisse USA Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Crowell & Moring LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	100	80	
Cummins Inc.	Columbus, IN	●	●	●	●	●	●	●	●	●	●	100	218	
Debevoise & Plimpton LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	35	
Delhaize America Inc.	Salisbury, NC	●	●	●	●	●	●	●	●	●	●	100		
Dell Inc.	Round Rock, TX	●	●	●	●	●	●	●	●	●	●	100	38	
Deloitte LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Deutsche Bank	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Dewey & LeBoeuf LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	19	
Diageo North America	Norwalk, CT	●	●	●	●	●	●	●	●	●	●	100		
DLA Piper	Baltimore, MD	●	●	●	●	●	●	●	●	●	●	100	13	
Dorsey & Whitney LLP	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100	79	
Dow Chemical Co., The	Midland, MI	●	●	●	●	●	●	●	●	●	●	100	46	
E. I. du Pont de Nemours and Co. (DuPont)	Wilmington, DE	●	●	●	●	●	●	●	●	●	●	100	86	
Eastman Kodak Co.	Rochester, NY	●	●	●	●	●	●	●	●	●	●	100	297	
eBay Inc.	San Jose, CA	●	●	●	●	●	●	●	●	●	●	100	267	
Edwards Angell Palmer & Dodge LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	100	94	
Eli Lilly & Co.	Indianapolis, IN	●	●	●	●	●	●	●	●	●	●	100	112	
EMC Corp.	Hopkinton, MA	●	●	●	●	●	●	●	●	●	●	100	166	
Ernst & Young LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Exelon Corp.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	134	
Faegre & Benson LLP	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100	95	
Federal Home Loan Mortgage Corp. (Freddie Mac)	McLean, VA	●	●	●	●	●	●	●	●	●	●	100	54	
Fenwick & West LLP	Mountain View, CA	●	●	●	●	●	●	●	●	●	●	100	136	
Ford Motor Co.	Dearborn, MI	●	●	●	●	●	●	●	●	●	●	100	8	
Fried, Frank, Harris, Shriver & Jacobson LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	65	
Gap Inc.	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	162	
Genentech Inc.	South San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100		
General Mills Inc.	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100	155	
Gibson, Dunn & Crutcher LLP	Los Angeles, CA	●	●	●	●	●	●	●	●	●	●	100	14	
GlaxoSmithKline plc	Philadelphia, PA	●	●	●	●	●	●	●	●	●	●	100		
Goldman Sachs Group Inc., The	New York, NY	●	●	●	●	●	●	●	●	●	●	100	39	
Google Inc.	Mountain View, CA	●	●	●	●	●	●	●	●	●	●	100	102	
Group Health Cooperative	Seattle, WA	●	●	●	●	●	●	●	●	●	●	100		
Herman Miller Inc.	Zeeland, MI	●	●	●	●	●	●	●	●	●	●	100	965	
Hewlett-Packard Co.	Palo Alto, CA	●	●	●	●	●	●	●	●	●	●	100	10	
Hinshaw & Culbertson LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	138	
Hogan Lovells US LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	100	23	
Hyatt Hotels Corp.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	581	
ING North America Insurance Corp.	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100		

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
International Business Machines Corp. (IBM)	Armonk, NY	●	●	●	●	●	●	●	●	●	●	100	20	
Intuit Inc.	Mountain View, CA	●	●	●	●	●	●	●	●	●	●	100	610	
Jenner & Block LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	75	
Johnson & Johnson	New Brunswick, NJ	●	●	●	●	●	●	●	●	●	●	100	33	
JPMorgan Chase & Co.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	9	
K&L Gates LLP	Pittsburgh, PA	●	●	●	●	●	●	●	●	●	●	100	12	
Kellogg Co.	Battle Creek, MI	●	●	●	●	●	●	●	●	●	●	100	184	
Kimpton Hotel & Restaurant Group Inc.	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100		
Kirkland & Ellis LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	5	
KPMG LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Kraft Foods Inc.	Northfield, IL	●	●	●	●	●	●	●	●	●	●	100	53	
Levi Strauss & Co.	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	503	
Limited Brands Inc.	Columbus, OH	●	●	●	●	●	●	●	●	●	●	100	269	
Littler Mendelson PC	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	74	
Lockheed Martin Corp.	Bethesda, MD	●	●	●	●	●	●	●	●	●	●	100	44	
Marsh & McLennan Companies Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	221	
McDermott Will & Emery LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	27	
McKinsey & Co. Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Medtronic Inc.	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100	160	
MetLife Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	51	
Microsoft Corp.	Redmond, WA	●	●	●	●	●	●	●	●	●	●	100	36	
MillerCoors LLC	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		
Mitchell Gold + Bob Williams	Taylorsville, NC	●	●	●	●	●	●	●	●	●	●	100		
Morgan Lewis & Bockius LLP	Philadelphia, PA	●	●	●	●	●	●	●	●	●	●	100	11	
Morgan Stanley	New York, NY	●	●	●	●	●	●	●	●	●	●	100	70	
Morrison & Foerster LLP	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	21	
Nationwide	Columbus, OH	●	●	●	●	●	●	●	●	●	●	100	118	
Navigant Consulting Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		
Nike Inc.	Beaverton, OR	●	●	●	●	●	●	●	●	●	●	100	124	
Nixon Peabody LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	60	
Nordstrom Inc.	Seattle, WA	●	●	●	●	●	●	●	●	●	●	100	270	
Northern Trust Corp.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	497	
Office Depot Inc.	Boca Raton, FL	●	●	●	●	●	●	●	●	●	●	100	192	
Oracle Corp.	Redwood City, CA	●	●	●	●	●	●	●	●	●	●	100	105	
Orbitz Worldwide Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		
Orrick, Herrington & Sutcliffe LLP	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	25	
Owens Corning	Toledo, OH	●	●	●	●	●	●	●	●	●	●	100	432	
Patterson Belknap Webb & Tyler LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	160	
Paul Hastings LLP	Los Angeles, CA	●	●	●	●	●	●	●	●	●	●	100	20	
Paul, Weiss, Rifkind, Wharton & Garrison LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	37	
Perkins Coie LLP	Seattle, WA	●	●	●	●	●	●	●	●	●	●	100	63	
Pfizer Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	40	
PG&E Corp.	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	173	
Pillsbury Winthrop Shaw Pittman LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	53	
PricewaterhouseCoopers LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Prudential Financial Inc.	Newark, NJ	●	●	●	●	●	●	●	●	●	●	100	65	
Raytheon Co.	Waltham, MA	●	●	●	●	●	●	●	●	●	●	100	95	
Replacements Ltd.	McLeansville, NC	●	●	●	●	●	●	●	●	●	●	100		

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Robins, Kaplan, Miller & Ciresi LLP	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100		146
Ropes & Gray LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	100		30
Schiff Hardin LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		121
Sears Holdings Corp.	Hoffman Estates, IL	●	●	●	●	●	●	●	●	●	●	100	48	
Sedgwick, Detert, Moran & Arnold LLP	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100		133
Sempra Energy	San Diego, CA	●	●	●	●	●	●	●	●	●	●	100	280	
Seyfarth Shaw LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		62
Shearman & Sterling LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		29
Sheppard, Mullin, Richter & Hampton LLP	Los Angeles, CA	●	●	●	●	●	●	●	●	●	●	100		76
Shook, Hardy & Bacon LLP	Kansas City, MO	●	●	●	●	●	●	●	●	●	●	100		82
Sidley Austin LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		6
Simpson, Thacher & Bartlett LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		22
Sodexo Inc.	Gaithersburg, MD	●	●	●	●	●	●	●	●	●	●	100		
Southern California Edison Co.	Rosemead, CA	●	●	●	●	●	●	●	●	●	●	100		
Sprint Nextel Corp.	Overland Park, KS	●	●	●	●	●	●	●	●	●	●	100	67	
Squire, Sanders & Dempsey LLP	Cleveland, OH	●	●	●	●	●	●	●	●	●	●	100		52
Staples Inc.	Framingham, MA	●	●	●	●	●	●	●	●	●	●	100		101
Starwood Hotels & Resorts Worldwide	White Plains, NY	●	●	●	●	●	●	●	●	●	●	100		438
Sun Life Financial Inc. (U.S.)	Wellesley Hills, MA	●	●	●	●	●	●	●	●	●	●	100		
Supervalu Inc.	Eden Prairie, MN	●	●	●	●	●	●	●	●	●	●	100	47	
Sutherland Asbill & Brennan LLP	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100		104
Symantec Corp.	Mountain View, CA	●	●	●	●	●	●	●	●	●	●	100		353
TD Bank, N.A.	Wilmington, DE	●	●	●	●	●	●	●	●	●	●	100		
Teachers Insurance & Annuity Association - College Retirement Equities Fund	New York, NY	●	●	●	●	●	●	●	●	●	●	100	90	
Tech Data Corp.	Clearwater, FL	●	●	●	●	●	●	●	●	●	●	100		109
Thompson Coburn LLP	St. Louis, MO	●	●	●	●	●	●	●	●	●	●	100		153
Time Warner Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100		82
TJX Companies Inc., The	Framingham, MA	●	●	●	●	●	●	●	●	●	●	100		119
Toyota Financial Services Corp.	Torrance, CA	●	●	●	●	●	●	●	●	●	●	100		
Toyota Motor Sales USA Inc.	Torrance, CA	●	●	●	●	●	●	●	●	●	●	100		
Troutman Sanders LLP	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100		72
U.S. Bancorp	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100		121
UBS AG	Stamford, CT	●	●	●	●	●	●	●	●	●	●	100		
Unilever	Englewood Cliffs, NJ	●	●	●	●	●	●	●	●	●	●	100		
United Continental Holdings Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	140	
United Parcel Service Inc. (UPS)	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100		43
United Technologies Corp.	Hartford, CT	●	●	●	●	●	●	●	●	●	●	100		37
UnitedHealth Group Inc.	Minnetonka, MN	●	●	●	●	●	●	●	●	●	●	100		21
Wachtell, Lipton, Rosen & Katz LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		43
Walt Disney Co., The	Burbank, CA	●	●	●	●	●	●	●	●	●	●	100		57
Wells Fargo & Co.	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100		19
Whirlpool Corp.	Benton Harbor, MI	●	●	●	●	●	●	●	●	●	●	100		136
White & Case LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		7
Wilmer Cutler Pickering Hale & Dorr LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	100		18
Winston & Strawn LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		33
Xerox Corp.	Norwalk, CT	●	●	●	●	●	●	●	●	●	●	100		152
Yahoo! Inc.	Sunnyvale, CA	●	●	●	●	●	●	●	●	●	●	100		343

Appendix B

Corporate Equality Index: Ratings and Criteria Breakdowns

Corporate Equality Index Rating Criteria

- 1a** Prohibits Discrimination Based on Sexual Orientation **(15 points)**
- 1b** Prohibits Discrimination Based on Gender Identity or Expression **(15 points)**
- 2a** Offers Partner Health/Medical Insurance **(15 points)**
- 2b** Has Parity Across Other “Soft” Benefits for Partners **(10 points)**
(half credit for parity across some, but not all benefits)
- 2c** Offers Transgender-Inclusive Health Insurance Coverage **(10 points)**
- 3a** Firm-wide Organizational Competency Programs **(10 points)**
- 3b** Has Employer-Supported Employee Resource Group
OR Firm-Wide Diversity Council **(10 points)**
Would Support ERG if Employees Express Interest **(half credit)**
- 4** Positively Engages the External LGBT Community **(15 points)**
(partial credit of 5 points given for less than 3 efforts)
- 5** Responsible Citizenship Employers will have 25 points deducted
from their score for a large-scale official or public anti-LGBT blemish
on their recent records **(-25 points)**

Ratings in Gray

Unofficial rating of the Fortune 500 companies that have not responded to repeated invitations to the CEI survey. These ratings are based on publicly available information as well as information submitted to HRC from unofficial LGBT employee groups or individual employees.

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
3M Co.	St. Paul, MN	●	●	●	●	●	●	●	●	●	●	100	106	
A.T. Kearney Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		
AAA Northern California, Nevada & Utah Insurance Exchange	Walnut Creek, CA	●	●	●	●	●	●	●	●	●	●	100		
Abbott Laboratories	Abbott Park, IL	●		●	▶					●	●	60	75	
Abercrombie & Fitch Co.	New Albany, OH	●	●	●	●	●	●	●	●	●	●	100	651	
AbitibiBowater Inc.	Greenville, SC											0	472	
Accenture Ltd.	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Acer Inc.	Irvine, CA	●		●	▶							35		
Adecco North America LLC	Melville, NY	●		●	●			●	●	●	●	90		
Adobe Systems Inc.	San Jose, CA	●	●	●	●			●	●	●	●	90	657	
Advance Auto Parts (Advance Holding)	Roanoke, VA	●	●									30	389	
Advanced Micro Devices Inc.	Sunnyvale, CA	●	●	●	▶			●	▶	▶		70	390	
AECOM Technology Corp.	Los Angeles, CA	●	●	●	▶			●	●	●		85	352	
AEGON USA Inc.	Cedar Rapids, IA			●	▶							20		
AES Corp., The	Arlington, VA	●										15	156	
Aetna Inc.	Hartford, CT	●	●	●	●	●	●	●	●	●	●	100	63	
Affiliated Computer Services	Dallas, TX	●		●	▶						▶	40	341	
AFLAC Inc.	Columbus, GA	●	●									30	130	
Agco	Duluth, GA	●										15	337	
Agilent Technologies Inc.	Santa Clara, CA	●	●	●	▶					●	●	75	461	
Ahold USA Inc.	Quincy, MA	●		●	▶					▶		55		
AIG	New York, NY	●	●	●	▶			●	●	●		85	16	
Air Products & Chemicals Inc.	Allentown, PA	●	●	●	●					●	●	80	273	
Airgas Inc.	Radnor, PA											0	474	
Akin, Gump, Strauss, Hauer & Feld LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	100	31	
Alaska Air Group Inc.	Seattle, WA	●	●	●	●			●	●	●	●	90	575	
Alcatel-Lucent	Murray Hill, NJ	●	●	●	●	●	●	●	●	●	●	100		
Alcoa Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	127	
Allegheny Energy Inc.	Greensburg, PA	●										15	571	
Allergan Inc.	Irvine, CA	●										15	459	
Alliant Energy Corp.	Madison, WI	●		●	▶					●	▶	50	570	
Alliant Techsystems Inc.	Minneapolis, MN	●		●	▶							35	454	
Allianz Life Insurance Co. of North America	Minneapolis, MN	●	●	●	▶					●		60		
Allscripts-Misys Health care Solutions Inc.	Chicago, IL	●			▶					▶	▶	30		
Allstate Corp., The	Northbrook, IL	●	●	●	▶			●	●	●		85	68	
Ally Financial Inc.	Detroit, MI	●										15	122	
Alston & Bird LLP	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100	49	
Altria Group Inc.	Richmond, VA	●										15	137	
Amazon.com Inc.	Seattle, WA	●	●	●	●			●	●	●	●	90	100	
AMC Entertainment Inc.	Kansas City, MO	●	●	●	●			●	●	●	●	90	740	
Ameren Corp.	St. Louis, MO	●		●	▶					●	●	60	320	
American Eagle Outfitters Inc.	Pittsburgh, PA	●	●	●	▶			●	▶	●		80	649	
American Electric Power Co. Inc.	Columbus, OH	●										15	172	
American Express Co.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	88	
American Family Insurance Group	Madison, WI	●	●		▶					▶	●	55	344	
American Financial Group	Cincinnati, OH	●										0	478	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Amerigroup Corp.	Virginia Beach, VA											0	404	
Ameriprise Financial Inc.	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100	288	
AmerisourceBergen Corp.	Chesterbrook, PA	●										15	24	
Amgen Inc.	Thousand Oaks, CA	●		●	▶					●		45	159	
AMR Corp. (American Airlines)	Fort Worth, TX	●	●	●	●	●	●	●	●	●	●	100	120	
Anadarko Petroleum	The Woodlands, TX	●										15	260	
Andrews Kurth LLP	Houston, TX	●	●	●	●			●	●	●	●	90		115
Anheuser-Busch Companies Inc.	St. Louis, MO	●	●	●	●			●	●	●	●	90		
Anixter International Inc.	Glenview, IL	●	●									30	422	
Aon Corp.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	298	
Apache Corp.	Houston, TX	●	●									30	271	
Apple Inc.	Cupertino, CA	●	●	●	●	●	●	●	●	●	●	100	56	
Applied Materials Inc.	Santa Clara, CA	●	●	●	▶			●	●	●	●	85	421	
Aramark Corp.	Philadelphia, PA	●	●	●	●			●	●	●	●	90	189	
Archer Daniels Midland Co.	Decatur, IL	●		●	▶							35	27	
Arent Fox LLP	Washington, DC	●	●	●	▶			●	●	●	●	85		124
Arnold & Porter LLP	Washington, DC	●	●	●	●			●	●	●	●	90		54
Arrow Electronics	Melville, NY	●										15	157	
ArvinMeritor Inc.	Troy, MI	●										15	450	
Ashland Inc.	Covington, KY	●										15	280	
Assurant	New York, NY	●	●	●	▶			●	▶	●	●	80	268	
Astellas Pharma US, Inc.	Deerfield, IL	●		●	▶			●	▶	▶	▶	55		
AstraZeneca PLC	Wilmington, DE	●		●	▶					●	●	60		
AT&T Inc.	Dallas, TX	●	●	●	●	●	●	●	●	●	●	100	7	
Atmos Energy Corp.	Dallas, TX	●	●									30	424	
Austin Radiological Assn.	Austin, TX	●		●	▶					▶		40		
Autoliv Inc.	Auburn Hills, MI	●	●									30	410	
Automatic Data Processing Inc.	Roseland, NJ	●	●	●	●	●	●	●	●	●	●	100	265	
AutoNation Inc.	Fort Lauderdale, FL	●										15	212	
Auto-Owners Insurance Group	Lansing, MI											0	418	
AutoZone Inc.	Memphis, TN	●										15	329	
Avaya Inc.	Basking Ridge, NJ	●	●	●	●	●				●	▶	80		
Avery Dennison	Pasadena, CA	●										15	362	
Avis Budget Group Inc.	Parsippany, NJ	●	●		▶					●	●	60	409	
Avnet Inc.	Phoenix, AZ	●		●	▶					●	▶	50	142	
Avon Products Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	228	
B J's Wholesale Club	Westborough, MA	●										15	232	
Bain & Co. Inc.	Boston, MA	●	●	●	●	●	●	●	●	●	●	100		
Baker & Daniels LLP	Indianapolis, IN	●		●	●			●	●	●	●	90		164
Baker & McKenzie LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		1
Baker Botts LLP	Houston, TX	●	●	●	●			●	●	●	●	90		45
Baker Hughes Inc.	Houston, TX	●										15	243	
Baker, Donelson, Bearman, Caldwell & Berkowitz PC	Memphis, TN	●	●	●	▶			●	●	●	●	85		114
Baldor Electric Co.	Fort Smith, AR	●			▶					▶		25		
Ball Corp.	Broomfield, CO			●	▶			●	▶	▶		40	307	
Ballard Spahr LLP	Philadelphia, PA	●	●	●	●			●	●	●		90		101

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Bank of America Corp.	Charlotte, NC	●	●	●	●	●	●	●	●	●	●	100	5	
Bank of New York Mellon Corp., The (BNY Mellon)	New York, NY	●	●	●	●	●	●	●	●	●	●	100	274	
Barclays Capital	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Barnes & Noble Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	372	
BASF Corp.	Florham Park, NJ	●	●	●	●	●	●	●	●	●	●	90		
Bausch & Lomb Inc.	Rochester, NY	●	●	●	▸	●	●	●	●	●	●	85		
Baxter International Inc.	Deerfield, IL	●	●	●	▸	●	●	●	●	●	●	60	185	
Bayer Corp.	Pittsburgh, PA	●	●	●	●	●	●	●	●	●	●	90		
BB&T Corp.	Winston-Salem, NC	●	●	●	▸	●	●	●	▸	●	●	70	217	
Becton, Dickinson and Co.	Franklin Lakes, NJ	●	●	●	●	●	●	●	●	●	●	30	312	
Bed Bath & Beyond Inc.	Union, NJ	●	●	●	●	●	●	●	●	●	●	30	314	
Berkshire Hathaway Inc.	Omaha, NE	●	●	●	●	●	●	●	●	●	●	15	11	
Best Buy Co. Inc.	Richfield, MN	●	●	●	●	●	●	●	●	●	●	100	45	
Big Lots	Columbus, OH	●	●	●	●	●	●	●	●	●	●	15	436	
Bingham McCutchen LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	100		24
Biogen Idec Inc	Cambridge, MA	●	●	●	●	●	●	●	●	●	●	15	471	
BlackRock	New York, NY	●	●	●	●	●	●	●	●	●	●	75	441	
Blockbuster Inc.	Dallas, TX	●	●	●	▸	●	●	●	●	●	●	20	500	
Blue Cross Blue Shield of Florida Inc.	Jacksonville, FL	●	●	●	●	●	●	●	●	●	●	100		
Blue Cross Blue Shield of Minnesota	Eagan, MN	●	●	●	●	●	●	●	●	●	●	100		
Blue Cross Blue Shield of North Carolina	Durham, NC	●	●	●	▸	●	●	●	●	●	●	60		
BMC Software Inc.	Houston, TX	●	●	●	●	●	●	●	●	●	●	80	872	
BMO Bankcorp Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		
BNP Paribas	New York, NY	●	●	●	▸	●	●	●	●	●	●	85		
Boehringer Ingelheim USA Corp.	Ridgefield, CT	●	●	●	●	●	●	●	●	●	●	90		
Boeing Co.	Chicago, IL	●	●	●	▸	●	●	●	●	●	●	85	28	
Bon-Ton Stores, Inc.	York, PA	●	●	●	●	●	●	●	●	●	●	90	637	
Booz Allen Hamilton Inc.	McLean, VA	●	●	●	●	●	●	●	●	●	●	100		
Boston Consulting Group	Boston, MA	●	●	●	●	●	●	●	●	●	●	100		
Boston Scientific Corp.	Natick, MA	●	●	●	●	●	●	●	●	●	●	65	279	
BP America Inc.	Houston, TX	●	●	●	▸	●	●	●	●	●	●	85		
Bracewell & Giuliani	Houston, TX	●	●	●	●	●	●	●	●	●	●	60		98
Bridgestone Americas Holding Inc.	Nashville, TN	●	●	●	▸	●	●	●	●	●	●	70		
Bright Horizons Family Solutions Inc.	Watertown, MA	●	●	●	●	●	●	●	●	●	●	90		
Brinker International Inc.	Dallas, TX	●	●	●	▸	●	●	●	●	●	●	60	551	
Bristol-Myers Squibb Co.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	114	
Broadcom Corp.	Irvine, CA	●	●	●	●	●	●	●	●	●	●	15	460	
Broadridge Financial Solutions Inc.	Lake Success, NY	●	●	●	●	●	●	●	●	●	●	90	788	
Brown Rudnick LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	100		162
Brown Shoe Company, Inc.	St. Louis, MO	●	●	●	▸	●	●	●	●	●	●	45	770	
Brown-Forman Corp.	Louisville, KY	●	●	●	●	●	●	●	●	●	●	100	729	
Bryan Cave LLP	St. Louis, MO	●	●	●	●	●	●	●	●	●	●	100		48
Burger King Corp.	Miami, FL	●	●	●	▸	●	●	●	▸	●	●	55	721	
Burlington Northern Santa Fe Corp.	Fort Worth, TX	●	●	●	●	●	●	●	▸	●	●	20	167	
C&S Wholesale Grocers Inc.	Keene, NH	●	●	●	●	●	●	●	●	●	●	30		
C. H. Robinson Worldwide	Eden Prairie, MN	●	●	●	●	●	●	●	●	●	●	15	301	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
CA Inc.	Islandia, NY	●	●	●	●				●	●		80	482	
Cablevision Systems Corp.	Bethpage, NY	●										15	292	
Cadwalader, Wickersham & Taft LLP	New York, NY	●	●	●	▶			●	●	●		85	61	
Caesars Entertainment Corp.	Las Vegas, NV	●	●	●	●	●	●	●	●	●		100	264	
Calpine Corp.	Houston, TX	●		●	▶					▶		40	338	
Cameron International Corp.	Houston, TX											0	399	
Campbell Soup Co.	Camden, NJ	●	●	●	●	●	●	●	●	●		100	299	
Canadian Imperial Bank of Commerce	New York, NY	●	●	●	▶			●	●			70		
Capgemini U.S. LLC	New York, NY	●		●	▶				●	▶		50		
Capital One Financial Corp.	McLean, VA	●	●	●	●	●	●	●	●	●		100	144	
Cardinal Health Inc.	Dublin, OH	●	●	●	●	●	●	●	●	●		100	17	
CareFusion Corp.	San Diego, CA	●	●	●	●	●			●	●		90		
Cargill Inc.	Wayzata, MN	●	●	●	●	●	●	●	●	●		100		
Carlson Companies Inc.	Minnetonka, MN	●	●	●	▶			●	●	●		85		
Carlton Fields PA	Tampa, FL	●	●	●	●	●	●	●	●	●		100	157	
CarMax Inc.	Richmond, VA	●	●	●	▶			●	●	●		85	323	
Casey's General Stores, Inc.	Ankeny, IA											0	485	
Caterpillar Inc.	Peoria, IL	●	●		▶			●	●	●		70	66	
CB Richard Ellis Group Inc.	Los Angeles, CA	●	●	●	▶			●	●	●		85	499	
CBS Corp.	New York, NY	●	●	●	●			●	●	●		90	177	
CC Media Holdings Inc. (Clear Channel)	San Antonio, TX	●	●	●	●				▶	●		75	376	
CDW Corp.	Vernon Hills, IL	●	●	●	●			●	●	●		90		
Celanese Corp.	Dallas, TX	●										15	414	
Centene Corp.	St. Louis, MO											0	486	
CenterPoint Energy Inc.	Houston, TX	●										15	275	
CenturyLink Inc.	Monroe, LA	●		●	▶					●	▶	50	423	
Cerner Corp.	North Kansas City, MO	●	●	●	▶			●	▶	▶		70	944	
CH2M HILL Companies Ltd.	Englewood, CO	●	●	●	▶			●	●	●		85	381	
Chadbourne & Parke LLP	New York, NY	●	●	●	●			●	●	●		90	96	
Chamberlin Edmonds & Associates Inc.	Atlanta, GA	●		●	▶					▶		40		
Chapman and Cutler LLP	Chicago, IL	●	●	●	●	●	●	●	●	●		100	173	
Charles Schwab Corp., The	San Francisco, CA	●	●	●	●	●	●	●	●	●		100	465	
Charter Communications	St. Louis, MO	●										15	332	
Chesapeake Energy Corp.	Oklahoma City, OK	●										15	296	
Chevron Corp.	San Ramon, CA	●	●	●	●	●	●	●	●	●		100	3	
Chipotle Mexican Grill Inc.	Denver, CO	●	●	●	●					▶	●	75		
Choate, Hall & Stewart LLP	Boston, MA	●	●	●	●	●	●	●	●	●		100	170	
Choice Hotels International Inc.	Silver Spring, MD	●	●	●	●	●	●	●	●	●		100		
Chrysler LLC	Auburn Hills, MI	●	●	●	●	●	●	●	●	●		100		
CHS Inc.	Inver Grove Heights, MN											0	91	
Chubb Corp.	Warren, NJ	●	●	●	●	●	●	●	●	●		100	176	
CIGNA Corp.	Bloomfield, CT	●	●	●	●			●	●	●		90	129	
Cisco Systems Inc.	San Jose, CA	●	●	●	●	●	●	●	●	●		100	58	
CIT Group Inc.	New York, NY	●										15	515	
Citigroup Inc.	New York, NY	●	●	●	●	●	●	●	●	●		100	12	
Classified Ventures LLC	Chicago, IL	●	●	●	●			●	●	▶		80		

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Clery, Gottlieb, Steen & Hamilton LLP	New York, NY	●	●	●	●		●	●	●			90		16
Clifford Chance US LLP	New York, NY	●	●	●	●	●	●	●	●	●		100		
Clorox Co.	Oakland, CA	●	●	●	●	●	●	●	●	●		100	384	
CMS Energy Services	Jackson, MI	●										15	350	
CNA Insurance	Chicago, IL	●	●	●	▶			●	●	●		85		
CNO Financial Group Inc.	Carmel, IN											0	475	
Coca-Cola Co., The	Atlanta, GA	●	●	●	●	●	●	●	●	●		100	72	
Coca-Cola Enterprises Inc.	Atlanta, GA	●	●	●	▶				●	●		75	113	
Colgate-Palmolive Co.	New York, NY	●	●	●	▶			●	●	●		85	151	
Comcast Corp.	Philadelphia, PA	●	●	●	●				●	●		80	59	
Comerica Inc.	Dallas, TX	●	●	●	▶	●	●	●	●	●		95	615	
Commercial Metals	Irving, TX											0	327	
Community Health Systems Inc.	Franklin, TN	●	●									30	191	
Compass Bancshares Inc. (BBVA Compass)	Birmingham, AL	●		●	▶					▶	●	55		
Compass Group USA Inc.	Charlotte, NC	●		●	▶							35		
Computer Sciences Corp. (CSC)	Falls Church, VA	●	●	●	▶			●	●	●		85	138	
Compuware Corp.	Detroit, MI	●	●	●	▶					▶	●	70		
ConAgra Foods Inc.	Omaha, NE	●	●	●	▶				●	●		75	178	
ConocoPhillips	Houston, TX	●		●	▶			●	●			55	6	
Consol Energy, Inc.	Canonsburg, PA	●										15	449	
Consolidated Edison Co.	New York, NY	●	●	●	●			●	●	●		90	175	
Constellation Energy Group Inc.	Baltimore, MD	●	●	●	●			●	●	●		90	149	
Convergys Corp.	Cincinnati, OH	●			▶				●	●		45	666	
Con-way Inc.	San Mateo, CA	●										15	483	
Cooper Tire & Rubber Co.	Findlay, OH		●		▶					▶		25	678	
Corbis Corp.	Seattle, WA	●	●	●	▶							50		
CoreLogic	Santa Ana, CA	●	●	●	●			●	●	●		90		
Core-Mark Holding Company Inc.	South San Francisco, CA											0	419	
Corning Inc.	Corning, NY	●	●	●	●	●	●	●	●	●		100	391	
Costco Wholesale Corp.	Issaquah, WA	●	●	●	●			●	●	●		90	25	
Coventry Health Care	Bethesda, MD	●										15	168	
Covington & Burling LLP	Washington, DC	●	●	●	●	●	●	●	●	●		100		44
Cox Enterprises Inc.	Atlanta, GA	●	●	●	●			●	●	●		90		
Cracker Barrel Old Country Store Inc.	Lebanon, TN	●			▶				●	▶		35	746	
Cravath, Swaine & Moore LLP	New York, NY	●	●	●	●			●	●	●		90		46
Credit Suisse USA Inc.	New York, NY	●	●	●	●	●	●	●	●	●		100		
Crowell & Moring LLP	Washington, DC	●	●	●	●	●	●	●	●	●		100		80
Crown Holdings	Philadelphia, PA	●										15	289	
CSX Corp.	Jacksonville, FL	●	●	●	▶			●	●	●		85	259	
Cummins Inc.	Columbus, IN	●	●	●	●	●	●	●	●	●		100	218	
CUNA Mutual Insurance Group	Madison, WI	●			▶				●			30	692	
CVS Caremark Corp.	Woonsocket, RI	●	●	●	▶				●	●		75	18	
Dana Holding Corp.	Maumee, OH	●										15	398	
Danaher Corp.	Washington, DC	●										15	207	
Darden Restaurants Inc.	Orlando, FL	●	●	●	●			●	●	●		90	311	
Davis Polk & Wardwell LLP	New York, NY	●	●	●	●			●	●	●		90		26

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		1a	1b	2a	2b	2c	3a	3b	4	5				
Davis Wright Tremaine LLP	Seattle, WA	●	●	●	●	●	●	●	●	●	●	75		100
DaVita Inc.	El Segundo, CA	●										15	355	
Dean Foods Co.	Dallas, TX	●		●	▶						▶	40	208	
Debevoise & Plimpton LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		35
Deere & Co.	Moline, IL	●		●	▶						●	60	107	
Delhaize America Inc.	Salisbury, NC	●	●	●	●	●	●	●	●	●	●	100		
Dell Inc.	Round Rock, TX	●	●	●	●	●	●	●	●	●	●	100	38	
Deloitte LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Delta Air Lines Inc.	Atlanta, GA	●		●	●			●	●	●	●	90	84	
Deutsche Bank	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Devon Energy Corp.	Oklahoma City, OK	●	●									30	261	
Dewey & LeBoeuf LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		19
Diageo North America	Norwalk, CT	●	●	●	●	●	●	●	●	●	●	100		
Dick's Sporting Goods Inc.	Coraopolis, PA	●										15	466	
Dickstein Shapiro LLP	Washington, DC	●	●	●	●			●	●	●	●	90		88
Dillard's Inc.	Little Rock, AR	●	●									30	348	
DIRECTV	El Segundo, CA	●	●	●	▶					●	●	75	116	
Discover Financial Services	Riverwoods, IL	●	●		▶					▶	▶	45	286	
DISH Network Corp.	Englewood, CO											0	200	
DLA Piper	Baltimore, MD	●	●	●	●	●	●	●	●	●	●	100		13
Dole Food Co. Inc.	Westlake Village, CA	●		●								30	331	
Dollar General Corp.	Goodlettsville, TN											0	195	
Dollar Thrifty Automotive Group Inc.	Tulsa, OK	●	●	●	▶			●	▶	●	●	80	998	
Dollar Tree Stores Inc.	Chesapeake, VA	●	●									30	397	
Dominion Resources Inc.	Richmond, VA	●	●	●	▶			●	●	●	●	85	153	
Domino's Pizza Inc.	Ann Arbor, MI	●			▶				●	▶		35		
Domtar Corp.	Fort Mill, SC	●										15	383	
Dorsey & Whitney LLP	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100		79
Dover Corp.	New York, NY											0	367	
Dow Chemical Co., The	Midland, MI	●	●	●	●	●	●	●	●	●	●	100	46	
Dr Pepper Snapple Group Inc.	Plano, TX	●	●	●	●						▶	60	378	
Drinker Biddle & Reath LLP	Philadelphia, PA	●	●	●	●			●	●	●	●	90		73
DTE Energy Co.	Detroit, MI	●			▶					●	●	45	285	
Duane Morris LLP	Philadelphia, PA	●	●	●	▶			●	●	●	●	85		71
Duke Energy Corp.	Charlotte, NC	●		●	▶			●	●	●	●	70	181	
Dun & Bradstreet Corp., The	Short Hills, NJ	●		●								30	940	
Dykema Gossett PLLC	Detroit, MI	●		●	▶	●				●	●	70		142
E&J Gallo Winery	Modesto, CA	●	●		▶					●	●	60		
E*TRADE Financial Corp.	New York, NY	●	●	●	▶					▶	▶	60	675	
E. I. du Pont de Nemours and Co. (DuPont)	Wilmington, DE	●	●	●	●	●	●	●	●	●	●	100	86	
EarthLink Inc.	Atlanta, GA	●	●	●	▶					▶		55		
Eastman Chemical Co.	Kingsport, TN	●										15	415	
Eastman Kodak Co.	Rochester, NY	●	●	●	●	●	●	●	●	●	●	100	297	
Eaton Corp.	Cleveland, OH	●										15	194	
eBay Inc.	San Jose, CA	●	●	●	●	●	●	●	●	●	●	100	267	
Ecolab Inc.	St. Paul, MN	●	●	●	●			●	●	●	●	90	365	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200	
		1a	1b	2a	2b	2c	3a	3b	4	5					
Edison International	Rosemead, CA	●	●										30	187	
Edwards Angell Palmer & Dodge LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	●	100		94
El Paso Corp	Houston, TX	●											15	447	
Electronic Arts Inc.	Redwood City, CA	●	●	●	●			●	●	●	●		90	494	
Eli Lilly & Co.	Indianapolis, IN	●	●	●	●	●	●	●	●	●	●		100	112	
EMC Corp.	Hopkinton, MA	●	●	●	●	●	●	●	●	●	●		100	166	
EMCOR Group Inc	Norwalk, CT	●											15	377	
Emerson Electric Co.	St. Louis, MO	●						●			●		40	117	
Enbridge Energy Partners	Houston, TX	●											15	364	
Energy Future Holdings Corp	Dallas, TX	●											15	246	
Energy Transfer Partners, L.P.	Dallas, TX												0	388	
Energys Corp.	New Orleans, LA	●	●	●	●			●	●	●	●		90	219	
Enterprise Holdings Inc.	St. Louis, MO	●		●	●					●	●		50		
EOG Resources	Houston, TX	●											15	434	
Epstein Becker & Green PC	New York, NY	●	●	●	●			●	●	●	●		90		143
Erie Insurance Group	Erie, PA	●	●										30	484	
Ernst & Young LLP	New York, NY	●	●	●	●	●	●	●	●	●	●		100		
Estée Lauder Companies Inc., The	New York, NY	●	●	●	●					●	●		75	308	
Esurance Inc.	San Francisco, CA	●	●	●	●			●	●	●	●		90		
Excelsus Health Plan Inc.	Rochester, NY	●	●	●	●			●	●	●	●		90		
Exelon Corp.	Chicago, IL	●	●	●	●	●	●	●	●	●	●		100	134	
Expedia Inc.	Bellevue, WA	●	●	●	●					●	●		80	654	
Express Scripts Inc.	St. Louis, MO	●											15	96	
Exxon Mobil Corp.	Irving, TX											●	-25	2	
Faegre & Benson LLP	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●		100		95
Family Dollar Stores	Matthews, NC	●	●										30	305	
Federal Home Loan Mortgage Corp. (Freddie Mac)	McLean, VA	●	●	●	●	●	●	●	●	●	●		100	54	
Federal National Mortgage Association (Fannie Mae)	Washington, DC	●	●	●	●					●	●		80	81	
Federal Reserve Bank of Boston	Boston, MA	●	●	●	●					●	●		70		
FedEx Corp.	Memphis, TN	●	●	●	●	●	●			●	●		75	60	
Fenwick & West LLP	Mountain View, CA	●	●	●	●	●	●	●	●	●	●		100		136
Fidelity National Financial Corp.	Jacksonville, FL	●	●										30	366	
Fifth Third Bancorp	Cincinnati, OH	●		●	●			●	●	●	●		70	248	
Financial Industry Regulatory Authority Inc.	Washington, DC	●		●	●					●	●		65		
Finnegan, Henderson, Farabow, Garrett & Dunner LLP	Washington, DC	●	●	●	●			●	●	●	●		90		78
First American Financial Corp.	Santa Ana, CA	●											15	361	
First Data Corp.	Atlanta, GA	●											15	250	
First Horizon National Corp.	Memphis, TN	●	●	●	●	●	●	●	●	●	●		85	773	
FirstEnergy Corp.	Akron, OH	●											15	179	
Fiserv Inc.	Brookfield, WI	●											15	491	
Fish & Richardson PC	Boston, MA	●	●	●	●			●	●	●	●		90		68
Flowserve	Irving, TX												0	473	
Fluor Corp	Irving, TX												0	111	
FMC Technologies Inc.	Houston, TX	●											15	467	
Foley & Lardner LLP	Milwaukee, WI	●	●	●	●	●	●	●	●	●	●	●	60		36

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Foley Hoag LLP	Boston, MA	●	●	●	▶		●	●	●			85		165
Foot Locker Inc.	New York, NY	●										15	428	
Ford Motor Co.	Dearborn, MI	●	●	●	●	●	●	●	●	●		100	8	
Fortune Brands Inc.	Deerfield, IL	●										15	351	
Franklin Resources Inc.	San Mateo, CA	●		●	●							40	495	
Freeport-McMoRan Copper & Gold Inc	Phoenix, AZ	●										0	154	
Freescale Semiconductor Inc.	Austin, TX	●	●	●	●				●	●		80		
Fried, Frank, Harris, Shriver & Jacobson LLP	New York, NY	●	●	●	●	●	●	●	●	●		100		65
Frontier Oil Corp.	Houston, TX	●										0	488	
Frost Brown Todd LLC	Cincinnati, OH	●	●	●	●			●	●	●		90		148
Fulbright & Jaworski LLP	Houston, TX	●	●	●	●			●	●	●		90		40
Galloway, Johnson, Tompkins, Burr & Smith, PLC	New Orleans, LA	●	●	●	●			●	●	●		90		
GameStop Corp.	Grapevine, TX	●	●		●			●	●	●		75	255	
Gannett Co. Inc.	McLean, VA	●		●	▶				●			45	370	
Gap Inc.	San Francisco, CA	●	●	●	●	●	●	●	●	●		100	162	
Gastronomy Inc.	Salt Lake City, UT	●	●	●	▶				▶	●		70		
Genentech Inc.	South San Francisco, CA	●	●	●	●	●	●	●	●	●		100		
General Cable Corp.	Highland Heights, KY	●										15	469	
General Dynamics Corp.	Falls Church, VA	●	●	●	▶			●	●	●		85	69	
General Electric Co.	Fairfield, CT	●		●	▶				●	●		60	4	
General Mills Inc.	Minneapolis, MN	●	●	●	●	●	●	●	●	●		100	155	
General Motors Co.	Detroit, MI	●	●		●	●	●	●	●	●		85	15	
Genuine Parts Co.	Atlanta, GA	●										15	236	
Genworth Financial Inc.	Richmond, VA	●	●									30	257	
Genzyme Corp.	Cambridge, MA	●										15	458	
Gibson, Dunn & Crutcher LLP	Los Angeles, CA	●		●	●	●	●	●	●	●		100		14
Gilead Sciences Inc	Foster City, CA	●										0	324	
GlaxoSmithKline plc	Philadelphia, PA	●	●	●	●	●	●	●	●	●		100		
Global Partners	Waltham, MA	●										0	368	
Goldman Sachs Group Inc., The	New York, NY	●	●	●	●	●	●	●	●	●		100	39	
Goodrich Corp.	Charlotte, NC	●										0	334	
Goodwin Procter LLP	Boston, MA	●	●	●	●			●	●	●		90		38
Goodyear Tire & Rubber Co.	Akron, OH	●										15	141	
Google Inc.	Mountain View, CA	●	●	●	●	●	●	●	●	●		100	102	
Gordon & Rees LLP	San Francisco, CA	●	●	●	●			●	●	●		90		154
Goulston & Storrs	Boston, MA	●	●	●	●				●	●		80		179
Grant Thornton LLP	Chicago, IL	●		●	●					●		65		
Graybar Electric Company, Inc.	St. Louis, MO	●										15	470	
Great Atlantic & Pacific Tea Co. Inc., The	Montvale, NJ	●										0	247	
Greenberg Traurig LLP	Miami, FL	●	●	●	▶			●	●	●		85		9
Group 1 Automotive	Houston, TX	●										15	457	
Group Health Cooperative	Seattle, WA	●	●	●	●	●	●	●	●	●		100		
Group Health Permanente	Seattle, WA	●	●	●	●	●	●	●	●	●		90		
Guardian Life Insurance Co. of America, The	New York, NY	●		●	▶							35	237	
H&R Block Inc.	Kansas City, MO	●		●	▶					●		50	493	

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		1a	1b	2a	2b	2c	3a	3b	4	5					
H.E. Butt Grocery Co.	San Antonio, TX	●		●							●		40		
H.J. Heinz Co.	Pittsburgh, PA	●	●	●	●						▶	▶	65	233	
Hain Celestial Group Inc.	Melville, NY	●		●	●						●	●	65		
Halliburton Co.	Houston, TX	●											15	158	
Hallmark Cards Inc.	Kansas City, MO	●	●	●	●			●		●	●		90		
Hanesbrands Inc.	Winston-Salem, NC	●	●	●	●						▶		60	524	
Hanover Direct Inc.	Weehawken, NJ	●	●	●	▶						▶	●	70		
Harley-Davidson Inc.	Milwaukee, WI	●											15	430	
Harris Corp.	Melbourne, FL	●	●										30	371	
Harris Interactive Inc.	New York, NY	●	●	●	▶						▶	●	70		
Harry & David Holdings Inc.	Medford, OR	●	●	●	▶						▶	●	70		
Hartford Financial Services Group Inc., The	Hartford, CT	●	●	●	●			●		●	●		90	97	
Harvard Pilgrim Health Care Inc.	Wellesley, MA	●	●	●	●			●		▶	●		85		
Hasbro Inc.	Pawtucket, RI	●									●		25	511	
Haynes and Boone LLP	Dallas, TX	●	●	●	▶			●		●	●		85		87
HCA - Hospital Corporation of America	Nashville, TN	●											15	77	
Health Care Service Corp.	Chicago, IL	●	●	●	▶			●		●	●		85		
Health Management Associates Inc.	Naples, FL	●											0	443	
Health Net Inc.	Woodland Hills, CA	●	●	●	▶			●		▶	●		80	146	
Henry Schein	Melville, NY	●											15	339	
Herman Miller Inc.	Zeeland, MI	●	●	●	●	●	●	●	●	●	●		100	965	
Herrick Feinstein LLP	New York, NY	●	●	●	▶			●		●	▶		75		174
Hershey Co., The	Hershey, PA	●	●	●	▶			●		●	●		85	395	
Hertz Global Holdings Inc.	Park Ridge, NJ	●	●	●	▶						●		65	318	
Hess Corp.	New York, NY	●											15	79	
Hewlett-Packard Co.	Palo Alto, CA	●	●	●	●	●	●	●	●	●	●		100	10	
Hilton Hotels Corp.	Beverly Hills, CA	●	●		▶					●	●		60		
Hinshaw & Culbertson LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●		100	138	
Hogan Lovells US LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●		100	23	
Holland & Hart LLP	Denver, CO	●	●	●	▶					●	●		75	134	
Holland & Knight LLP	Tampa, FL	●	●	●	●			●		●	●		90	51	
Holly Corp.	Dallas, TX	●											0	431	
Holme Roberts & Owen LLP	Denver, CO	●		●	▶					●			45	188	
Home Depot Inc., The	Atlanta, GA	●	●	●	●					●	●		80	29	
Honeywell International Inc.	Morris Township, NJ	●	●	●	▶			●		●	●		85	74	
Hormel Foods Corp.	Austin, MN	●	●		▶			●		●	▶		60	340	
Hospira Inc.	Lake Forest, IL	●	●	●	▶					●	●		75	527	
Host Hotels & Resorts Inc.	Bethesda, MD	●		●									30	492	
Houghton Mifflin Harcourt Publishing Co.	Boston, MA	●			▶						▶		25		
Howard & Howard Attorneys PLLC	Kalamazoo, MI	●			▶						▶		25		
Howrey LLP	Washington, DC	●	●	●	▶			●		●	●		85		58
HSBC - North America	New York, NY	●	●	●	●			●		●	●		90		
Humana Inc.	Louisville, KY	●	●	●	●			●		●	●		90	73	
Huntington Bancshares Inc.	Columbus, OH	●		●	▶					●	●		60	597	
Hunton & Williams LLP	Washington, DC	●	●	●	●			●		●	●		90		41

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Huntsman Corp.	Salt Lake City, UT											0	293	
Husch Blackwell LLP	Kansas City, MO	●	●	●	●		●	●	●			90	92	
Hyatt Hotels Corp.	Chicago, IL	●	●	●	●	●	●	●	●			100	581	
Icahn Enterprises LP	New York, NY											0	290	
Illinois Tool Works Inc.	Glenview, IL	●	●	●	▶				▶	▶		60	169	
Imation Corp.	Oakdale, MN	●	●	●	▶				▶	●		70	923	
ING North America Insurance Corp.	Atlanta, GA	●	●	●	●	●	●	●	●	●		100		
Ingram Micro	Santa Ana, CA	●	●		●				▶	●		60	80	
Integrus Energy Group Inc.	Chicago, IL	●	●									30	302	
Intel Corp.	Santa Clara, CA	●	●	●	▶	●	●	●	●	●		95	62	
InterContinental Hotels Group Americas	Atlanta, GA	●		●	●				●	●		65		
International Assets Holding Corp.	Altamonte Springs, FL											0	49	
International Business Machines Corp. (IBM)	Armonk, NY	●	●	●	●	●	●	●	●	●		100	20	
International Paper Co.	Memphis, TN	●		●	▶				●	●		45	104	
Interpublic Group of Companies Inc.	New York, NY	●	●	●	▶			●	●	●		85	358	
Intuit Inc.	Mountain View, CA	●	●	●	●	●	●	●	●	●		100	610	
ITT Corp.	White Plains, NY	●	●	●	▶				●	●		75	214	
J.C. Penney Co. Inc.	Plano, TX	●	●	●	▶			●	●	●		85	133	
Jabil Circuit Inc.	St. Petersburg, FL	●										15	199	
Jacobs Engineering Group Inc.	Pasadena, CA	●	●	●	▶							50	203	
Jarden Corp.	Rye, NY	●	●									30	406	
Jenner & Block LLP	Chicago, IL	●	●	●	●	●	●	●	●	●		100	75	
JetBlue Airways Corp.	Forest Hills, NY	●	●	●	●			●	●	●		90	592	
John Hancock Financial Services Inc.	Boston, MA	●	●	●	●				●	●		80		
Johnson & Johnson	New Brunswick, NJ	●	●	●	●	●	●	●	●	●		100	33	
Johnson Controls Inc.	Milwaukee, WI	●	●									30	83	
Jones Apparel Group Inc.	New York, NY	●	●	●	▶				▶	●		70	583	
JPMorgan Chase & Co.	New York, NY	●	●	●	●	●	●	●	●	●		100	9	
K&L Gates LLP	Pittsburgh, PA	●	●	●	●	●	●	●	●	●		100	12	
Kaiser Permanente	Oakland, CA	●	●	●	●			●	●	●		90		
Katten Muchin Rosenman LLP	Chicago, IL	●	●	●	▶			●	●	●		85	66	
Kaye Scholer LLP	New York, NY	●	●	●	●			●	●	●		90	64	
KB Home	Los Angeles, CA	●	●	●	▶							50	892	
KBR Inc.	Houston, TX											0	193	
Keane Inc.	Boston, MA	●							●			25		
Kelley Drye & Warren LLP	New York, NY	●	●	●	●			●	●	●		90	127	
Kellogg Co.	Battle Creek, MI	●	●	●	●	●	●	●	●	●		100	184	
Kelly Services Inc.	Troy, MI	●	●									30	479	
Kenneth Cole Productions Inc.	New York, NY	●	●	●	●			●	●	●		90		
KeyCorp	Cleveland, OH	●	●	●	●			●	●	●		90	356	
Kilpatrick Townsend & Stockton LLP	Atlanta, GA	●	●	●	●			●	●	●		90	113	
Kimberly-Clark Corp.	Irving, TX	●	●	●	●			●	●	●		90	126	
Kimpton Hotel & Restaurant Group Inc.	San Francisco, CA	●	●	●	●	●	●	●	●	●		100		
Kinder Morgan Inc.	Houston, TX	●										15	315	
Kindred Health care	Louisville, KY	●										15	477	

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		1a	1b	2a	2b	2c	3a	3b	4	5				
King & Spalding LLP	Atlanta, GA	●	●	●	●		●	●	●			90		34
Kirkland & Ellis LLP	Chicago, IL	●	●	●	●	●	●	●	●	●		100		5
KLA-Tencor Corp.	Milpitas, CA	●		●					●			35		
Kohl's Corp.	Menomonee Falls, WI	●										15	135	
KPMG LLP	New York, NY	●	●	●	●	●	●	●	●	●		100		
Kraft Foods Inc.	Northfield, IL	●	●	●	●	●	●	●	●	●		100	53	
Kramer Levin Naftalis & Frankel LLP	New York, NY	●	●	●	●	●		●	●	●		85		90
Kroger Co., The	Cincinnati, OH	●	●	●	●	●		●	●	●		85	23	
Kutak Rock LLP	Omaha, NE	●	●	●	●			●	●	●		90		156
L.L. Bean Inc.	Freeport, ME	●	●	●	●			●	●	●		65		
L-3 Communications Holdings	New York, NY	●										15	148	
Laboratory Corporation of America Holdings	Burlington, NC	●										15	442	
Laclede Group Inc., The	St. Louis, MO	●	●		●				●	●		45	865	
Land O'Lakes Inc.	Arden Hills, MN	●	●	●	●			●	●	●		90	226	
Las Vegas Sands Corp.	Las Vegas, NV											0	456	
Latham & Watkins LLP	New York, NY	●	●	●	●			●	●	●		85		3
Lear Corp.	Southfield, MI											0	242	
Levi Strauss & Co.	San Francisco, CA	●	●	●	●	●	●	●	●	●		100	503	
LexisNexis Group	Miamisburg, OH	●	●	●	●			●	●	●		90		
Lexmark International Inc.	Lexington, KY	●	●	●	●			●	●	●		90	526	
Liberty Global Inc.	Englewood, CO											0	210	
Liberty Interactive Corp.	Englewood, CO											0	227	
Liberty Mutual Group	Boston, MA											0	71	
Limited Brands Inc.	Columbus, OH	●	●	●	●	●	●	●	●	●		100	269	
Lincoln National Corp.	Radnor, PA	●	●	●	●				●			60	256	
Lindquist & Vennum PLLP	Minneapolis, MN	●		●	●				●	●		60		
Littler Mendelson PC	San Francisco, CA	●	●	●	●	●	●	●	●	●		100		74
Live Nation Inc.	Beverly Hills, CA	●	●	●	●					●		70	490	
Liz Claiborne Inc.	New York, NY	●	●	●	●			●	●	●		85	645	
Locke Lord Bissell & Liddell LLP	Chicago, IL	●		●	●				●			45		69
Lockheed Martin Corp.	Bethesda, MD	●	●	●	●	●	●	●	●	●		100	44	
Loews Corp.	New York, NY	●		●	●							35	165	
Lowe's Companies Inc.	Mooreville, NC	●										15	42	
Lubrizol Corporation	Wickliffe, OH	●										15	453	
Luce Forward Hamilton & Scripps LLP	San Diego, CA	●	●		●			●	●	●		70		193
Macy's Inc.	Cincinnati, OH	●	●	●	●			●	●	●		90	103	
Manatt, Phelps & Phillips LLP	Los Angeles, CA	●	●	●	●			●	●	●		90		109
ManpowerGroup	Milwaukee, WI	●			●				●	●		50	143	
Marathon Oil Corp.	Houston, TX	●										15	41	
Marriott International Inc.	Bethesda, MD	●	●	●	●			●	●	●		90	213	
Mars Inc.	Mt. Olive, NJ	●	●	●	●				●			55		
Marsh & McLennan Companies Inc.	New York, NY	●	●	●	●	●	●	●	●	●		100	221	
Masco Corp.	Taylor, MI	●										15	291	
Massachusetts Mutual Life Insurance Co.	Springfield, MA	●	●	●	●			●	●	●		90	93	
MasterCard Inc.	Purchase, NY	●	●	●	●			●	●	●		90	411	

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		1a	1b	2a	2b	2c	3a	3b	4	5					
Mattel Inc.	El Segundo, CA	●	●	●	⌋			●	●				75	387	
Mayer Brown LLP	Chicago, IL	●	●	●	●			●	●	●			90		10
Mayo Clinic	Rochester, MN	●		●	⌋			●	●	●			70		
McAfee Inc.	Santa Clara, CA	●			⌋					⌋			25	857	
McCarter & English LLP	Newark, NJ	●	●	●	●			●	●	●			90		129
McDermott Will & Emery LLP	Chicago, IL	●	●	●	●	●		●	●	●			100		27
McDonald's Corp.	Oak Brook, IL	●		●	●			●	●	●			75	108	
McGraw-Hill Companies Inc., The	New York, NY	●	●	●	●			●	●	●			90	363	
McGuireWoods LLP	Richmond, VA	●	●	●	⌋			●	●	●			85		55
McKenna, Long & Aldridge LLP	Atlanta, GA	●	●	●	●				●	●			80		102
McKesson Corp.	San Francisco, CA	●		●	⌋				●	●			60	14	
McKinsey & Co. Inc.	New York, NY	●	●	●	●	●		●	●	●			100		
MDU Resources Group, Inc.	Bismarck, ND												0	498	
MeadWestvaco Corp.	Richmond, VA	●		●	⌋					⌋			50	357	
Medco Health Solutions	Franklin Lakes, NJ	●											15	35	
Medtronic Inc.	Minneapolis, MN	●	●	●	●	●		●	●	●			100	160	
Meijer Inc.	Grand Rapids, MI	●			⌋					⌋			25		
Men's Wearhouse Inc., The	Houston, TX	●	●										30	861	
Merck & Co. Inc.	Whitehouse Station, NJ	●	●	●	●			●	●	●			90	85	
MetLife Inc.	New York, NY	●	●	●	●	●		●	●	●			100	51	
MGM Resorts International	Las Vegas, NV	●	●	●	●			●	●	●			90	360	
Micron Technology Inc.	Boise, ID	●											15	432	
Microsoft Corp.	Redmond, WA	●	●	●	●	●		●	●	●			100	36	
Milbank, Tweed, Hadley & McCloy LLP	New York, NY	●	●	●	●			●	●	●			90		42
MillerCoors LLC	Chicago, IL	●	●	●	●	●		●	●	●			100		
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo PC	Boston, MA	●	●	●	⌋			●	●	●			85		97
Mirant Corp.	Atlanta, GA	●		●									30	760	
Mitchell Gold + Bob Williams	Taylorsville, NC	●	●	●	●	●		●	●	●			100		
Mohawk Industries Inc.	Calhoun, GA			●	⌋								20	392	
Monsanto Co.	St. Louis, MO	●	●	●	●					●	●		80	197	
Moody's Corp.	New York, NY	●	●	●	⌋					●	●		75	900	
Moore & Van Allen PLLC	Charlotte, NC	●	●	●	⌋					⌋			55		150
Morgan Lewis & Bockius LLP	Philadelphia, PA	●	●	●	●	●		●	●	●			100		11
Morgan Stanley	New York, NY	●	●	●	●	●		●	●	●			100	70	
Morningstar Inc.	Chicago, IL	●	●	●	●			●	●	●			90		
Morrison & Foerster LLP	San Francisco, CA	●	●	●	●	●		●	●	●			100		21
Mosaic Company	Plymouth, MN	●	●										30	231	
Motorola Solutions Inc.	Schaumburg, IL	●	●	●	●			●	●	●			90	110	
Munger, Tolles & Olson LLP	Los Angeles, CA	●	●		⌋					●	●		60		132
Murphy Oil	El Dorado, AR	●											15	125	
Mutual of Omaha Insurance	Omaha, NE	●		●	⌋					●	●		60	408	
Mylan Laboratories Inc.	Canonsburg, PA												0	412	
Nash Finch	Minneapolis, MN	●											15	400	
National Grid USA	Brooklyn, NY	●	●	●	●			●	●	●			90		
National Oilwell Varco, Inc.	Houston, TX	●											15	182	

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		1a	1b	2a	2b	2c	3a	3b	4	5				
Nationwide	Columbus, OH	●	●	●	●	●	●	●	●	●	●	100	118	
Navigant Consulting Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		
Navistar International Corp.	Warrenville, IL									●		10	202	
NCR Corp.	Duluth, GA	●	●	●	●					●	●	80	451	
Nelson Mullins Riley & Scarborough LLP	Columbia, SC	●		●	▶					●	●	60		135
Nestlé Purina PetCare Co.	St. Louis, MO	●			▶					●	●	45		
NetApp Inc.	Sunnyvale, CA	●	●	●	●			●	●	●	●	90	574	
New York Life Insurance Co.	New York, NY	●	●	●	▶			●	●	●	●	85	64	
New York Times Co.	New York, NY	●	●	●	●			●	●	●	●	90	733	
Newell Rubbermaid Inc.	Atlanta, GA	●	●	●	●			●	●	●	●	90	373	
Newmont Mining Corporation	Greenwood Village, CO	●										15	295	
News Corp.	New York, NY	●										15	76	
NextEra Energy Inc.	Juno Beach, FL	●										15	147	
Nielsen Co., The	New York City, NY	●	●	●	●			●	●	●	●	90		
NII Holdings	Reston, VA											0	468	
Nike Inc.	Beaverton, OR	●	●	●	●	●	●	●	●	●	●	100	124	
NiSource Inc.	Merrillville, IN	●										15	336	
Nissan North America Inc.	Franklin, TN	●		●								30		60
Nixon Peabody LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		
Nokia Corp.	Irving, TX	●	●	●	●					●	▶	70		
Nordstrom Inc.	Seattle, WA	●	●	●	●	●	●	●	●	●	●	100	270	
Norfolk Southern Corp.	Norfolk, VA	●		●	●					▶	▶	50	287	
Nortel Networks Corp.	Richardson, TX	●		●	▶					●	●	60		
Northeast Utilities	Berlin, CT	●			▶					●		30	385	
Northern Trust Corp.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	497	
Northrop Grumman Corp.	Falls Church, VA	●	●	●	▶					●	●	75	61	
Northwestern Mutual Life Insurance	Milwaukee, WI	●			●					●	●	50	115	
Novartis Pharmaceuticals Corp.	East Hanover, NJ	●	●	●	▶					●	●	75		
NRG Energy Inc.	Princeton, NJ	●										15	263	
Nucor Corp.	Charlotte, NC	●										0	206	
NV Energy Inc.	Las Vegas, NV	●	●		▶			●	●	●	●	70	556	
NYSE Euronext Inc.	New York, NY	●										15	444	
Occidental Petroleum	Los Angeles, CA	●	●									30	150	
Office Depot Inc.	Boca Raton, FL	●	●	●	●	●	●	●	●	●	●	100	192	
OfficeMax Inc.	Naperville, IL	●		●	▶			●	●	●	●	85	313	
O'Melveny & Myers LLP	Washington, DC	●	●	●	●			●	●	●	●	90		28
Omnicare	Covington, KY	●										0	347	
Omnicom Group	New York, NY	●	●		●					●	●	65	198	
ONEOK Inc.	Tulsa, OK	●										15	209	
Oracle Corp.	Redwood City, CA	●	●	●	●	●	●	●	●	●	●	100	105	
Orbitz Worldwide Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		
O'Reilly Automotive Inc.	Springfield, MO	●										0	429	
Orrick, Herrington & Sutcliffe LLP	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100		25
Oshkosh Corp.	Oshkosh, WI	●										15	386	
Owens & Minor Inc.	Mechanicsville, VA	●			▶						▶	25	283	

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		1a	1b	2a	2b	2c	3a	3b	4	5				
Owens Corning	Toledo, OH	●	●	●	●	●	●	●	●	●	●	100	432	
Owens-Illinois Inc.	Perrysburg, OH	●										15	322	
Paccar Inc.	Bellevue, WA	●										15	282	
Pacific Life Insurance Co.	Newport Beach, CA	●	●	●	●				●	●		80	401	
PacifiCorp	Portland, OR	●	●	●	▸			●	▸	●		80		
Palm Management Corp.	Washington, DC	●		●	▸			●	▸	●		65		
Pantry Inc., The	Cary, NC											0	382	
Parker Hannifin Corp.	Cleveland, OH	●										15	230	
Patterson Belknap Webb & Tyler LLP	New York, NY	●	●	●	●	●	●	●	●	●		100		160
Patterson Companies (Patterson Dental Supply)	St. Paul, MN	●		●	▸				▸	▸		60	629	
Patton Boggs LLP	Washington, DC	●	●	●	●			●	●	●		90		84
Paul Hastings LLP	Los Angeles, CA	●	●	●	●	●	●	●	●	●		100		20
Paul, Weiss, Rifkind, Wharton & Garrison LLP	New York, NY	●	●	●	●	●	●	●	●	●		100		37
Peabody Energy Corp	St. Louis, MO	●										15	346	
Pearson Inc.	New York, NY	●	●	●	●	●			●	●		90		
Penske Automotive Group	Bloomfield Hills, MI											0	245	
Pep Boys-Manny, Moe & Jack	Philadelphia, PA	●	●	●	▸				▸	●		70	860	
Pepco Holdings Inc.	Washington, DC	●		●	▸				●	●		60	251	
Pepper Hamilton LLP	Philadelphia, PA	●	●	●	●			●	●	●		90		83
PepsiCo Inc.	Purchase, NY	●	●	●	▸	●	●	●	●	●		95	50	
Perkins + Will Inc.	Chicago, IL	●		●	▸				●			45		
Perkins Coie LLP	Seattle, WA	●	●	●	●	●	●	●	●	●		100		63
Peter Kiewit Sons' Inc	Omaha, NE	●										15	238	
PetSmart Inc.	Phoenix, AZ	●	●		●			●	●			60	393	
Pfizer Inc.	New York, NY	●	●	●	●	●	●	●	●	●		100	40	
PG&E Corp.	San Francisco, CA	●	●	●	●	●	●	●	●	●		100	173	
Philip Morris International Inc.	New York, NY											0	94	
Pilgrim's Pride Corporation	Pittsburg, TX											0	317	
Pillsbury Winthrop Shaw Pittman LLP	New York, NY	●	●	●	●	●	●	●	●	●		100		53
Pinnacle West Capital	Phoenix, AZ	●	●							▸		35	590	
Pitney Bowes Inc.	Stamford, CT	●	●	●	▸							50	375	
Plains All American Pipeline, L.P.	Houston, TX											0	128	
PNC Financial Services Group Inc., The	Pittsburgh, PA	●	●	●	●			●	●	●		90	123	
PNM Resources Inc.	Albuquerque, NM	●	●						▸			35	927	
Polaroid Corp.	Waltham, MA	●			▸				●			30		
Polo Ralph Lauren Corp.	New York, NY	●										15	417	
Polsinelli Shughart PC	Kansas City, MO	●	●	●	▸			●	●	●		85		147
Portland General Electric Co.	Portland, OR	●	●	●	●			●	●	●		90	899	
PPG Industries Inc.	Pittsburgh, PA	●		●	▸				●	●		60	190	
PPL Corp.	Allentown, PA	●		●	▸				●	●		60	300	
Praxair Inc.	Danbury, CT	●		●	▸				●	▸		50	262	
Precision Castparts Corp	Portland, OR	●	●									30	325	
PricewaterhouseCoopers LLP	New York, NY	●	●	●	●	●	●	●	●	●		100		
Principal Financial Group	Des Moines, IA	●	●	●	▸			●	●	●		85	266	
Procter & Gamble Co.	Cincinnati, OH	●	●	●	●			●	●	●		90	22	

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		1a	1b	2a	2b	2c	3a	3b	4	5				
Progress Energy Inc.	Raleigh, NC	●		●	▶				▶	▶		45	239	
Progressive Corp., The	Mayfield Village, OH	●	●	●	●		●	●	●			90	161	
Proskauer Rose LLP	New York, NY	●	●	●	●		●	●	●			90		39
Prudential Financial Inc.	Newark, NJ	●		●	●	●	●	●	●			100	65	
Public Service Enterprise Group	Newark, NJ	●	●	●	▶		●	●	●			85	186	
Publicis Inc.	New York, NY	●	●	●	●		●	●	●			90		
Publix Super Markets	Lakeland, FL	●										15	99	
QUALCOMM Inc.	San Diego, CA	●	●	●	●		●	●	●			90	225	
Quarles & Brady LLP	Milwaukee, WI	●	●	●	▶		●	●	●			85		126
Quest Diagnostics Inc.	Madison, NJ	●		●	●			●	●			65	303	
R.R. Donnelley & Sons Co.	Chicago, IL	●	●	●	●			●	●			80	240	
RadioShack Corp.	Fort Worth, TX	●		●								30	481	
Raymond James Financial Inc.	St. Petersburg, FL	●	●	●	●		●	●	●			90	708	
Raytheon Co.	Waltham, MA	●	●	●	●	●	●	●	●			100	95	
RBC Wealth Management	Minneapolis, MN	●	●	●	▶		●	●	●			85		
Realty Corp.	Parsippany, NJ	●			▶			●	●			45	519	
Recreational Equipment Inc.	Kent, WA	●	●	●	▶			●	▶			65		
Reed Smith LLP	Pittsburgh, PA	●	●	●	●		●	●	●			90		17
Reinsurance Group of America Inc.	Chesterfield, MO	●										15	321	
Reliance Steel & Aluminum Co.	Los Angeles, CA	●										15	394	
Replacements Ltd.	McLeansville, NC	●	●	●	●	●	●	●	●			100		
Republic Services Inc.	Phoenix, AZ	●										15	278	
Reynolds American Inc.	Winston-Salem, NC	●	●	●	▶				▶	●		70	272	
Rite Aid Corp.	Camp Hill, PA	●		●	▶				●			45	89	
Robert Half International Inc.	Menlo Park, CA	●	●	●	●				▶	●		75	636	
Robert W. Baird & Co. Incorporated	Milwaukee, WI	●	●		▶		●	●	●			70		
Robins, Kaplan, Miller & Ciresi LLP	Minneapolis, MN	●	●	●	●	●	●	●	●			100		146
Rockwell Automation Inc.	Milwaukee, WI	●	●	●	●	●		●	●			90	476	
Rockwell Collins Inc.	Cedar Rapids, IA	●	●	●	▶			●	●			75	462	
Ropes & Gray LLP	Boston, MA	●	●	●	●	●	●	●	●			100		30
Ross Stores	Pleasanton, CA	●										0	316	
Royal Caribbean Cruises Ltd.	Miami, FL	●	●	●	▶				●			60		
RRI Energy Inc.	Houston, TX	●		●	▶				●	●		60	528	
Ryder System Inc.	Miami, FL	●	●	●	▶		●	▶	●			80	426	
Ryland Group Inc., The	Calabasas, CA	●			▶							20		
S.C. Johnson & Son Inc.	Racine, WI	●	●	●	●		●	●	●			90		
Sabre Holdings Inc.	Southlake, TX	●	●	●	▶				●	●		75		
Safeway Inc.	Pleasanton, CA	●	●	●	▶		●	●	●			85	52	
SAIC Inc.	McLean, VA	●										15	215	
Sanmina-SCI	San Jose, CA	●										0	405	
Sanofi-Aventis U.S. LLC	Bridgewater, NJ	●		●					●	▶		45		
SAP America Inc.	Newtown Square, PA	●	●	●	●		●	●	●			90		
Sara Lee Corp.	Downers Grove, IL	●	●	●	▶		●	●	●			85	180	
Saul Ewing LLP	Philadelphia, PA	●			▶				▶	▶		30		180
SCANA Corp.	Cayce, SC	●										15	489	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Schiff Hardin LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		121
Schulte, Roth & Zabel LLP	New York, NY	●		●	⌋					●	●	60		70
Seagate Technology LLC	Scotts Valley, CA	●		●	⌋					●		45		
Sealed Air Corp.	Elmwood Park, NJ											0	487	
Sears Holdings Corp.	Hoffman Estates, IL	●	●	●	●	●	●	●	●	●	●	100	48	
Sedgwick, Detert, Moran & Arnold LLP	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100		133
Selective Insurance Group	Branchville, NJ	●	●	●	⌋					●	⌋	65	993	
Sempra Energy	San Diego, CA	●	●	●	●	●	●	●	●	●	●	100	280	
Severn Trent Services Inc.	Fort Washington, PA	●	●	●	⌋							50		
Seyfarth Shaw LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		62
Shearman & Sterling LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		29
Shell Oil Co.	Houston, TX	●	●	●	⌋					●	●	85		
Sheppard, Mullin, Richter & Hampton LLP	Los Angeles, CA	●	●	●	●	●	●	●	●	●	●	100		76
Sherwin-Williams Co., The	Cleveland, OH	●										15	319	
Shook, Hardy & Bacon LLP	Kansas City, MO	●	●	●	●	●	●	●	●	●	●	100		82
Sidley Austin LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100		6
Simpson, Thacher & Bartlett LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		22
SIRIUS XM Radio Inc.	New York, NY	●	●	●	⌋					●	●	75	732	
Skadden, Arps, Slate, Meagher & Flom LLP	New York, NY	●	●	●	●					●	●	90		2
SLM Corp. (Sallie Mae)	Reston, VA	●		●	⌋					●		45	354	
Smith International Inc.	Houston, TX	●										15	277	
Smithfield Foods Inc.	Smithfield, VA											0	163	
Smurfit-Stone Container Corp.	Chicago, IL	●										15	374	
SNR Denton US LLP	New York, NY	●	●	●	●					●	●	90		59
Sodexo Inc.	Gaithersburg, MD	●	●	●	●	●	●	●	●	●	●	100		
Software AG USA Inc.	Reston, VA	●	●	●	●					●	●	80		
Software House International	Somerset, NJ	●										15		
Sonic Automotive Inc.	Charlotte, NC	●										15	345	
Sony Electronics Inc.	San Diego, CA	●	●	●	●					●	●	90		
Southern California Edison Co.	Rosemead, CA	●	●	●	●	●	●	●	●	●	●	100		
Southern Co.	Atlanta, GA	●			⌋					⌋	●	40	145	
Southwest Airlines Co.	Dallas, TX	●	●	●	●					●	●	90	229	
Spectra Energy Corp.	Houston, TX	●	●	●	⌋					●	●	85	437	
Spectrum Group International Inc.	Irvine, CA											0	480	
Sprint Nextel Corp.	Overland Park, KS	●		●	●	●	●	●	●	●	●	100	67	
SPX Corp.	Charlotte, NC											0	427	
Squire, Sanders & Dempsey LLP	Cleveland, OH	●	●	●	●	●	●	●	●	●	●	100		52
SRA International Inc.	Fairfax, VA	●		●	⌋					●		45	1000	
St. Jude Medical Inc.	St. Paul, MN	●	●		●					⌋	●	60	445	
Staples Inc.	Framingham, MA	●	●	●	●	●	●	●	●	●	●	100	101	
Starbucks Corp.	Seattle, WA	●	●	●	●					●	●	90	241	
Starcom MediaVest Group	Chicago, IL	●	●	●	⌋					●	●	85		
Starwood Hotels & Resorts Worldwide	White Plains, NY	●	●	●	●	●	●	●	●	●	●	100	438	
State Farm Group	Bloomington, IL	●	●	●	⌋	●	●	●	●	●	●	95	34	
State Street Corp.	Boston, MA	●	●	●	●					●	●	90	249	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5	-25 points			
Steelcase Inc.	Grand Rapids, MI	●	●	●	●		●	●	●			90	609	
Stephoe & Johnson LLP	Washington, DC	●	●	●	●			●	●			80		81
Stinson Morrison Hecker LLP	Kansas City, MO	●	●	●	●		●	●	●			90		162
Stoel Rives LLP	Portland, OR	●	●	●	●		●	●	●			90		137
Stryker Corp.	Kalamazoo, MI	●										15	333	
Subaru of America Inc.	Cherry Hill, NJ	●	●	●	▶		●	●	●			85		
Sullivan & Cromwell LLP	New York, NY	●	●	●	●		●	●	●			90		14
Sun Life Financial Inc. (U.S.)	Wellesley Hills, MA	●	●	●	●	●	●	●	●			100		
SunGard Data Systems Inc.	Wayne, PA	●										15	380	
Sunoco Inc.	Philadelphia, PA	●										15	78	
SunTrust Banks Inc.	Atlanta, GA	●	●	●	●		●	●	●			90	224	
Supervalu Inc.	Eden Prairie, MN	●	●	●	●	●	●	●	●			100	47	
Sutherland Asbill & Brennan LLP	Atlanta, GA	●	●	●	●	●	●	●	●			100		104
Symantec Corp.	Mountain View, CA	●	●	●	●	●	●	●	●			100	353	
SYNNEX Corp.	Fremont, CA											0	294	
SYSCO Corp.	Houston, TX											0	55	
Target Corp.	Minneapolis, MN	●	●	●	▶		●	●	●			85	30	
TD Bank, N.A.	Wilmington, DE	●	●	●	●	●	●	●	●			100		
Teachers Insurance & Annuity Association - College Retirement Equities Fund	New York, NY	●	●	●	●	●	●	●	●			100	90	
Tech Data Corp.	Clearwater, FL	●	●	●	●	●	●	●	●			100	109	
Telephone & Data Systems Inc. (U.S. Cellular)	Chicago, IL											0	416	
Tenet Health care	Dallas, TX	●		●	▶				▶	▶		45	253	
Tenneco Inc.	Lake Forest, IL											0	446	
Terex Corporation	Westport, CT	●	●									30	402	
Tesoro Corp.	San Antonio, TX	●										15	139	
Texas Instruments Inc.	Dallas, TX	●	●	●	●		●	●	●			90	223	
Textron Inc.	Providence, RI	●										15	220	
Shaw Group Inc., The	Baton Rouge, LA	●										15	309	
Thermo Fisher Scientific Inc.	Waltham, MA	●		●	●				▶	▶		50	234	
Thompson Coburn LLP	St. Louis, MO	●	●	●	●	●	●	●	●			100		153
Thompson Hine LLP	Cleveland, OH	●	●	●	▶		●	●	●			85		140
Thomson Reuters	New York, NY	●	●	●	●	●		●	●			90		
Thrivent Financial for Lutherans	Minneapolis, MN	●										15	342	
Tiffany & Co.	New York, NY	●	●	●	▶	●	●	▶	●			90	690	
Time Warner Cable Inc.	New York, NY	●	●	●	●		●	●	●			90	131	
Time Warner Inc.	New York, NY	●	●	●	●	●	●	●	●			100	82	
TJX Companies Inc., The	Framingham, MA	●	●	●	●	●	●	●	●			100	119	
T-Mobile USA Inc.	Bellevue, WA	●		●	●				●			55		
Toyota Financial Services Corp.	Torrance, CA	●	●	●	●	●	●	●	●			100		
Toyota Motor Sales USA Inc.	Torrance, CA	●	●	●	●	●	●	●	●			100		
Toys 'R' Us Inc.	Wayne, NJ	●	●	●	●				▶	▶		65	171	
Travel Impressions Ltd.	Farmingdale, NY	●	●	●	▶		●		▶	●		80		
TravelCenters of America	Westlake, OH	●										15	440	
Travelers Companies Inc., The	New York, NY	●	●	●	●		●	●	●			90	98	
Travelport Ltd.	Parsippany, NJ	●	●	●	▶				●	▶		65		

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Troutman Sanders LLP	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100		72
TRW Automotive Holdings Corp.	Livonia, MI										●	10	201	
Tutor Perini Corp.	Sylmar, CA											0	407	
Tyson Foods, Inc.	Springdale, AR	●										15	87	
U.S. Bancorp	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100	121	
U.S. Foodservice Inc.	Rosemont, IL	●		●	●				▶	▶		50		
UBM plc	Manhasset, NY	●		●	▶				●	●		60		
UBS AG	Stamford, CT	●	●	●	●	●	●	●	●	●	●	100		
UGI Corp.	King of Prussia, PA	●	●									30	369	
Unilever	Englewood Cliffs, NJ	●	●	●	●	●	●	●	●	●	●	100		
Union Pacific Corp.	Omaha, NE	●	●		▶			●	▶	●		65	164	
Unisys Corp.	Blue Bell, PA	●	●						●			40	452	
United Continental Holdings Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	140	
United Parcel Service Inc. (UPS)	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100	43	
United Services Automobile Association	San Antonio, TX											0	132	
United States Steel Corp.	Pittsburgh, PA											0	211	
United Stationers Inc.	Deerfield, IL	●										15	439	
United Technologies Corp.	Hartford, CT	●	●	●	●	●	●	●	●	●	●	100	37	
UnitedHealth Group Inc.	Minnetonka, MN	●	●	●	●	●	●	●	●	●	●	100	21	
Universal American Corp.	Rye Brook, NY											0	425	
Universal Health Services	King of Prussia, PA	●										15	403	
Unum Group	Chattanooga, TN	●	●	●	▶				▶	●		70	235	
URS Corp.	San Francisco, CA	●										15	252	
US Airways Group Inc.	Tempe, AZ	●	●	●	▶			●	●	●		85	222	
Valassis Communications Inc.	Livonia, MI	●	●		●			●	●	●		75	768	
Valero Energy Corp.	San Antonio, TX	●										15	26	
Verizon Communications Inc.	New York, NY	●		●	▶				●		●	20	13	
VF Corp.	Greensboro, NC	●										15	310	
Viacom Inc.	New York, NY	●	●	●	●			●	●	●		90	170	
Vinson & Elkins LLP	Houston, TX	●	●	●	●			●	●	●		90		47
Virgin America	Burlingame, CA	●	●	●	●			●	●	●		90		
Virgin Media Inc.	New York, NY	●										15	359	
Visa	San Francisco, CA	●	●	●	▶			●	●	●		85	326	
Vision Service Plan	Rancho Cordova, CA	●		●	▶				●			45		
Visteon Corp.	Van Buren Township, MI	●	●	●	▶			●	●	●		85	335	
Volkswagen Group of America Inc.	Herndon, VA	●	●	●	●	●			●	●		90		
Vorys, Sater, Seymour and Pease LLP	Columbus, OH	●	●	●	●				●	●		80		158
W.R. Berkley	Greenwich, CT											0	463	
W.W. Grainger	Lake Forest, IL	●										15	349	
Wachtell, Lipton, Rosen & Katz LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100		43
Walgreen Co.	Deerfield, IL	●	●	●	●			●	●	●		90	32	
Wal-Mart Stores Inc.	Bentonville, AR	●	●		▶				●	●		60	1	
Walt Disney Co., The	Burbank, CA	●	●	●	●	●	●	●	●	●	●	100	57	
Washington Post Co.	Washington, DC											0	455	
Waste Management Inc.	Houston, TX	●	●	●	●			●	●	●		90	196	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Weil, Gotshal & Manges LLP	New York, NY	●	●	●	●		●	●	●			90		8
WellCare Health Plans, Inc.	Tampa, FL	●										15	328	
WellPoint Inc.	Indianapolis, IN	●	●	●	▶		●	●	●			85	31	
Wells Fargo & Co.	San Francisco, CA	●	●	●	●	●	●	●	●	●		100	19	
WESCO International Inc.	Pittsburgh, PA	●										15	448	
Western & Southern Financial Group	Cincinnati, OH											0	420	
Western Digital Corp.	Lake Forest, CA	●										15	304	
Western Refining Inc.	El Paso, TX											0	330	
Western Union Co., The	Englewood, CO	●	●									30	413	
Weyerhaeuser Co.	Federal Way, WA	●		●	▶				●	●		60	379	
Whirlpool Corp.	Benton Harbor, MI	●	●	●	●	●	●	●	●	●		100	136	
White & Case LLP	New York, NY	●	●	●	●	●	●	●	●	●		100		7
Whole Foods Market Inc.	Austin, TX	●	●		●		●	●	●	●		75	284	
Wildman, Harrold, Allen & Dixon LLP	Chicago, IL	●			▶				●	●		45		
Williams Companies Inc.	Tulsa, OK	●		●	▶				●	●		60	276	
Williams Mullen PC	Richmond, VA	●	●	●	●		●	●	●	●		90	169	
Willkie Farr & Gallagher LLP	New York, NY	●	●	●	▶		●	●	●	●		85	50	
Wilmer Cutler Pickering Hale & Dorr LLP	Washington, DC	●	●	●	●	●	●	●	●	●		100	18	
Wilson Sonsini Goodrich & Rosati PC	Palo Alto, CA	●	●	●	▶		●	●	●	●		85	57	
Winn-Dixie Stores Inc.	Jacksonville, FL	●										15	306	
Winston & Strawn LLP	Chicago, IL	●	●	●	●	●	●	●	●	●		100	33	
Wisconsin Energy Corp.	Milwaukee, WI	●			▶				●	●		45	496	
Womble Carlyle Sandridge & Rice LLP	Winston-Salem, NC	●			●			●	●	●		60		106
World Fuel Services	Miami, FL	●	●									30	205	
WPP Group USA	New York, NY	●	●	●	●		●	●	●	●		90		
Wyeth	Madison, NJ	●		●	▶				●	●		60		
Wyndham Worldwide Corp.	Parsippany, NJ	●	●	●	●		●	●	●	●		90	541	
Wynn Resorts Ltd.	Las Vegas, NV	●	●	●	●		●	●	●	●		90	634	
Xcel Energy Inc.	Minneapolis, MN	●	●		●		●	●	●	●		75	244	
Xerox Corp.	Norwalk, CT	●	●	●	●	●	●	●	●	●		100	152	
XTO Energy, Inc.	Fort Worth, TX	●										15	258	
Yahoo! Inc.	Sunnyvale, CA	●	●	●	●	●	●	●	●	●		100	343	
YRC Worldwide Inc.	Overland Park, KS	●								▶		20	396	
Yum! Brands Inc.	Louisville, KY	●		●	▶				●			45	216	
Zurich North America	Schaumburg, IL	●	●	●	▶				●	▶		65		

Appendix C

Corporate Equality Index: Ratings by Industry, Descending Score

Corporate Equality Index Rating Criteria

- 1a** Prohibits Discrimination Based on Sexual Orientation **(15 points)**
- 1b** Prohibits Discrimination Based on Gender Identity or Expression **(15 points)**
- 2a** Offers Partner Health/Medical Insurance **(15 points)**
- 2b** Has Parity Across Other “Soft” Benefits for Partners **(10 points)**
(half credit for parity across some, but not all benefits)
- 2c** Offers Transgender-Inclusive Health Insurance Coverage **(10 points)**
- 3a** Firm-wide Organizational Competency Programs **(10 points)**
- 3b** Has Employer-Supported Employee Resource Group
OR Firm-Wide Diversity Council **(10 points)**
Would Support ERG if Employees Express Interest **(half credit)**
- 4** Positively Engages the External LGBT Community **(15 points)**
(partial credit of 5 points given for less than 3 efforts)
- 5** Responsible Citizenship Employers will have 25 points deducted
from their score for a large-scale official or public anti-LGBT blemish
on their recent records **(-25 points)**

Ratings in Gray

Unofficial rating of the Fortune 500 companies that have not responded to repeated invitations to the CEI survey. These ratings are based on publicly available information as well as information submitted to HRC from unofficial LGBT employee groups or individual employees.

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200		
		1a	1b	2a	2b	2c	3a	3b	4	5						
ADVERTISING AND MARKETING																
Publicis Inc.	New York, NY	●	●	●	●		●	●	●					90		
WPP Group USA	New York, NY	●	●	●	●			●	●	●				90		
Interpublic Group of Companies Inc.	New York, NY	●	●	●	⌋			●	●	●				85	358	
Starcom MediaVest Group	Chicago, IL	●	●	●	⌋			●	●	●				85		
Valassis Communications Inc.	Livonia, MI	●	●		●			●	●	●				75	768	
Omnicom Group	New York, NY	●	●		●				●	●				65	198	
AEROSPACE AND DEFENSE																
Lockheed Martin Corp.	Bethesda, MD	●	●	●	●	●	●	●	●	●				100	44	
Raytheon Co.	Waltham, MA	●	●	●	●	●	●	●	●	●				100	95	
Boeing Co.	Chicago, IL	●	●	●	⌋			●	●	●				85	28	
General Dynamics Corp.	Falls Church, VA	●	●	●	⌋			●	●	●				85	69	
Honeywell International Inc.	Morris Township, NJ	●	●	●	⌋			●	●	●				85	74	
Northrop Grumman Corp.	Falls Church, VA	●	●	●	⌋				●	●				75	61	
Rockwell Collins Inc.	Cedar Rapids, IA	●	●	●	⌋				●	●				75	462	
Alliant Techsystems Inc.	Minneapolis, MN	●		●	⌋									35	454	
Goodrich Corp.	Charlotte, NC													0	334	
L-3 Communications Holdings	New York, NY	●												15	148	
Precision Castparts Corp	Portland, OR	●	●											30	325	
Textron Inc.	Providence, RI	●												15	220	
AIRLINES																
AMR Corp. (American Airlines)	Fort Worth, TX	●	●	●	●	●	●	●	●	●				100	120	
United Continental Holdings Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●				100	140	
Alaska Air Group Inc.	Seattle, WA	●	●	●	●			●	●	●				90	575	
Delta Air Lines Inc.	Atlanta, GA	●	●	●	●			●	●	●				90	84	
JetBlue Airways Corp.	Forest Hills, NY	●	●	●	●			●	●	●				90	592	
Southwest Airlines Co.	Dallas, TX	●	●	●	●			●	●	●				90	229	
Virgin America	Burlingame, CA	●	●	●	●			●	●	●				90		
US Airways Group Inc.	Tempe, AZ	●	●	●	⌋			●	●	●				85	222	
APPAREL, FASHION, TEXTILES, DEPT. STORES																
Levi Strauss & Co.	San Francisco, CA	●	●	●	●	●	●	●	●	●				100	503	
Nike Inc.	Beaverton, OR	●	●	●	●	●	●	●	●	●				100	124	
Kenneth Cole Productions Inc.	New York, NY	●	●	●	●			●	●	●				90		
Macy's Inc.	Cincinnati, OH	●	●	●	●			●	●	●				90	103	
Jones Apparel Group Inc.	New York, NY	●	●	●	⌋				⌋	●				70	583	
L.L. Bean Inc.	Freeport, ME	●	●	●	⌋			●	⌋					65		
Hanesbrands Inc.	Winston-Salem, NC	●	●	●	●					⌋				60	524	
Polo Ralph Lauren Corp.	New York, NY	●												15	417	
VF Corp.	Greensboro, NC	●												15	310	
AUTOMOTIVE																
Ford Motor Co.	Dearborn, MI	●	●	●	●	●	●	●	●	●				100	8	
Toyota Motor Sales USA Inc.	Torrance, CA	●	●	●	●	●	●	●	●	●				100		
Chrysler LLC	Auburn Hills, MI	●	●	●	●	●	●	●	●	●				100		
Volkswagen Group of America Inc.	Herndon, VA	●	●	●	●	●	●		●	●				90		
Subaru of America Inc.	Cherry Hill, NJ	●	●	●	⌋			●	●	●				85		

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200	
		1a	1b	2a	2b	2c	3a	3b	4	5					
Visteon Corp.	Van Buren Township, MI	●	●	●	⋄		●	●	●			85	335		
General Motors Co.	Detroit, MI	●	●		●	●	●	●	●			85	15		
Bridgestone Americas Holding Inc.	Nashville, TN	●	●		⋄		●	●	●			70			
Hertz Global Holdings Inc.	Park Ridge, NJ	●	●	●	⋄						●	65	318		
Nissan North America Inc.	Franklin, TN	●		●								30			
Cooper Tire & Rubber Co.	Findlay, OH		●		⋄					⋄		25	678		
Dana Holding Corp.	Maumee, OH	●										15	398		
Navistar International Corp.	Warrenville, IL								●			10	202		
Lear Corp.	Southfield, MI											0	242		
ArvinMeritor Inc.	Troy, MI	●										15	450		
Autoliv Inc.	Auburn Hills, MI	●	●									30	410		
AutoNation Inc.	Fort Lauderdale, FL	●										15	212		
Goodyear Tire & Rubber Co.	Akron, OH	●										15	141		
Group 1 Automotive	Houston, TX	●										15	457		
Johnson Controls Inc.	Milwaukee, WI	●	●									30	83		
Paccar Inc.	Bellevue, WA	●										15	282		
Penske Automotive Group	Bloomfield Hills, MI											0	245		
Sonic Automotive Inc	Charlotte, NC	●										15	345		
Tenneco Inc.	Lake Forest, IL											0	446		
TRW Automotive Holdings Corp.	Livonia, MI									●		10	201		
BANKING AND FINANCIAL SERVICES															
American Express Co.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	88		
Ameriprise Financial Inc.	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100	288		
Bank of America Corp.	Charlotte, NC	●	●	●	●	●	●	●	●	●	●	100	5		
Bank of New York Mellon Corp., The (BNY Mellon)	New York, NY	●	●	●	●	●	●	●	●	●	●	100	274		
Barclays Capital	New York, NY	●	●	●	●	●	●	●	●	●	●	100			
BMO Bankcorp Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100			
Capital One Financial Corp.	McLean, VA	●	●	●	●	●	●	●	●	●	●	100	144		
Charles Schwab Corp., The	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	465		
Citigroup Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	12		
Credit Suisse USA Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100			
Deutsche Bank	New York, NY	●	●	●	●	●	●	●	●	●	●	100			
Federal Home Loan Mortgage Corp. (Freddie Mac)	McLean, VA	●	●	●	●	●	●	●	●	●	●	100	54		
Goldman Sachs Group Inc., The	New York, NY	●	●	●	●	●	●	●	●	●	●	100	39		
JPMorgan Chase & Co.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	9		
Morgan Stanley	New York, NY	●	●	●	●	●	●	●	●	●	●	100	70		
Northern Trust Corp.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	497		
TD Bank, N.A.	Wilmington, DE	●	●	●	●	●	●	●	●	●	●	100			
Teachers Insurance & Annuity Association - College Retirement Equities Fund	New York, NY	●	●	●	●	●	●	●	●	●	●	100	90		
Toyota Financial Services Corp.	Torrance, CA	●	●	●	●	●	●	●	●	●	●	100			
U.S. Bancorp	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100	121		
UBS AG	Stamford, CT	●	●	●	●	●	●	●	●	●	●	100			
Wells Fargo & Co.	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	19		
Comerica Inc.	Dallas, TX	●	●	●	⋄	●	●	●	●	●	●	95	615		
CoreLogic	Santa Ana, CA	●	●	●	●		●	●	●			90			

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200		
		1a	1b	2a	2b	2c	3a	3b	4	5						
HSBC - North America	New York, NY	●	●	●	●		●	●	●			90				
KeyCorp	Cleveland, OH	●	●	●	●		●	●	●			90	356			
MasterCard Inc.	Purchase, NY	●	●	●	●		●	●	●			90	411			
Morningstar Inc.	Chicago, IL	●	●	●	●		●	●	●			90				
PNC Financial Services Group Inc., The	Pittsburgh, PA	●	●	●	●		●	●	●			90	123			
Raymond James Financial Inc.	St. Petersburg, FL	●	●	●	●		●	●	●			90	708			
State Street Corp.	Boston, MA	●	●	●	●		●	●	●			90	249			
SunTrust Banks Inc.	Atlanta, GA	●	●	●	●		●	●	●			90	224			
BNP Paribas	New York, NY	●	●	●	▸		●	●	●			85				
First Horizon National Corp.	Memphis, TN	●	●	●	▸		●	●	●			85	773			
RBC Wealth Management	Minneapolis, MN	●	●	●	▸		●	●	●			85				
Visa	San Francisco, CA	●	●	●	▸		●	●	●			85	326			
Federal National Mortgage Association (Fannie Mae)	Washington, DC	●	●	●	●			●	●			80	81			
BlackRock	New York, NY	●		●	●	●		●	●			75	441			
Moody's Corp.	New York, NY	●	●	●	▸			●	●			75	900			
BB&T Corp.	Winston-Salem, NC	●	●	●	▸			▸	●			70	217			
Canadian Imperial Bank of Commerce	New York, NY	●	●	●	▸		●	●				70				
Federal Reserve Bank of Boston	Boston, MA	●	●	●	●			●	▸			70				
Fifth Third Bancorp	Cincinnati, OH	●		●	▸		●	●	●			70	248			
Robert W. Baird & Co. Incorporated	Milwaukee, WI	●	●		▸		●	●	●			70				
Financial Industry Regulatory Authority Inc.	Washington, DC	●		●	●			●	●			65				
E*TRADE Financial Corp.	New York, NY	●	●	●	▸			▸	▸			60	675			
Huntington Bancshares Inc.	Columbus, OH	●		●	▸			●	●			60	597			
Compass Bancshares Inc. (BBVA Compass)	Birmingham, AL	●		●	▸			▸	●			55				
H&R Block Inc.	Kansas City, MO	●		●	▸				●			50	493			
Discover Financial Services	Riverwoods, IL	●	●		▸			▸	▸			45	286			
SLM Corp. (Sallie Mae)	Reston, VA	●		●	▸			●				45	354			
Chamberlin Edmonds & Associates Inc.	Atlanta, GA	●		●	▸			▸				40				
Franklin Resources Inc.	San Mateo, CA	●		●	●							40	495			
Dun & Bradstreet Corp., The	Short Hills, NJ	●		●								30	940			
CIT Group Inc.	New York, NY	●										15	515			
Ally Financial Inc.	Detroit, MI	●										15	122			
Fidelity National Financial Corp.	Jacksonville, FL	●	●									30	366			
First Data Corp.	Atlanta, GA	●										15	250			
Fiserv Inc.	Brookfield, WI	●										15	491			
International Assets Holding Corp.	Altamonte Springs, FL											0	49			
NYSE Euronext Inc.	New York, NY	●										15	444			
SunGard Data Systems Inc.	Wayne, PA	●										15	380			
Western Union Co., The	Englewood, CO	●	●									30	413			
CHEMICALS AND BIOTECHNOLOGY																
Dow Chemical Co., The	Midland, MI	●	●	●	●	●	●	●	●	●	●	100	46			
E. I. du Pont de Nemours and Co. (DuPont)	Wilmington, DE	●	●	●	●	●	●	●	●	●	●	100	86			
Genentech Inc.	South San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100				
BASF Corp.	Florham Park, NJ	●	●	●	●			●	●	●		90				
Bayer Corp.	Pittsburgh, PA	●	●	●	●			●	●	●		90				

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Ecolab Inc.	St. Paul, MN	●	●	●	●		●	●	●			90	365	
Air Products & Chemicals Inc.	Allentown, PA	●	●	●	●				●	●		80	273	
Monsanto Co.	St. Louis, MO	●	●	●	●				●	●		80	197	
PPG Industries Inc.	Pittsburgh, PA	●		●	▸				●	●		60	190	
Praxair Inc.	Danbury, CT	●		●	▸				●	▸		50	262	
Ashland Inc.	Covington, KY	●										15	280	
Avery Dennison	Pasadena, CA	●										15	362	
Celanese Corp.	Dallas, TX	●										15	414	
Eastman Chemical Co.	Kingsport, TN	●										15	415	
Huntsman Corp.	Salt Lake City, UT											0	293	
Lubrizol Corporation	Wickliffe, OH	●										15	453	
Mosaic Company	Plymouth, MN	●	●									30	231	
Sherwin-Williams Co., The	Cleveland, OH	●										15	319	
COMPUTER AND DATA SERVICES														
Automatic Data Processing Inc.	Roseland, NJ	●	●	●	●	●	●	●	●	●		100	265	
EMC Corp.	Hopkinton, MA	●	●	●	●	●	●	●	●	●		100	166	
Hewlett-Packard Co.	Palo Alto, CA	●	●	●	●	●	●	●	●	●		100	10	
Broadridge Financial Solutions Inc.	Lake Success, NY	●	●	●	●	●			●	●		90	788	
LexisNexis Group	Miamisburg, OH	●	●	●	●			●	●	●		90		
Computer Sciences Corp. (CSC)	Falls Church, VA	●	●	●	▸			●	●	●		85	138	
SRA International Inc.	Fairfax, VA	●		●	▸				●			45	1000	
Affiliated Computer Services	Dallas, TX	●		●	▸					▸		40	341	
Unisys Corp.	Blue Bell, PA	●	●						●			40	452	
Keane Inc.	Boston, MA	●							●			25		
SAIC Inc.	McLean, VA	●										15	215	
COMPUTER HARDWARE AND OFFICE EQUIPMENT														
Apple Inc.	Cupertino, CA	●	●	●	●	●	●	●	●	●		100	56	
Cisco Systems Inc.	San Jose, CA	●	●	●	●	●	●	●	●	●		100	58	
Dell Inc.	Round Rock, TX	●	●	●	●	●	●	●	●	●		100	38	
Tech Data Corp.	Clearwater, FL	●	●	●	●	●	●	●	●	●		100	109	
Xerox Corp.	Norwalk, CT	●	●	●	●	●	●	●	●	●		100	152	
CDW Corp.	Vernon Hills, IL	●	●	●	●			●	●	●		90		
Lexmark International Inc.	Lexington, KY	●	●	●	●			●	●	●		90	526	
NetApp Inc.	Sunnyvale, CA	●	●	●	●			●	●	●		90	574	
NCR Corp.	Duluth, GA	●	●	●	●				●	●		80	451	
Ingram Micro	Santa Ana, CA	●	●		●				▸	●		60	80	
Avnet Inc.	Phoenix, AZ	●		●	▸				●	▸		50	142	
Pitney Bowes Inc.	Stamford, CT	●	●	●	▸							50	375	
Seagate Technology LLC	Scotts Valley, CA	●		●	▸				●			45		
Acer Inc.	Irvine, CA	●		●	▸							35		
Software House International	Somerset, NJ	●										15		
Arrow Electronics	Melville, NY	●										15	157	
Harris Corp.	Melbourne, FL	●	●									30	371	
SYNNEX Corp.	Fremont, CA											0	294	
United Stationers Inc.	Deerfield, IL	●										15	439	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200	
		1a	1b	2a	2b	2c	3a	3b	4	5					
Western Digital Corp.	Lake Forest, CA	●											15	304	
COMPUTER SOFTWARE															
Intuit Inc.	Mountain View, CA	●	●	●	●	●	●	●	●	●	●	●	100	610	
Microsoft Corp.	Redmond, WA	●	●	●	●	●	●	●	●	●	●	●	100	36	
Oracle Corp.	Redwood City, CA	●	●	●	●	●	●	●	●	●	●	●	100	105	
Symantec Corp.	Mountain View, CA	●	●	●	●	●	●	●	●	●	●	●	100	353	
Adobe Systems Inc.	San Jose, CA	●	●	●	●	●	●	●	●	●	●	●	90	657	
Electronic Arts Inc.	Redwood City, CA	●	●	●	●	●	●	●	●	●	●	●	90	494	
SAP America Inc.	Newtown Square, PA	●	●	●	●	●	●	●	●	●	●	●	90		
BMC Software Inc.	Houston, TX	●	●	●	●	●	●	●	●	●	●	●	80	872	
CA Inc.	Islandia, NY	●	●	●	●	●	●	●	●	●	●	●	80	482	
Software AG USA Inc.	Reston, VA	●	●	●	●	●	●	●	●	●	●	●	80		
Cerner Corp.	North Kansas City, MO	●	●	●	●	●	●	●	●	●	●	●	70	944	
Compuware Corp.	Detroit, MI	●	●	●	●	●	●	●	●	●	●	●	70		
Allscripts-Misys Health care Solutions Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	●	30		
McAfee Inc.	Santa Clara, CA	●	●	●	●	●	●	●	●	●	●	●	25	857	
CONSULTING AND BUSINESS SERVICES															
A.T. Kearney Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	●	100		
Accenture Ltd.	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100		
Aon Corp.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	●	100	298	
Bain & Co. Inc.	Boston, MA	●	●	●	●	●	●	●	●	●	●	●	100		
Booz Allen Hamilton Inc.	McLean, VA	●	●	●	●	●	●	●	●	●	●	●	100		
Boston Consulting Group	Boston, MA	●	●	●	●	●	●	●	●	●	●	●	100		
Deloitte LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100		
Ernst & Young LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100		
International Business Machines Corp. (IBM)	Armonk, NY	●	●	●	●	●	●	●	●	●	●	●	100	20	
KPMG LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100		
Marsh & McLennan Companies Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100	221	
McKinsey & Co. Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100		
Navigant Consulting Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	●	100		
PricewaterhouseCoopers LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100		
Adecco North America LLC	Melville, NY	●	●	●	●	●	●	●	●	●	●	●	90		
Aramark Corp.	Philadelphia, PA	●	●	●	●	●	●	●	●	●	●	●	90	189	
Nielsen Co., The	New York City, NY	●	●	●	●	●	●	●	●	●	●	●	90		
Robert Half International Inc.	Menlo Park, CA	●	●	●	●	●	●	●	●	●	●	●	75	636	
Harris Interactive Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	●	70		
Grant Thornton LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	●	65		
Capgemini U.S. LLC	New York, NY	●	●	●	●	●	●	●	●	●	●	●	50		
ManpowerGroup	Milwaukee, WI	●	●	●	●	●	●	●	●	●	●	●	50	143	
Convergys Corp.	Cincinnati, OH	●	●	●	●	●	●	●	●	●	●	●	45	666	
Kelly Services Inc.	Troy, MI	●	●	●	●	●	●	●	●	●	●	●	30	479	
EDUCATION AND CHILD CARE															
Bright Horizons Family Solutions Inc.	Watertown, MA	●	●	●	●	●	●	●	●	●	●	●	90		
ENERGY AND UTILITIES															
Exelon Corp.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	●	100	134	

APPENDIX C | **CORPORATE EQUALITY INDEX 2012**
RATINGS BY INDUSTRY, DESCENDING SCORE

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200		
		1a	1b	2a	2b	2c	3a	3b	4	5	-25 points					
PG&E Corp.	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	●	●	100	173	
Sempra Energy	San Diego, CA	●	●	●	●	●	●	●	●	●	●	●	●	100	280	
Southern California Edison Co.	Rosemead, CA	●	●	●	●	●	●	●	●	●	●	●	●	100		
Consolidated Edison Co.	New York, NY	●	●	●	●	●	●	●	●	●	●	●	●	90	175	
Constellation Energy Group Inc.	Baltimore, MD	●	●	●	●	●	●	●	●	●	●	●	●	90	149	
Entergy Corp.	New Orleans, LA	●	●	●	●	●	●	●	●	●	●	●	●	90	219	
National Grid USA	Brooklyn, NY	●	●	●	●	●	●	●	●	●	●	●	●	90		
Portland General Electric Co.	Portland, OR	●	●	●	●	●	●	●	●	●	●	●	●	90	899	
Dominion Resources Inc.	Richmond, VA	●	●	●	●	●	●	●	●	●	●	●	●	85	153	
Public Service Enterprise Group	Newark, NJ	●	●	●	●	●	●	●	●	●	●	●	●	85	186	
PacifiCorp	Portland, OR	●	●	●	●	●	●	●	●	●	●	●	●	80		
Xcel Energy Inc.	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	●	●	75	244	
Duke Energy Corp.	Charlotte, NC	●	●	●	●	●	●	●	●	●	●	●	●	70	181	
NV Energy Inc.	Las Vegas, NV	●	●	●	●	●	●	●	●	●	●	●	●	70	556	
Ameren Corp.	St. Louis, MO	●	●	●	●	●	●	●	●	●	●	●	●	60	320	
Pepco Holdings Inc.	Washington, DC	●	●	●	●	●	●	●	●	●	●	●	●	60	251	
RRI Energy Inc.	Houston, TX	●	●	●	●	●	●	●	●	●	●	●	●	60	528	
Williams Companies Inc.	Tulsa, OK	●	●	●	●	●	●	●	●	●	●	●	●	60	276	
Alliant Energy Corp.	Madison, WI	●	●	●	●	●	●	●	●	●	●	●	●	50	570	
Severn Trent Services Inc.	Fort Washington, PA	●	●	●	●	●	●	●	●	●	●	●	●	50		
DTE Energy Co.	Detroit, MI	●	●	●	●	●	●	●	●	●	●	●	●	45	285	
Laclede Group Inc., The	St. Louis, MO	●	●	●	●	●	●	●	●	●	●	●	●	45	865	
PPL Corp.	Allentown, PA	●	●	●	●	●	●	●	●	●	●	●	●	60	300	
Progress Energy Inc.	Raleigh, NC	●	●	●	●	●	●	●	●	●	●	●	●	45	239	
Wisconsin Energy Corp.	Milwaukee, WI	●	●	●	●	●	●	●	●	●	●	●	●	45	496	
Calpine Corp.	Houston, TX	●	●	●	●	●	●	●	●	●	●	●	●	40	338	
Southern Co.	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	●	●	40	145	
Pinnacle West Capital	Phoenix, AZ	●	●	●	●	●	●	●	●	●	●	●	●	35	590	
PNM Resources Inc.	Albuquerque, NM	●	●	●	●	●	●	●	●	●	●	●	●	35	927	
Mirant Corp.	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	●	●	30	760	
Northeast Utilities	Berlin, CT	●	●	●	●	●	●	●	●	●	●	●	●	30	385	
Allegheny Energy Inc.	Greensburg, PA	●	●	●	●	●	●	●	●	●	●	●	●	15	571	
AES Corp., The	Arlington, VA	●	●	●	●	●	●	●	●	●	●	●	●	15	156	
American Electric Power Co. Inc.	Columbus, OH	●	●	●	●	●	●	●	●	●	●	●	●	15	172	
Atmos Energy Corp.	Dallas, TX	●	●	●	●	●	●	●	●	●	●	●	●	30	424	
CenterPoint Energy Inc.	Houston, TX	●	●	●	●	●	●	●	●	●	●	●	●	15	275	
CMS Energy Services	Jackson, MI	●	●	●	●	●	●	●	●	●	●	●	●	15	350	
Edison International	Rosemead, CA	●	●	●	●	●	●	●	●	●	●	●	●	30	187	
Energy Future Holdings Corp	Dallas, TX	●	●	●	●	●	●	●	●	●	●	●	●	15	246	
Energy Transfer Partners, L.P.	Dallas, TX	●	●	●	●	●	●	●	●	●	●	●	●	0	388	
FirstEnergy Corp.	Akron, OH	●	●	●	●	●	●	●	●	●	●	●	●	15	179	
Global Partners	Waltham, MA	●	●	●	●	●	●	●	●	●	●	●	●	0	368	
Integrus Energy Group Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	●	●	30	302	
NextEra Energy Inc.	Juno Beach, FL	●	●	●	●	●	●	●	●	●	●	●	●	15	147	
NiSource Inc.	Merrillville, IN	●	●	●	●	●	●	●	●	●	●	●	●	15	336	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200	
		1a	1b	2a	2b	2c	3a	3b	4	5					
NRG Energy Inc.	Princeton, NJ	●											15	263	
ONEOK Inc.	Tulsa, OK	●											15	209	
SCANA Corp.	Cayce, SC	●											15	489	
UGI Corp.	King of Prussia, PA	●	●										30	369	
ENGINEERING AND CONSTRUCTION															
AECOM Technology Corp.	Los Angeles, CA	●	●	●	▶			●	●	●			85	352	
CH2M HILL Companies Ltd.	Englewood, CO	●	●	●	▶			●	●	●			85	381	
Jacobs Engineering Group Inc.	Pasadena, CA	●	●	●	▶								50	203	
KB Home	Los Angeles, CA	●	●	●	▶								50	892	
Perkins + Will Inc.	Chicago, IL	●		●	▶				●				45		
Ryland Group Inc., The	Calabasas, CA	●			▶								20		
EMCOR Group Inc	Norwalk, CT	●											15	377	
Peter Kiewit Sons' Inc	Omaha, NE	●											15	238	
Shaw Group Inc., The	Baton Rouge, LA	●											15	309	
URS Corp.	San Francisco, CA	●											15	252	
Fluor Corp	Irving, TX												0	111	
KBR Inc.	Houston, TX												0	193	
Tutor Perini Corp.	Sylmar, CA												0	407	
ENTERTAINMENT AND ELECTRONIC MEDIA															
Time Warner Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100	82	
Walt Disney Co., The	Burbank, CA	●	●	●	●	●	●	●	●	●	●	●	100	57	
AMC Entertainment Inc.	Kansas City, MO	●	●	●	●			●	●	●	●		90	740	
CBS Corp.	New York, NY	●	●	●	●			●	●	●	●		90	177	
Cox Enterprises Inc.	Atlanta, GA	●	●	●	●			●	●	●	●		90		
Thomson Reuters	New York, NY	●	●	●	●			●	●	●	●		90		
Viacom Inc.	New York, NY	●	●	●	●			●	●	●	●		90	170	
Comcast Corp.	Philadelphia, PA	●	●	●	●				●	●	●		80	59	
CC Media Holdings Inc. (Clear Channel)	San Antonio, TX	●	●	●	●				▶	●	●		75	376	
SIRIUS XM Radio Inc.	New York, NY	●	●	●	▶				●	●	●		75	732	
Live Nation Inc.	Beverly Hills, CA	●	●	●	●					●			70	490	
Corbis Corp.	Seattle, WA	●	●	●	▶								50		
News Corp.	New York, NY	●											15	76	
FOOD, BEVERAGES AND GROCERIES															
Brown-Forman Corp.	Louisville, KY	●	●	●	●	●	●	●	●	●	●	●	100	729	
Campbell Soup Co.	Camden, NJ	●	●	●	●	●	●	●	●	●	●	●	100	299	
Cargill Inc.	Wayzata, MN	●	●	●	●	●	●	●	●	●	●	●	100		
Coca-Cola Co., The	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	●	100	72	
Delhaize America Inc	Salisbury, NC	●	●	●	●	●	●	●	●	●	●	●	100		
Diageo North America	Norwalk, CT	●	●	●	●	●	●	●	●	●	●	●	100		
General Mills Inc.	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	●	100	155	
Kellogg Co.	Battle Creek, MI	●	●	●	●	●	●	●	●	●	●	●	100	184	
Kraft Foods Inc.	Northfield, IL	●	●	●	●	●	●	●	●	●	●	●	100	53	
MillerCoors LLC	Chicago, IL	●	●	●	●	●	●	●	●	●	●	●	100		
Sodexo Inc.	Gaithersburg, MD	●	●	●	●	●	●	●	●	●	●	●	100		
Supervalu Inc.	Eden Prairie, MN	●	●	●	●	●	●	●	●	●	●	●	100	47	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
PepsiCo Inc.	Purchase, NY	●	●	●	▶	●	●	●	●	●	●	95	50	
Anheuser-Busch Companies Inc.	St. Louis, MO	●	●	●	●		●	●	●			90		
Darden Restaurants Inc.	Orlando, FL	●	●	●	●		●	●	●			90	311	
Land O'Lakes Inc.	Arden Hills, MN	●	●	●	●		●	●	●			90	226	
Starbucks Corp.	Seattle, WA	●	●	●	●		●	●	●			90	241	
Hershey Co., The	Hershey, PA	●	●	●	▶		●	●	●			85	395	
Kroger Co., The	Cincinnati, OH	●	●	●	▶		●	●	●			85	23	
Safeway Inc.	Pleasanton, CA	●	●	●	▶		●	●	●			85	52	
Sara Lee Corp.	Downers Grove, IL	●	●	●	▶		●	●	●			85	180	
Chipotle Mexican Grill Inc.	Denver, CO	●	●	●	●			▶	●			75		
Coca-Cola Enterprises Inc.	Atlanta, GA	●	●	●	▶			●	●			75	113	
ConAgra Foods Inc.	Omaha, NE	●	●	●	▶			●	●			75	178	
McDonald's Corp.	Oak Brook, IL	●		●	●		●	●	●			75	108	
Whole Foods Market Inc.	Austin, TX	●	●		●		●	●	●			75	284	
Gastronomy Inc.	Salt Lake City, UT	●	●	●	▶			▶	●			70		
H.J. Heinz Co.	Pittsburgh, PA	●	●	●	●			▶	▶			65	233	
Hain Celestial Group Inc.	Melville, NY	●		●	●			●	●			65		
Palm Management Corp.	Washington, DC	●		●	▶		●	▶	●			65		
Brinker International Inc.	Dallas, TX	●	●	●	▶			●				60	551	
Dr Pepper Snapple Group Inc.	Plano, TX	●	●	●	●				▶			60	378	
E&J Gallo Winery	Modesto, CA	●	●		▶			●	●			60		
Hormel Foods Corp.	Austin, MN	●	●		▶		●	●	▶			60	340	
Ahold USA Inc.	Quincy, MA	●	●	●	▶				▶			55		
Burger King Corp.	Miami, FL	●		●	▶				▶	●		55	721	
Mars Inc.	Mt. Olive, NJ	●	●	●	▶				▶			55		
U.S. Foodservice Inc.	Rosemont, IL	●		●	●				▶	▶		50		
Nestlé Purina PetCare Co.	St. Louis, MO	●			▶			●	●			45		
Rite Aid Corp.	Camp Hill, PA	●		●	▶			●				45	89	
Yum! Brands Inc.	Louisville, KY	●		●	▶			●				45	216	
Dean Foods Co.	Dallas, TX	●		●	▶				▶			40	208	
H.E. Butt Grocery Co.	San Antonio, TX	●		●				●				40		
Compass Group USA Inc.	Charlotte, NC	●		●	▶							35		
Cracker Barrel Old Country Store Inc.	Lebanon, TN	●			▶			●	▶			35	746	
Domino's Pizza Inc.	Ann Arbor, MI	●			▶			●	▶			35		
C&S Wholesale Grocers Inc.	Keene, NH	●		●								30		
Dole Food Co. Inc.	Westlake Village, CA	●		●								30	331	
Archer Daniels Midland Co.	Decatur, IL	●		●	▶							35	27	
CHS Inc.	Inver Grove Heights, MN											0	91	
Core-Mark Holding Company, Inc.	South San Francisco, CA											0	419	
Great Atlantic & Pacific Tea Co. Inc., The	Montvale, NJ											0	247	
Nash Finch	Minneapolis, MN	●										15	400	
Pilgrim's Pride Corporation	Pittsburg, TX											0	317	
Publix Super Markets	Lakeland, FL	●										15	99	
Smithfield Foods Inc.	Smithfield, VA											0	163	
SYSCO Corp.	Houston, TX											0	55	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200	
		1a	1b	2a	2b	2c	3a	3b	4	5					
Tyson Foods, Inc.	Springdale, AR	●											15	87	
Winn-Dixie Stores Inc.	Jacksonville, FL	●											15	306	
FOREST AND PAPER PRODUCTS															
Weyerhaeuser Co.	Federal Way, WA	●		●	▶					●	●		60	379	
International Paper Co.	Memphis, TN	●		●	▶					●			45	104	
Domtar Corp.	Fort Mill, SC	●											15	383	
HEALTH CARE/ HEALTH INSURANCE															
Aetna Inc.	Hartford, CT	●	●	●	●	●	●	●	●	●	●	●	100	63	
Blue Cross Blue Shield of Florida Inc.	Jacksonville, FL	●	●	●	●	●	●	●	●	●	●	●	100		
Blue Cross Blue Shield of Minnesota	Eagan, MN	●	●	●	●	●	●	●	●	●	●	●	100		
Cardinal Health Inc.	Dublin, OH	●	●	●	●	●	●	●	●	●	●	●	100	17	
Group Health Cooperative	Seattle, WA	●	●	●	●	●	●	●	●	●	●	●	100		
UnitedHealth Group Inc.	Minnetonka, MN	●	●	●	●	●	●	●	●	●	●	●	100	21	
CareFusion Corp.	San Diego, CA	●	●	●	●	●				●	●	●	90		
CIGNA Corp.	Bloomfield, CT	●	●	●	●				●	●	●	●	90	129	
Excelsus Health Plan Inc.	Rochester, NY	●	●	●	●				●	●	●	●	90		
Humana Inc.	Louisville, KY	●	●	●	●				●	●	●	●	90	73	
Group Health Permanente	Seattle, WA	●	●	●	●	●				●	●	●	90		
Kaiser Permanente	Oakland, CA	●	●	●	●				●	●	●	●	90		
Bausch & Lomb Inc.	Rochester, NY	●	●	●	▶				●	●	●	●	85		
Harvard Pilgrim Health Care Inc.	Wellesley, MA	●	●	●	●				●	▶	●	●	85		
Health Care Service Corp.	Chicago, IL	●	●	●	▶				●	●	●	●	85		
WellPoint Inc.	Indianapolis, IN	●	●	●	▶				●	●	●	●	85	31	
Health Net Inc.	Woodland Hills, CA	●	●	●	▶				●	▶	●	●	80	146	
Mayo Clinic	Rochester, MN	●		●	▶				●	●	●	●	70		
Quest Diagnostics Inc.	Madison, NJ	●		●	●					●	●	●	65	303	
Abbott Laboratories	Abbott Park, IL	●		●	▶					●	●	●	60	75	
Baxter International Inc.	Deerfield, IL	●		●	▶					●	●	●	60	185	
Blue Cross Blue Shield of North Carolina	Durham, NC	●	●		▶					●	●	●	60		
McKesson Corp.	San Francisco, CA	●		●	▶					●	●	●	60	14	
Patterson Companies (Patterson Dental Supply)	St. Paul, MN	●	●	●	▶					▶	▶		60	629	
Vision Service Plan	Rancho Cordova, CA	●		●	▶					●			45		
Austin Radiological Assn.	Austin, TX	●		●	▶					▶			40		
Owens & Minor Inc.	Mechanicsville, VA	●			▶						▶		25	283	
Amerigroup Corp.	Virginia Beach, VA												0	404	
AmerisourceBergen Corp.	Chesterbrook, PA	●											15	24	
Centene Corp.	St. Louis, MO												0	486	
Coventry Health Care	Bethesda, MD	●											15	168	
Express Scripts Inc.	St. Louis, MO	●											15	96	
Henry Schein	Melville, NY	●											15	339	
Laboratory Corporation of America Holdings	Burlington, NC	●											15	442	
Medco Health Solutions	Franklin Lakes, NJ	●											15	35	
Omnicare	Covington, KY												0	347	
WellCare Health Plans, Inc.	Tampa, FL	●											15	328	
HEALTH CARE MEDICAL FACILITIES															
Tenet Health care	Dallas, TX	●		●	▶					▶	▶		45	253	

APPENDIX C | **CORPORATE EQUALITY INDEX 2012**
RATINGS BY INDUSTRY, DESCENDING SCORE

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200	
		1a	1b	2a	2b	2c	3a	3b	4	5					
Community Health Systems Inc.	Franklin, TN	●	●										30	191	
DaVita Inc.	El Segundo, CA	●											15	355	
HCA - Hospital Corporation of America	Nashville, TN	●											15	77	
Health Management Associates Inc.	Naples, FL												0	443	
Kindred Health care	Louisville, KY	●											15	477	
Universal Health Services	King of Prussia, PA	●											15	403	
HIGH-TECH/PHOTO/SCIENCE EQUIP.															
Eastman Kodak Co.	Rochester, NY	●	●	●	●	●	●	●	●	●	●	●	100	297	
Medtronic Inc.	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	●	100	160	
Intel Corp.	Santa Clara, CA	●	●	●	●	●	●	●	●	●	●	●	95	62	
Rockwell Automation Inc.	Milwaukee, WI	●	●	●	●	●	●	●	●	●	●	●	90	476	
Texas Instruments Inc.	Dallas, TX	●	●	●	●	●	●	●	●	●	●	●	90	223	
Applied Materials Inc.	Santa Clara, CA	●	●	●	●	●	●	●	●	●	●	●	85	421	
Agilent Technologies Inc.	Santa Clara, CA	●	●	●	●	●	●	●	●	●	●	●	75	461	
ITT Corp.	White Plains, NY	●	●	●	●	●	●	●	●	●	●	●	75	214	
Advanced Micro Devices Inc.	Sunnyvale, CA	●	●	●	●	●	●	●	●	●	●	●	70	390	
Nokia Corp.	Irving, TX	●	●	●	●	●	●	●	●	●	●	●	70		
Boston Scientific Corp.	Natick, MA	●	●	●	●	●	●	●	●	●	●	●	65	279	
St. Jude Medical Inc.	St. Paul, MN	●	●	●	●	●	●	●	●	●	●	●	60	445	
Thermo Fisher Scientific Inc.	Waltham, MA	●	●	●	●	●	●	●	●	●	●	●	50	234	
KLA-Tencor Corp.	Milpitas, CA	●	●	●	●	●	●	●	●	●	●	●	35		
Polaroid Corp.	Waltham, MA	●	●	●	●	●	●	●	●	●	●	●	30		
Agco	Duluth, GA	●											15	337	
Becton, Dickinson and Co.	Franklin Lakes, NJ	●	●										30	312	
Broadcom Corp.	Irvine, CA	●											15	460	
Dover Corp.	New York, NY												0	367	
Eaton Corp.	Cleveland, OH	●											15	194	
Flowserve	Irving, TX												0	473	
General Cable Corp.	Highland Heights, KY	●											15	469	
Graybar Electric Company, Inc.	St. Louis, MO	●											15	470	
Micron Technology Inc.	Boise, ID	●											15	432	
Parker Hannifin Corp.	Cleveland, OH	●											15	230	
Sanmina-SCI	San Jose, CA												0	405	
SPX Corp.	Charlotte, NC												0	427	
Stryker Corp.	Kalamazoo, MI	●											15	333	
Terex Corporation	Westport, CT	●	●										30	402	
WESCO International Inc.	Pittsburgh, PA	●											15	448	
HOME FURNISHING															
Mitchell Gold + Bob Williams	Taylorsville, NC	●	●	●	●	●	●	●	●	●	●	●	100		
Fortune Brands Inc.	Deerfield, IL	●											15	351	
Jarden Corp.	Rye, NY	●	●										30	406	
Masco Corp.	Taylor, MI	●											15	291	
HOTELS, RESORTS AND CASINOS															
Caesars Entertainment Corp.	Las Vegas, NV	●	●	●	●	●	●	●	●	●	●	●	100	264	
Choice Hotels International Inc.	Silver Spring, MD	●	●	●	●	●	●	●	●	●	●	●	100		
Hyatt Hotels Corp.	Chicago, IL	●	●	●	●	●	●	●	●	●	●	●	100	581	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200	
		1a	1b	2a	2b	2c	3a	3b	4	5					
Kimpton Hotel & Restaurant Group Inc.	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100			
Starwood Hotels & Resorts Worldwide	White Plains, NY	●	●	●	●	●	●	●	●	●	●	100	438		
Marriott International Inc.	Bethesda, MD	●	●	●	●	●	●	●	●	●	●	90	213		
MGM Resorts International	Las Vegas, NV	●	●	●	●	●	●	●	●	●	●	90	360		
Wyndham Worldwide Corp.	Parsippany, NJ	●	●	●	●	●	●	●	●	●	●	90	541		
Wynn Resorts Ltd.	Las Vegas, NV	●	●	●	●	●	●	●	●	●	●	90	634		
Carlson Companies Inc.	Minnetonka, MN	●	●	●	●	●	●	●	●	●	●	85			
InterContinental Hotels Group Americas	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	65			
Hilton Hotels Corp.	Beverly Hills, CA	●	●	●	●	●	●	●	●	●	●	60			
Host Hotels & Resorts Inc.	Bethesda, MD	●	●	●	●	●	●	●	●	●	●	30	492		
Las Vegas Sands Corp.	Las Vegas, NV	●	●	●	●	●	●	●	●	●	●	0	456		
INSURANCE															
AAA Northern California, Nevada & Utah Insurance Exchange	Walnut Creek, CA	●	●	●	●	●	●	●	●	●	●	100			
Chubb Corp.	Warren, NJ	●	●	●	●	●	●	●	●	●	●	100	176		
ING North America Insurance Corp.	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100			
MetLife Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	100	51		
Nationwide	Columbus, OH	●	●	●	●	●	●	●	●	●	●	100	118		
Prudential Financial Inc.	Newark, NJ	●	●	●	●	●	●	●	●	●	●	100	65		
Sun Life Financial Inc. (U.S.)	Wellesley Hills, MA	●	●	●	●	●	●	●	●	●	●	100			
State Farm Group	Bloomington, IL	●	●	●	●	●	●	●	●	●	●	95	34		
Esurance Inc.	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	90			
Hartford Financial Services Group Inc., The	Hartford, CT	●	●	●	●	●	●	●	●	●	●	90	97		
Massachusetts Mutual Life Insurance Co.	Springfield, MA	●	●	●	●	●	●	●	●	●	●	90	93		
Progressive Corp., The	Mayfield Village, OH	●	●	●	●	●	●	●	●	●	●	90	161		
Travelers Companies Inc., The	New York, NY	●	●	●	●	●	●	●	●	●	●	90	98		
AIG	New York, NY	●	●	●	●	●	●	●	●	●	●	85	16		
Allstate Corp., The	Northbrook, IL	●	●	●	●	●	●	●	●	●	●	85	68		
CNA Insurance	Chicago, IL	●	●	●	●	●	●	●	●	●	●	85			
New York Life Insurance Co.	New York, NY	●	●	●	●	●	●	●	●	●	●	85	64		
Principal Financial Group	Des Moines, IA	●	●	●	●	●	●	●	●	●	●	85	266		
Assurant	New York, NY	●	●	●	●	●	●	●	●	●	●	80	268		
John Hancock Financial Services Inc.	Boston, MA	●	●	●	●	●	●	●	●	●	●	80			
Pacific Life Insurance Co.	Newport Beach, CA	●	●	●	●	●	●	●	●	●	●	80	401		
Unum Group	Chattanooga, TN	●	●	●	●	●	●	●	●	●	●	70	235		
Selective Insurance Group	Branchville, NJ	●	●	●	●	●	●	●	●	●	●	65	993		
Zurich North America	Schaumburg, IL	●	●	●	●	●	●	●	●	●	●	65			
Allianz Life Insurance Co. of North America	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	60			
Lincoln National Corp.	Radnor, PA	●	●	●	●	●	●	●	●	●	●	60	256		
Mutual of Omaha Insurance	Omaha, NE	●	●	●	●	●	●	●	●	●	●	60	408		
American Family Insurance Group	Madison, WI	●	●	●	●	●	●	●	●	●	●	55	344		
Northwestern Mutual Life Insurance	Milwaukee, WI	●	●	●	●	●	●	●	●	●	●	50	115		
Guardian Life Insurance Co. of America, The	New York, NY	●	●	●	●	●	●	●	●	●	●	35	237		
Loews Corp.	New York, NY	●	●	●	●	●	●	●	●	●	●	35	165		
CUNA Mutual Insurance Group	Madison, WI	●	●	●	●	●	●	●	●	●	●	30	692		
AEGON USA Inc.	Cedar Rapids, IA	●	●	●	●	●	●	●	●	●	●	20			
AFLAC Inc.	Columbus, GA	●	●	●	●	●	●	●	●	●	●	30	130		

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 Amlaw 200	
		1a	1b	2a	2b	2c	3a	3b	4	5					
American Financial Group	Cincinnati, OH											0	478		
Auto-Owners Insurance Group	Lansing, MI											0	418		
Berkshire Hathaway Inc.	Omaha, NE	●										15	11		
CNO Financial Group Inc.	Carmel, IN											0	475		
Erie Insurance Group	Erie, PA	●	●									30	484		
First American Financial Corp.	Santa Ana, CA	●										15	361		
Genworth Financial Inc.	Richmond, VA	●	●									30	257		
Liberty Mutual Group	Boston, MA											0	71		
Reinsurance Group of America Inc.	Chesterfield, MO	●										15	321		
Thrivent Financial for Lutherans	Minneapolis, MN	●										15	342		
United Services Automobile Association	San Antonio, TX											0	132		
Universal American Corp.	Rye Brook, NY											0	425		
W.R. Berkley	Greenwich, CT											0	463		
Western & Southern Financial Group	Cincinnati, OH											0	420		
INTERNET SERVICES AND RETAILING															
eBay Inc.	San Jose, CA	●	●	●	●	●	●	●	●	●	●	100	267		
Google Inc.	Mountain View, CA	●	●	●	●	●	●	●	●	●	●	100	102		
Yahoo! Inc.	Sunnyvale, CA	●	●	●	●	●	●	●	●	●	●	100	343		
Amazon.com Inc.	Seattle, WA	●	●	●	●		●	●	●	●		90	100		
Classified Ventures LLC	Chicago, IL	●	●	●	●		●	●	●	●		80			
Expedia Inc.	Bellevue, WA	●	●	●	●			●	●	●		80	654		
Hanover Direct Inc.	Weehawken, NJ	●	●	●	●			●	●	●		70			
Liberty Interactive Corp.	Englewood, CO											0	227		
LAW FIRMS															
Akin, Gump, Strauss, Hauer & Feld LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	100	31		
Alston & Bird LLP	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100	49		
Baker & McKenzie LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	1		
Bingham McCutchen LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	100	24		
Brown Rudnick LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	100	162		
Bryan Cave LLP	St. Louis, MO	●	●	●	●	●	●	●	●	●	●	100	48		
Carlton Fields PA	Tampa, FL	●	●	●	●	●	●	●	●	●	●	100	157		
Chapman and Cutler LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	173		
Choate, Hall & Stewart LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	100	170		
Clifford Chance US LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100			
Covington & Burling LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	100	44		
Crowell & Moring LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	100	80		
Debevoise & Plimpton LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	35		
Dewey & LeBoeuf LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	19		
DLA Piper	Baltimore, MD	●	●	●	●	●	●	●	●	●	●	100	13		
Dorsey & Whitney LLP	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100	79		
Edwards Angell Palmer & Dodge LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	100	94		
Faegre & Benson LLP	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100	95		
Fenwick & West LLP	Mountain View, CA	●	●	●	●	●	●	●	●	●	●	100	136		
Fried, Frank, Harris, Shriver & Jacobson LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	65		
Gibson, Dunn & Crutcher LLP	Los Angeles, CA	●	●	●	●	●	●	●	●	●	●	100	14		
Hinshaw & Culbertson LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	138		

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Hogan Lovells US LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	100	23	
Jenner & Block LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	75	
K&L Gates LLP	Pittsburgh, PA	●	●	●	●	●	●	●	●	●	●	100	12	
Kirkland & Ellis LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	5	
Littler Mendelson PC	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	74	
McDermott Will & Emery LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	27	
Morgan Lewis & Bockius LLP	Philadelphia, PA	●	●	●	●	●	●	●	●	●	●	100	11	
Morrison & Foerster LLP	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	21	
Nixon Peabody LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	60	
Orrick, Herrington & Sutcliffe LLP	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	25	
Patterson Belknap Webb & Tyler LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	160	
Paul Hastings LLP	Los Angeles, CA	●	●	●	●	●	●	●	●	●	●	100	20	
Paul, Weiss, Rifkind, Wharton & Garrison LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	37	
Perkins Coie LLP	Seattle, WA	●	●	●	●	●	●	●	●	●	●	100	63	
Pillsbury Winthrop Shaw Pittman LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	53	
Robins, Kaplan, Miller & Ciresi LLP	Minneapolis, MN	●	●	●	●	●	●	●	●	●	●	100	146	
Ropes & Gray LLP	Boston, MA	●	●	●	●	●	●	●	●	●	●	100	30	
Schiff Hardin LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	121	
Sedgwick, Detert, Moran & Arnold LLP	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	100	133	
Seyfarth Shaw LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	62	
Shearman & Sterling LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	29	
Sheppard, Mullin, Richter & Hampton LLP	Los Angeles, CA	●	●	●	●	●	●	●	●	●	●	100	76	
Shook, Hardy & Bacon LLP	Kansas City, MO	●	●	●	●	●	●	●	●	●	●	100	82	
Sidley Austin LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	6	
Simpson, Thacher & Bartlett LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	22	
Squire, Sanders & Dempsey LLP	Cleveland, OH	●	●	●	●	●	●	●	●	●	●	100	52	
Sutherland Asbill & Brennan LLP	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100	104	
Thompson Coburn LLP	St. Louis, MO	●	●	●	●	●	●	●	●	●	●	100	153	
Troutman Sanders LLP	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100	72	
Wachtell, Lipton, Rosen & Katz LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	43	
White & Case LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	100	7	
Wilmer Cutler Pickering Hale & Dorr LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	100	18	
Winston & Strawn LLP	Chicago, IL	●	●	●	●	●	●	●	●	●	●	100	33	
Andrews Kurth LLP	Houston, TX	●	●	●	●	●	●	●	●	●	●	90	115	
Arnold & Porter LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	90	54	
Baker & Daniels LLP	Indianapolis, IN	●	●	●	●	●	●	●	●	●	●	90	164	
Baker Botts LLP	Houston, TX	●	●	●	●	●	●	●	●	●	●	90	45	
Ballard Spahr LLP	Philadelphia, PA	●	●	●	●	●	●	●	●	●	●	90	101	
Chadbourne & Parke LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	90	96	
Cleary, Gottlieb, Steen & Hamilton LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	90	16	
Cravath, Swaine & Moore LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	90	46	
Davis Polk & Wardwell LLP	New York, NY	●	●	●	●	●	●	●	●	●	●	90	26	
Dickstein Shapiro LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	90	88	
Drinker Biddle & Reath LLP	Philadelphia, PA	●	●	●	●	●	●	●	●	●	●	90	73	
Epstein Becker & Green PC	New York, NY	●	●	●	●	●	●	●	●	●	●	90	143	
Finnegan, Henderson, Farabow, Garrett & Dunner LLP	Washington, DC	●	●	●	●	●	●	●	●	●	●	90	78	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200
		1a	1b	2a	2b	2c	3a	3b	4	5				
Fish & Richardson PC	Boston, MA	●	●	●	●		●	●	●		90	68		
Frost Brown Todd LLC	Cincinnati, OH	●	●	●	●		●	●	●		90	148		
Fulbright & Jaworski LLP	Houston, TX	●	●	●	●		●	●	●		90	40		
Galloway, Johnson, Tompkins, Burr & Smith, PLC	New Orleans, LA	●	●	●	●		●	●	●		90			
Gordon & Rees LLP	San Francisco, CA	●	●	●	●		●	●	●		90	154		
Goodwin Procter LLP	Boston, MA	●	●	●	●		●	●	●		90	38		
Holland & Knight LLP	Tampa, FL	●	●	●	●		●	●	●		90	51		
Hunton & Williams LLP	Washington, DC	●	●	●	●		●	●	●		90	41		
Husch Blackwell LLP	Kansas City - Co-headquar-	●	●	●	●		●	●	●		90	92		
Kaye Scholer LLP	New York, NY	●	●	●	●		●	●	●		90	64		
Kelley Drye & Warren LLP	New York, NY	●	●	●	●		●	●	●		90	127		
Kilpatrick Townsend & Stockton LLP	Atlanta, GA	●	●	●	●		●	●	●		90	113		
King & Spalding LLP	Atlanta, GA	●	●	●	●		●	●	●		90	34		
Kutak Rock LLP	Omaha, NE	●	●	●	●		●	●	●		90	156		
Manatt, Phelps & Phillips LLP	Los Angeles, CA	●	●	●	●		●	●	●		90	109		
Mayer Brown LLP	Chicago, IL	●	●	●	●		●	●	●		90	10		
McCarter & English LLP	Newark, NJ	●	●	●	●		●	●	●		90	129		
Milbank, Tweed, Hadley & McCloy LLP	New York, NY	●	●	●	●		●	●	●		90	42		
O'Melveny & Myers LLP	Washington, DC	●	●	●	●		●	●	●		90	28		
Patton Boggs LLP	Washington, DC	●	●	●	●		●	●	●		90	84		
Pepper Hamilton LLP	Philadelphia, PA	●	●	●	●		●	●	●		90	83		
Proskauer Rose LLP	New York, NY	●	●	●	●		●	●	●		90	39		
Reed Smith LLP	Pittsburgh, PA	●	●	●	●		●	●	●		90	17		
Skadden, Arps, Slate, Meagher & Flom LLP	New York, NY	●	●	●	●		●	●	●		90	2		
SNR Denton US LLP	New York, NY	●	●	●	●		●	●	●		90	59		
Stinson Morrison Hecker LLP	Kansas City, MO	●	●	●	●		●	●	●		90	162		
Stoel Rives LLP	Portland, OR	●	●	●	●		●	●	●		90	137		
Sullivan & Cromwell LLP	New York, NY	●	●	●	●		●	●	●		90	14		
Vinson & Elkins LLP	Houston, TX	●	●	●	●		●	●	●		90	47		
Weil, Gotshal & Manges LLP	New York, NY	●	●	●	●		●	●	●		90	8		
Williams Mullen PC	Richmond, VA	●	●	●	●		●	●	●		90	169		
Arent Fox LLP	Washington, DC	●	●	●	▶		●	●	●		85	124		
Baker, Donelson, Bearman, Caldwell & Berkowitz PC	Memphis, TN	●	●	●	▶		●	●	●		85	114		
Cadwalader, Wickersham & Taft LLP	New York, NY	●	●	●	▶		●	●	●		85	61		
Duane Morris LLP	Philadelphia, PA	●	●	●	▶		●	●	●		85	71		
Foley Hoag LLP	Boston, MA	●	●	●	▶		●	●	●		85	165		
Greenberg Traurig LLP	Miami, FL	●	●	●	▶		●	●	●		85	9		
Haynes and Boone LLP	Dallas, TX	●	●	●	▶		●	●	●		85	87		
Howrey LLP	Washington, DC	●	●	●	▶		●	●	●		85	58		
Katten Muchin Rosenman LLP	Chicago, IL	●	●	●	▶		●	●	●		85	66		
Kramer Levin Naftalis & Frankel LLP	New York, NY	●	●	●	▶		●	●	●		85	90		
Latham & Watkins LLP	New York, NY	●	●	●	▶		●	●	●		85	3		
McGuireWoods LLP	Richmond, VA	●	●	●	▶		●	●	●		85	55		
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo PC	Boston, MA	●	●	●	▶		●	●	●		85	97		
Polsinelli Shughart PC	Kansas City, MO	●	●	●	▶		●	●	●		85	147		
Quarles & Brady LLP	Milwaukee, WI	●	●	●	▶		●	●	●		85	126		

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		1a	1b	2a	2b	2c	3a	3b	4	5				
Thompson Hine LLP	Cleveland, OH	●	●	●	●		●	●	●			85		140
Willkie Farr & Gallagher LLP	New York, NY	●	●	●	●		●	●	●			85		50
Wilson Sonsini Goodrich & Rosati PC	Palo Alto, CA	●	●	●	●		●	●	●			85		57
Goulston & Storrs	Boston, MA	●	●	●	●			●	●			80		179
McKenna, Long & Aldridge LLP	Atlanta, GA	●	●	●	●			●	●			80		102
Step toe & Johnson LLP	Washington, DC	●	●	●	●			●	●			80		81
Vorys, Sater, Seymour and Pease LLP	Columbus, OH	●	●	●	●			●	●			80		158
Davis Wright Tremaine LLP	Seattle, WA	●	●		●		●	●	●			75		100
Herrick Feinstein LLP	New York, NY	●	●	●	●		●	●	●			75		174
Holland & Hart LLP	Denver, CO	●	●	●	●			●	●			75		134
Dykema Gossett PLLC	Detroit, MI	●		●	●	●		●	●			70		142
Luce Forward Hamilton & Scripps LLP	San Diego, CA	●	●		●		●	●	●			70		193
Bracewell & Giuliani	Houston, TX	●			●		●	●	●			60		98
Foley & Lardner LLP	Milwaukee, WI	●	●	●	●		●	●	●	●	●	60		36
Lindquist & Venum PLLP	Minneapolis, MN	●		●	●			●	●			60		
Munger, Tolles & Olson LLP	Los Angeles, CA	●	●		●			●	●			60		132
Nelson Mullins Riley & Scarborough LLP	Columbia, SC	●		●	●			●	●			60		135
Schulte, Roth & Zabel LLP	New York, NY	●		●	●			●	●			60		70
Womble Carlyle Sandridge & Rice LLP	Winston-Salem, NC	●			●		●	●	●			60		106
Moore & Van Allen PLLC	Charlotte, NC	●	●	●	●				●			55		150
Holme Roberts & Owen LLP	Denver, CO	●		●	●			●				45		188
Locke Lord Bissell & Liddell LLP	Chicago, IL	●		●	●			●				45		69
Wildman, Harrold, Allen & Dixon LLP	Chicago, IL	●			●			●	●			45		
Saul Ewing LLP	Philadelphia, PA	●			●				●	●		30		180
Howard & Howard Attorneys PLLC	Kalamazoo, MI	●			●				●			25		
MAIL AND FREIGHT DELIVERY														
United Parcel Service Inc. (UPS)	Atlanta, GA	●	●	●	●	●	●	●	●	●	●	100		43
FedEx Corp.	Memphis, TN	●	●	●	●			●	●	●		75		60
Union Pacific Corp.	Omaha, NE	●	●		●			●	●	●		65		164
Burlington Northern Santa Fe Corp.	Fort Worth, TX	●								●		20		167
YRC Worldwide Inc.	Overland Park, KS	●								●		20		396
MANUFACTURING														
Corning Inc.	Corning, NY	●	●	●	●	●	●	●	●	●	●	100		391
Cummins Inc.	Columbus, IN	●	●	●	●	●	●	●	●	●	●	100		218
Herman Miller Inc.	Zeeland, MI	●	●	●	●	●	●	●	●	●	●	100		965
Owens Corning	Toledo, OH	●	●	●	●	●	●	●	●	●	●	100		432
United Technologies Corp.	Hartford, CT	●	●	●	●	●	●	●	●	●	●	100		37
Whirlpool Corp.	Benton Harbor, MI	●	●	●	●	●	●	●	●	●	●	100		136
Steelcase Inc.	Grand Rapids, MI	●	●	●	●			●	●	●		90		609
Freescale Semiconductor Inc.	Austin, TX	●	●	●	●			●	●	●		80		
R.R. Donnelley & Sons Co.	Chicago, IL	●	●	●	●			●	●	●		80		240
Caterpillar Inc.	Peoria, IL	●	●		●			●	●	●		70		66
Deere & Co.	Moline, IL	●		●	●			●	●	●		60		107
General Electric Co.	Fairfield, CT	●		●	●			●	●	●		60		4
Illinois Tool Works Inc.	Glenview, IL	●	●	●	●				●	●		60		169

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200	
		1a	1b	2a	2b	2c	3a	3b	4	5					
MeadWestvaco Corp.	Richmond, VA	●		●	▶			●	▶				50	357	
Ball Corp.	Broomfield, CO			●	▶			●	▶	▶			40	307	
Emerson Electric Co.	St. Louis, MO	●						●		●			40	117	
Baldor Electric Co.	Fort Smith, AR	●			▶					▶			25		
Mohawk Industries Inc.	Calhoun, GA			●	▶								20	392	
Crown Holdings	Philadelphia, PA	●											15	289	
Danaher Corp.	Washington, DC	●											15	207	
Jabil Circuit Inc.	St. Petersburg, FL	●											15	199	
Oshkosh Corp.	Oshkosh, WI	●											15	386	
Owens-Illinois Inc.	Perrysburg, OH	●											15	322	
MINING AND METALS															
Alcoa Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100	127	
Anadarko Petroleum	The Woodlands, TX	●											15	260	
Apache Corp.	Houston, TX	●	●										30	271	
Chesapeake Energy Corp.	Oklahoma City, OK	●											15	296	
Commercial Metals	Irving, TX												0	327	
Consol Energy, Inc.	Canonsburg, PA	●											15	449	
Devon Energy Corp.	Oklahoma City, OK	●	●										30	261	
EOG Resources	Houston, TX	●											15	434	
Freeport-McMoRan Copper & Gold Inc	Phoenix, AZ												0	154	
Icahn Enterprises LP	New York, NY												0	290	
MDU Resources Group, Inc.	Bismarck, ND												0	498	
Newmont Mining Corporation	Greenwood Village, CO	●											15	295	
Nucor Corp.	Charlotte, NC												0	206	
Occidental Petroleum	Los Angeles, CA	●	●										30	150	
Peabody Energy Corp	St. Louis, MO	●											15	346	
Reliance Steel & Aluminum Co.	Los Angeles, CA	●											15	394	
United States Steel Corp.	Pittsburgh, PA												0	211	
XTO Energy, Inc.	Fort Worth, TX	●											15	258	
MISCELLANEOUS															
3M Co.	St. Paul, MN	●	●	●	●	●	●	●	●	●	●	●	100	106	
Imation Corp.	Oakdale, MN	●	●	●	▶					▶	●		70	923	
Airgas Inc.	Radnor, PA												0	474	
Anixter International Inc.	Glenview, IL	●	●										30	422	
Genuine Parts Co.	Atlanta, GA	●											15	236	
Sealed Air Corp	Elmwood Park, NJ												0	487	
Smurfit-Stone Container Corp.	Chicago, IL	●											15	374	
Spectrum Group International Inc.	Irvine, CA												0	480	
W.W. Grainger	Lake Forest, IL	●											15	349	
OIL AND GAS															
Chevron Corp.	San Ramon, CA	●	●	●	●	●	●	●	●	●	●	●	100	3	
BP America Inc.	Houston, TX	●	●	●	▶			●	●	●			85		
Shell Oil Co.	Houston, TX	●	●	●	▶			●	●	●			85		
Spectra Energy Corp	Houston, TX	●	●	●	▶			●	●	●			85	437	
ConocoPhillips	Houston, TX	●		●	▶			●	●				55	6	

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		1a	1b	2a	2b	2c	3a	3b	4	5					
Marathon Oil Corp.	Houston, TX	●											15	41	
Exxon Mobil Corp.	Irving, TX											●	-25	2	
Baker Hughes Inc.	Houston, TX	●											15	243	
Cameron International Corp.	Houston, TX												0	399	
El Paso Corp.	Houston, TX	●											15	447	
Enbridge Energy Partners	Houston, TX	●											15	364	
FMC Technologies Inc.	Houston, TX	●											15	467	
Frontier Oil Corp.	Houston, TX												0	488	
Halliburton Co.	Houston, TX	●											15	158	
Hess Corp.	New York, NY	●											15	79	
Holly Corp.	Dallas, TX												0	431	
Kinder Morgan Inc.	Houston, TX	●											15	315	
Murphy Oil	El Dorado, AR	●											15	125	
National Oilwell Varco, Inc.	Houston, TX	●											15	182	
Plains All American Pipeline, L.P.	Houston, TX												0	128	
Smith International Inc.	Houston, TX	●											15	277	
Sunoco Inc.	Philadelphia, PA	●											15	78	
Tesoro Corp.	San Antonio, TX	●											15	139	
Valero Energy Corp.	San Antonio, TX	●											15	26	
Western Refining Inc.	El Paso, TX												0	330	
World Fuel Services	Miami, FL	●	●										30	205	
PHARMACEUTICALS															
Bristol-Myers Squibb Co.	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100	114	
Eli Lilly & Co.	Indianapolis, IN	●	●	●	●	●	●	●	●	●	●	●	100	112	
GlaxoSmithKline plc	Philadelphia, PA	●	●	●	●	●	●	●	●	●	●	●	100		
Johnson & Johnson	New Brunswick, NJ	●	●	●	●	●	●	●	●	●	●	●	100	33	
Pfizer Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100	40	
Boehringer Ingelheim USA Corp.	Ridgefield, CT	●	●	●	●	●	●	●	●	●	●	●	90		
Merck & Co. Inc.	Whitehouse Station, NJ	●	●	●	●	●	●	●	●	●	●	●	90	85	
CVS Caremark Corp.	Woonsocket, RI	●	●	●	●	●	●	●	●	●	●	●	75	18	
Hospira Inc.	Lake Forest, IL	●	●	●	●	●	●	●	●	●	●	●	75	527	
Novartis Pharmaceuticals Corp.	East Hanover, NJ	●	●	●	●	●	●	●	●	●	●	●	75		
AstraZeneca PLC	Wilmington, DE	●	●	●	●	●	●	●	●	●	●	●	60		
Wyeth	Madison, NJ	●	●	●	●	●	●	●	●	●	●	●	60		
Astellas Pharma US, Inc.	Deerfield, IL	●	●	●	●	●	●	●	●	●	●	●	55		
Amgen Inc.	Thousand Oaks, CA	●	●	●	●	●	●	●	●	●	●	●	45	159	
Sanofi-Aventis U.S. LLC	Bridgewater, NJ	●	●	●	●	●	●	●	●	●	●	●	45		
Allergan Inc.	Irvine, CA	●	●	●	●	●	●	●	●	●	●	●	15	459	
Biogen Idec Inc	Cambridge, MA	●	●	●	●	●	●	●	●	●	●	●	15	471	
Genzyme Corp.	Cambridge, MA	●	●	●	●	●	●	●	●	●	●	●	15	458	
Gilead Sciences Inc	Foster City, CA	●	●	●	●	●	●	●	●	●	●	●	0	324	
Mylan Laboratories Inc.	Canonsburg, PA	●	●	●	●	●	●	●	●	●	●	●	0	412	
PUBLISHING AND PRINTING															
McGraw-Hill Companies Inc., The	New York, NY	●	●	●	●	●	●	●	●	●	●	●	90	363	
New York Times Co.	New York, NY	●	●	●	●	●	●	●	●	●	●	●	90	733	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200	
		1a	1b	2a	2b	2c	3a	3b	4	5					
Pearson Inc.	New York, NY	●	●	●	●	●		●	●	●	●	●	90		
UBM plc	Manhasset, NY	●		●	▶						●	●	60		
Gannett Co. Inc.	McLean, VA	●		●	▶						●		45	370	
Houghton Mifflin Harcourt Publishing Co.	Boston, MA	●			▶							▶	25		
AbitibiBowater Inc.	Greenville, SC												0	472	
Washington Post Co.	Washington, DC												0	455	
REAL ESTATE, RESIDENTIAL															
CB Richard Ellis Group Inc.	Los Angeles, CA	●	●	●	▶			●	●	●	●	●	85	499	
Realty Group	Parsippany, NJ	●			▶						●	●	45	519	
RETAIL AND CONSUMER PRODUCTS															
Abercrombie & Fitch Co.	New Albany, OH	●	●	●	●	●	●	●	●	●	●	●	100	651	
Avon Products Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100	228	
Barnes & Noble Inc.	New York, NY	●	●	●	●	●	●	●	●	●	●	●	100	372	
Best Buy Co. Inc.	Richfield, MN	●	●	●	●	●	●	●	●	●	●	●	100	45	
Clorox Co.	Oakland, CA	●	●	●	●	●	●	●	●	●	●	●	100	384	
Gap Inc.	San Francisco, CA	●	●	●	●	●	●	●	●	●	●	●	100	162	
Limited Brands Inc.	Columbus, OH	●	●	●	●	●	●	●	●	●	●	●	100	269	
Nordstrom Inc.	Seattle, WA	●	●	●	●	●	●	●	●	●	●	●	100	270	
Office Depot Inc.	Boca Raton, FL	●	●	●	●	●	●	●	●	●	●	●	100	192	
Replacements Ltd.	McLeansville, NC	●	●	●	●	●	●	●	●	●	●	●	100		
Sears Holdings Corp.	Hoffman Estates, IL	●	●	●	●	●	●	●	●	●	●	●	100	48	
Staples Inc.	Framingham, MA	●	●	●	●	●	●	●	●	●	●	●	100	101	
TJX Companies Inc., The	Framingham, MA	●	●	●	●	●	●	●	●	●	●	●	100	119	
Unilever	Englewood Cliffs, NJ	●	●	●	●	●	●	●	●	●	●	●	100		
Bon-Ton Stores, Inc.	York, PA	●	●	●	●	●			●	●	●	●	90	637	
Costco Wholesale Corp.	Issaquah, WA	●	●	●	●	●			●	●	●	●	90	25	
Hallmark Cards Inc.	Kansas City, MO	●	●	●	●	●			●	●	●	●	90		
Kimberly-Clark Corp.	Irving, TX	●	●	●	●	●			●	●	●	●	90	126	
Newell Rubbermaid Inc.	Atlanta, GA	●	●	●	●	●			●	●	●	●	90	373	
Procter & Gamble Co.	Cincinnati, OH	●	●	●	●	●			●	●	●	●	90	22	
S.C. Johnson & Son Inc.	Racine, WI	●	●	●	●	●			●	●	●	●	90		
Sony Electronics Inc.	San Diego, CA	●	●	●	●	●			●	●	●	●	90		
Tiffany & Co.	New York, NY	●	●	●	▶	●	●	●	▶	●	●	●	90	690	
Walgreen Co.	Deerfield, IL	●	●	●	●	●			●	●	●	●	90	32	
CarMax Inc.	Richmond, VA	●	●	●	▶				●	●	●	●	85	323	
Colgate-Palmolive Co.	New York, NY	●	●	●	▶				●	●	●	●	85	151	
J.C. Penney Co. Inc.	Plano, TX	●	●	●	▶				●	●	●	●	85	133	
Liz Claiborne Inc.	New York, NY	●	●	●	▶				●	●	●	●	85	645	
OfficeMax Inc.	Naperville, IL	●	●	●	▶				●	●	●	●	85	313	
Target Corp.	Minneapolis, MN	●	●	●	▶				●	●	●	●	85	30	
American Eagle Outfitters Inc.	Pittsburgh, PA	●	●	●	▶				●	▶	●	●	80	649	
Home Depot Inc., The	Atlanta, GA	●	●	●	●					●	●	●	80	29	
Estée Lauder Companies Inc., The	New York, NY	●	●	●	▶					●	●	●	75	308	
GameStop Corp.	Grapevine, TX	●	●		●				●	●	●	●	75	255	
Mattel Inc.	El Segundo, CA	●	●	●	▶					●	●	●	75	387	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200	
		1a	1b	2a	2b	2c	3a	3b	4	5					
Harry & David Holdings Inc.	Medford, OR	●	●	●	▶			▶	●				70		
Pep Boys-Manny, Moe & Jack	Philadelphia, PA	●	●	●	▶			▶	●				70	860	
Recreational Equipment Inc.	Kent, WA	●	●	●	▶			●	▶				65		
Toys 'R' Us Inc.	Wayne, NJ	●	●	●	●			▶	▶				65	171	
PetSmart Inc.	Phoenix, AZ	●	●		●		●	●					60	393	
Wal-Mart Stores Inc.	Bentonville, AR	●	●		▶			●	●				60	1	
Brown Shoe Company, Inc.	St. Louis, MO	●			▶			●	●				45	770	
Men's Wearhouse Inc., The	Houston, TX	●	●										30	861	
Hasbro Inc.	Pawtucket, RI	●						●					25	511	
Meijer Inc.	Grand Rapids, MI	●			▶					▶			25		
AutoZone Inc.	Memphis, TN	●											15	329	
B J's Wholesale Club	Westborough, MA	●											15	232	
Kohl's Corp.	Menomonee Falls, WI	●											15	135	
Advance Auto Parts (Advance Holding)	Roanoke, VA	●	●										30	389	
Bed Bath & Beyond Inc.	Union, NJ	●	●										30	314	
Big Lots	Columbus, OH	●											15	436	
Blockbuster Inc.	Dallas, TX			●	▶								20	500	
Casey's General Stores, Inc.	Ankeny, IA												0	485	
Dick's Sporting Goods Inc.	Coraopolis, PA												0	466	
Dillard's Inc.	Little Rock, AR	●	●										30	348	
Dollar General Corp.	Goodlettsville, TN												0	195	
Dollar Tree Stores Inc.	Chesapeake, VA	●	●										30	397	
Family Dollar Stores	Matthews, NC	●	●										30	305	
Foot Locker Inc.	New York, NY	●											15	428	
Lowe's Companies Inc.	Mooresville, NC	●											15	42	
O'Reilly Automotive Inc	Springfield, MO												0	429	
Pantry Inc., The	Cary, NC												0	382	
RadioShack Corp.	Fort Worth, TX	●		●									30	481	
Ross Stores	Pleasanton, CA	●											15	316	
TravelCenters of America	Westlake, OH	●											15	440	
TELECOMMUNICATIONS															
Alcatel-Lucent	Murray Hill, NJ	●	●	●	●	●	●	●	●	●	●		100		
AT&T Inc.	Dallas, TX	●	●	●	●	●	●	●	●	●	●		100	7	
Sprint Nextel Corp.	Overland Park, KS	●	●	●	●	●	●	●	●	●	●		100	67	
Motorola Solutions Inc.	Schaumburg, IL	●	●	●	●		●	●	●	●			90	110	
QUALCOMM Inc.	San Diego, CA	●	●	●	●		●	●	●	●			90	225	
Time Warner Cable Inc.	New York, NY	●	●	●	●		●	●	●	●			90	131	
Avaya Inc.	Basking Ridge, NJ	●	●	●	●	●		●	▶				80		
DIRECTV	El Segundo, CA	●	●	●	▶			●	●				75	116	
Nortel Networks Corp.	Richardson, TX	●		●	▶			●	●				60		
EarthLink Inc.	Atlanta, GA	●	●	●	▶			▶					55		
T-Mobile USA Inc.	Bellevue, WA	●		●	●				●				55		
Verizon Communications Inc.	New York, NY	●		●	▶			●		●			20	13	
Cablevision Systems Corp.	Bethpage, NY	●								▶			15	292	
CenturyLink Inc.	Monroe, LA	●		●	▶			●	▶				50	423	

Employer	Headquarters Location	Criterion										2012 CEI Rating	2011 Fortune 1000	2011 AmLaw 200	
		1a	1b	2a	2b	2c	3a	3b	4	5					
Charter Communications	St. Louis, MO	●											15	332	
DISH Network Corp.	Englewood, CO												0	200	
Liberty Global Inc.	Englewood, CO												0	210	
NII Holdings	Reston, VA												0	468	
Telephone & Data Systems Inc. (U.S. Cellular)	Chicago, IL												0	416	
Virgin Media Inc.	New York, NY	●											15	359	
TOBACCO															
Reynolds American Inc.	Winston-Salem, NC	●	●	●	▶					▶	●		70	272	
Altria Group Inc.	Richmond, VA	●											15	137	
Philip Morris International Inc.	New York, NY												0	94	
TRANSPORTATION AND TRAVEL															
Orbitz Worldwide Inc.	Chicago, IL	●	●	●	●	●	●	●	●	●	●		100		
CSX Corp.	Jacksonville, FL	●	●	●	▶			●	●	●			85	259	
Dollar Thrifty Automotive Group Inc.	Tulsa, OK	●	●	●	▶			●	▶	●			80	998	
Ryder System Inc.	Miami, FL	●	●	●	▶			●	▶	●			80	426	
Travel Impressions Ltd.	Farmingdale, NY	●	●	●	▶			●	▶	●			80		
Sabre Holdings Inc.	Southlake, TX	●	●	●	▶				●	●			75		
Travelport Ltd.	Parsippany, NJ	●	●	●	▶				●	▶			65		
Avis Budget Group Inc.	Parsippany, NJ	●	●		▶				●	●			60	409	
Royal Caribbean Cruises Ltd.	Miami, FL	●	●	●	▶				●				60		
Enterprise Holdings Inc.	St. Louis, MO	●		●	▶				●	▶			50		
Norfolk Southern Corp.	Norfolk, VA	●		●	●				▶	▶			50	287	
C. H. Robinson Worldwide	Eden Prairie, MN	●											15	301	
Con-way Inc.	San Mateo, CA	●											15	483	
Harley-Davidson Inc.	Milwaukee, WI	●											15	430	
WASTE MANAGEMENT															
Waste Management Inc.	Houston, TX	●	●	●	●			●	●	●			90	196	
Republic Services Inc.	Phoenix, AZ	●											15	278	

Deena Fidas and Liz Cooper, Authors

**About HRC
Foundation's
Workplace
Project**

HRC Foundation's Workplace Project is a nationally recognized source of expert information and advice on lesbian, gay, bisexual and transgender workplace issues. It provides decision makers with cutting-edge research, expert counsel, online resources, best practices information and on-site training and education. Project staff serve as trusted consultants to diversity professionals and other executives seeking to position their business as welcoming workplaces that respect all employees, regardless of sexual orientation and gender identity or expression. The Workplace Project also makes available the expertise of the HRC Business Council for invaluable peer-to-peer advice.

Project Staff

Kathryn Friedman
Director, HRC Foundation Workplace Project

For the last 16 years, Kathryn Friedman has served as the chief diversity officer and a member of the Presidents' senior leadership teams for Wesleyan University in Connecticut, the University of Vermont and the University of Rhode Island. As the first Chief Diversity Officer at all three of these institutions she has been an architect of change by establishing and shaping projects that increase, enhance and strengthen diversity. As a CDO and consultant to businesses, government and non-profits, her experience has included extensive work providing direction and guidance to the design, development and integration of diversity and inclusion strategies to overall organizational strategies and missions. Friedman has also worked in AA/EO area and as a Union Organizer. She holds a Masters of Fine Arts degree from Western Illinois University. Friedman joined the Workplace Project in November 2011.

Deena Fidas
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Deena Fidas oversees the corporate programs of the Workplace Project. She manages the Corporate Equality Index survey administration and authors the CEI report. She led the Degrees of Equality published research on assessing and improving the workplace climate for LGBT employees in large businesses and developed related trainings on LGBT workforce diversity. Fidas consults directly with employers on the implementation of LGBT-inclusive policies, benefits and diversity best practices. She has worked one-on-one with numerous Fortune 500 companies to help them identify areas of potential improvement and how to effect change within their organizations. Fidas has presented the HRC Foundation's work at dozens of professional conferences and corporate site visits before domestic and international audiences. Formerly working in political fundraising, she joined the Workplace Project in 2007. Fidas holds a master's degree in sociology from American University in Washington, D.C.

Liz Cooper**Associate, HRC Foundation Workplace Project**

Liz Cooper joined the Workplace Project in August 2010. As a Project Associate, Liz engages directly with employers to identify and improve LGBT-inclusive policies and practices. Cooper brings her background in academic and sales marketing research to develop the Project's resources on LGBT diversity and inclusion best practices aimed at employers, employees, and consumers. In her capacity she has enlisted corporate support for LGBT equality under the law. She also uses her advocacy to help elevate the role of allies in the LGBT community. By making allies a more visible part of the workforce, Cooper hopes to make a fully inclusive culture the new standard for employers, allowing employees to be authentic and open in their workplace environment. Cooper holds a bachelor's degree in political science from Davidson College in North Carolina.

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The Human Rights Campaign Business Council was founded in 1997. Members provide expert advice and counsel to the HRC Workplace Project on lesbian, gay, bisexual and transgender workplace issues based on their business experience and knowledge.

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Economic Motives for Adopting LGBT-Related Workplace Policies

Introduction

This study evaluates the economic impact of corporate non-discrimination and benefits policies by analyzing the extent to which economic reasons motivate corporations to adopt such policies. The past decade has seen a large increase in the number of corporations adopting LGBT-related workplace policies. In 1999, 72% of Fortune 500 companies included sexual orientation in their non-discrimination policies, and only a handful included gender identity.¹ By 2009, 87% of such companies included sexual orientation and 41% included gender identity in their non-discrimination policies.² Over the same time period, the percentage of Fortune 500 companies offering domestic partner benefits increased from 14% to 59%.³ This study reviews statements issued when adopting such policies by the top 50 Fortune 500 companies and the top 50 federal government contractors.

Since companies began to adopt these policies, and state and local governments began to amend their laws to prohibit sexual orientation and gender identity discrimination, arguments have been made that the requirements are costly and burdensome for private businesses. As recently as May 2011, the Tennessee legislature repealed an ordinance passed by the city of Nashville requiring city contractors to include sexual orientation and gender identity in their non-discrimination policies.⁴ The Tennessee Chamber of Commerce initially supported the state bill, stating that “employment standards...should not create an additional burden on companies that are endeavoring to become competitive”.⁵ The Chamber later withdrew its support.⁶

In contrast to these arguments, many private companies have supported these policies for the opposite reason—because they make good business sense. In 2009 and 2010, during the consideration of the Employment Non-Discrimination Act (ENDA),⁷ a statute that would prohibit sexual orientation and gender identity discrimination in the workplace, a number of private sector employers reported to Congress that these policies are good for the corporate bottom line.⁸

Overall, we find that almost all of top 50 Fortune 500 companies and the top 50 federal government contractors (92%) state that, in general, diversity policies and generous benefit packages are good for their business. In addition, the majority (53%) have specifically linked policies prohibiting sexual orientation and gender identity discrimination, and extending domestic partner benefits to their employees, to improving their bottom line.

Key Findings

- The majority of these companies prohibit sexual orientation and gender identity discrimination.
 - All but two (96%) of the top 50 Fortune 500 companies include sexual orientation in their non-discrimination policies and 70% include gender identity.
 - 81% of the top 50 federal contractors include sexual orientation in their non-discrimination policies and 44% include gender identity.
- The majority of these companies already provide benefits to the same-sex domestic partners of employees.
 - 88% of the top 50 Fortune 500 companies extend domestic partner benefits, including health insurance, to the same-sex domestic partners of employees.
 - At least 52% of the top 50 federal contractors extend domestic partner benefits, including health insurance, to the same-sex domestic partners of employees.
- Based on a review of corporate statements issued to announce a policy, almost all of the companies (92%) that prohibit these forms of discrimination or extend domestic partner benefits to their employees state that policies promoting employee diversity in general are good for their bottom line (36 of 41 contractors and 46 of 48 Fortune 500 companies).
- The majority of the companies (53%) that prohibit these forms of discrimination or extend domestic partner benefits have expressly linked either these specific policies, or diversity that specifically includes LGBT people, to a positive impact on business (17 of 41 contractors and 30 of 48 Fortune 500 companies).
- When companies adopt LGBT-related workplace polices, the most frequently mentioned economic benefits include:
 - **Recruitment and Retention.** Recruiting and retaining the best talent, which in turn makes the company more competitive.
 - **Ideas and Innovation.** Generating the best ideas and innovations by drawing on a workforce with a wide range of characteristics and experiences.
 - **Customer Service.** Attracting and better serving a diverse customer base through a diverse workforce.
 - **Employee Productivity.** Increasing productivity among employees by making them feel valued and comfortable at work.
 - **Public Sector Clients.** Securing business by responding favorably to specific policy requests or contracting requirements from public sector clients.

- **Employee Relations and Morale.** Maintaining positive employee morale and relations by responding favorably to specific policy requests from employees and unions.

While most of the large companies in this study did tie policies related to diversity in general, and LGBT employees more specifically, to the corporate bottom line, many also expressed that doing so was consistent with corporate values such as treating employees with respect and fairness and because it is “the right thing to do.” However, no company stated that the policies would be costly, but enacted them anyway only because it was the “right” or fair thing to do.

Methodology


The research presented in this memo is based on a review of the non-discrimination and diversity policies and benefits policies of the top 50 Fortune 500 companies (2010) and the top 50 federal government contractors (2009) (collectively “companies” or “employers”).

The top 50 federal contractors were determined by the dollar amount of their combined federal contracts. Due to partnerships involving two or more companies contracting under one name, and to separate awards to subsidiaries of the same company, the top 50 contractors consist of 48 unique entities. The percentages reported in this study are based on the number of companies represented, but for simplicity, they will be referred to as “the top 50 contractors”.

For each company in the two groups, we began by ascertaining whether its non-discrimination policy includes sexual orientation and/or gender identity and whether it extends domestic partner benefits to its employees with same-sex partners. This information was gathered primarily through the HRC Corporate Employer Database, and supplemented with additional information gathered from the companies’ websites and online job postings.

Using these sources, we could not identify whether eight contractors and one Fortune 500 company prohibit discrimination based on sexual orientation and gender identity or provide domestic partnership benefits. We attempted to contact these nine companies by email or by phone on March 31, 2011 with a follow-up contact on April 12, 2011 to ascertain whether they provide these protections. However, eight of these companies have not yet responded to our inquiries.

We have made several assumptions in order to categorize these eight companies for purposes of this study. If a company had a non-discrimination policy that included characteristics other than sexual orientation and gender identity, we assumed that the company does not prohibit discrimination based on sexual orientation or gender identity. If we were unable to find a non-discrimination policy that included sexual



orientation or gender identity, and found no evidence that the company offer domestic partner benefits, we assumed that the company does not extend domestic partner benefits. For two companies, we could not find any information on non-discrimination or benefits policies, so we assumed that the companies do not have sexual orientation and gender identity non-discrimination policies, and do not extend domestic partner benefits.

Further, many companies, including those with sexual orientation and gender identity non-discrimination policies, do not publicly indicate whether they extend domestic partner benefits. If a company did not document that it offers domestic partner benefits in publicly available corporate materials, or was not profiled on the HRC Corporate Employer Database, we assumed that the company does not extend domestic partner benefits. For this reason, our determination that 48% of companies do not offer domestic partnership benefits may be higher than the actual percentage.

For those companies that include sexual orientation and/or gender identity in their non-discrimination policies or extend domestic partner benefits, we thoroughly reviewed company issued-documents, news articles, and other sources to find company statements expressing why these policies were implemented and why the company supports a diverse workforce that includes LGBT people. We then consulted these same sources to find more general statements on diversity within the company or the benefits programs offered by the company. Finally, the companies were contacted twice in April 2011 with a request to provide any information addressing the decision to include sexual orientation or gender identity in the non-discrimination policy or the decision to extend domestic partner benefits. None of the companies have yet responded to the requests for information, so all information in this study is based on written documents described above.

If a company expressed a reason for enacting the policies that was related to corporate competitiveness or success, we coded the motive as economic. We then identified the most commonly mentioned benefits resulting from these policies:

- Recruitment and Retention.
- Ideas and Innovation.
- Customer Service.
- Employee Productivity.
- Public Sector Clients.
- Employee Relations and Morale.

The findings below provide examples of statements that express how these economic benefits accrue from enacting these polices.

Findings

Statements on Sexual Orientation and Gender Identity Non-Discrimination Policies and Domestic Partner Benefits

The majority of companies (53%) that prohibit sexual orientation and gender identity discrimination or extend domestic partner benefits have expressly linked either these specific policies, or diversity that specifically includes LGBT people, to a positive impact on business. Sixty-three percent of the top 50 Fortune 500 companies with these policies have justified them with a business rationale. Similarly, 41% of contractors with such policies have expressly linked these particular policies, or the creation of a diverse workforce that includes LGBT people, to a positive impact on business.

Recruitment and Retention

The most commonly cited economic benefit of sexual orientation and gender identity inclusive non-discrimination policies and/or a diverse workforce that includes LGBT people is that by promoting inclusiveness and equal opportunity, employers are able to recruit and retain the best talent, which in turn makes the company more competitive. For example, a Senior Vice President of top 50 Fortune 500 company, and top 50 federal contractor, Lockheed Martin said of these policies, “Ensuring a positive and respectful workplace and robust set of benefits for everyone is critical to retaining employees.”⁹ Similarly, the chairman and CEO of top 50 Fortune 500 company, and top 50 federal contractor, Hewlett-Packard said that the company decided to extend domestic partner benefits in part to “enhance competitiveness as a great place to work so [the company] can attract and retain top talent.”¹⁰ Making a similar point, Provost Robert Holub of the University of Tennessee, a top 50 federal contractor, said of the omission of sexual orientation from the university’s prior employment non-discrimination policy, “We fool ourselves if we believe that the absence of a direct statement regarding discrimination against gays and lesbians does not harm our institution...We are probably hurt not only by gay and lesbian candidates preferring to go elsewhere, but by heterosexuals who are as horrified as I am that we will not pledge to treat gay and lesbian applicants without prejudice.”¹¹ The university's policy now includes sexual orientation and gender identity.

Ideas and Innovation

Several of the companies identified the link between these policies and promoting their business success in the variety of ideas and innovations that result from fostering a workforce with a wide range of characteristics and experiences. For example, top 5 federal contractor General Dynamics “recognizes that the best ideas and solutions are developed by gathering input from people who have different perspectives as well as tangible differences...such as age, gender, ethnicity, national origin, physical ability, military experience, and sexual orientation, among others.”¹² Federal contractor Raytheon’s Chief Diversity Officer said that these policies “reflect the strides the company has made to build a culture that recognizes, respects, and leverages individual and cultural differences. Our commitment to diversity and inclusion is our undeniable

pathway to success for individuals and the company.”¹³ And Vice President of Global Workforce Diversity at IBM, a top 50 Fortune 500 company and a federal contractor, said that “at [IBM], we are creating an environment that allows employees to operate in the marketplace and the workplace where they can personally influence client success, foster innovation, as well as exhibit trust and personal responsibility in achieving IBM’s business goals... Our goal is to assemble the most talented workforce in our industry, and to use the skills of that diverse team to respond to the needs of our clients. The contributions that are made by GLBT IBMers accrue directly to our bottom line and ensure the success of our business.”¹⁴

Customer Service

Some companies find that they are better able to serve a diverse customer base when they have a diverse workforce that includes LGBT people. For example, Marcela Perez de Alonso, Executive Vice President of Human Resources of Hewlett-Packard, said that the company “is strongly committed to attracting, developing, promoting and retaining a diverse workforce to better serve our increasingly diverse customers.”¹⁵ Rod Gillum, Vice President for Corporate Diversity and Responsibility at Fortune 500 company General Motors said that “non-discrimination policies and practices... [are the company’s] way of showing GLBT customers that we support the community and appreciate their business.”¹⁶ And Geri Thomas, Diversity and Inclusion Executive of Fortune 500 company Bank of America stated that a diverse workplace that “respect[s] and valu[es] nationalities, cultures, sexual orientation, religions, economic and social backgrounds and disabilities...gives [the company] the advantage of understanding and meeting the needs of diverse customers, clients, and shareholders.”¹⁷

Employee Productivity

Other employers state that these policies increase productivity by LGBT employees who feel valued and comfortable at work. The Director of Diversity at federal contractor Booz Allen has said that the company is committed to “valuing people from all backgrounds, across all cultures, and regardless of sexual orientation or gender identity. We recognize that...our people can serve our clients best when they can be authentic in the workplace.”¹⁸ And an employee of federal contractor Boeing said of the decision to include gender identity in the company’s non-discrimination policy that it would help to create a “fully engaged workforce” that was part of the company’s “core business strategy.”¹⁹

Public Sector Clients

Some of these companies added these policies in response to requirements of public sector clients. For example, federal contractor Bechtel Group added sexual orientation to its non-discrimination policy and extended domestic partner benefits in order to bid for a contract with San Francisco after the city passed an ordinance requiring that all city contractors have a sexual orientation non-discrimination policy and extend equal benefits.²⁰ Fortune 500 company Chevron extended domestic partner benefits for the same reason.²¹

Employee Relations

Some of these companies added these policies in response to requests from clients or employees. For example, federal contractor California Institute of Technology said that it extended domestic partner benefits to respond to the requests of employees and because doing so was consistent with the university's policy of non-discrimination.²² The "Big 3" auto companies (Ford, General Motors, and DaimlerChrysler), two of which are top 50 Fortune 500 companies, agreed to offer domestic partner benefits in response to union requests.²³

General Diversity and Benefits Statements

Nearly all of the top 50 contractors and the top 50 Fortune 500 companies state in company-issued documents that diversity is good for business. Of these companies that include sexual orientation and/or gender identity in their non-discrimination policies or extend domestic partner benefits, 92% have linked diversity to corporate success (88% of contractors and 96% of Fortune companies), suggesting that these employers treat LGBT employees equally to serve diversity goals. These employers provide similar business-related explanations as the companies above offer in support of non-discrimination policies specific to sexual orientation and gender identity and domestic partner benefits.

Recruitment and Retention

The ability to recruit and retain top talent is also frequently cited by these companies to support diversity more generally. For example, federal contractor Raytheon recognizes "the importance of retaining, attracting and developing a diverse range of world-class talent in employee ranks to maximize the potential of the company, and to bring the most value to the shareholders."²⁴ Fortune 500 company Procter & Gamble states that diversity "enables [it] to be the 'employer of choice' that hires, engages, and retains the best talent."²⁵ And federal contractor Creative Associates International "celebrates and is committed to a vibrant and diverse workforce...[and] know[s] that recruiting and retaining the best talent in [the] field is critical to success."²⁶

Several companies have also recognized that generous benefits programs also help to attract and retain talented employees. For example, federal contractor United Technologies Corporation states that it "will attract, motivate and retain competent, dedicated people by designing compensation and benefits programs that are competitive in our worldwide marketplace."²⁷ And federal contractor Textron states that its "benefits and compensation programs are designed to reflect our commitment to attracting and retaining talented and motivated people."²⁸

Ideas and Innovation

Commonly, contractors and Fortune companies locate the link between diversity and corporate success in the variety of ideas that result from employing a workforce with a

broad spectrum of backgrounds and experiences. For example, Ford Motor Company (ranked 8 on the Fortune 500 list, and also a federal contractor) states, “Our diversity makes us a better company, a stronger company, by bringing fresh perspectives, experiences and life responsibilities, and by fostering a truly collaborative workplace.”²⁹ Similarly, top 5 federal contractor Northrop Grumman takes “pride in creating a working environment where diversity and inclusion is valued and leveraged to foster creativity and innovation, thereby allowing us to meet the business challenges of tomorrow.”³⁰ And federal contractor ITT is “committed to building a workforce that mirrors the world in which we do business” because it “will lead to improved creativity, innovation, decision-making, and customer service and is essential to achieving premier status.”³¹

Customer Service

Several employers find that diversity lends to corporate success by allowing the workforce to connect with a diverse customer base. For example, federal contractor HealthNet stated that “the best way to serve [its] diverse member base is by maintaining a diverse workforce.”³² For federal contractor UTC, “diversity is a competitive asset that enables [it] to more closely reflect and respond to the diverse needs of [its] markets, customers and communities.”³³ And Fortune 500 company CVS believes that “having a broad range of ideas and viewpoints through a diverse workforce increases chances of success with the customer.”³⁴

Employee Productivity

Other employers tie diversity in general to corporate success by focusing on an increase in productivity among employees who feel valued and comfortable at work. For example, federal contractor Boeing promotes diversity to “provide a work environment for all employees that is welcoming, respectful, and engaging...[which] in turn increases productivity, quality, creativity and innovation.”³⁵ And federal contractor L-3 Communications, “to compete and win in the industry[,] continually strives to create an environment where everyone is a valued member of the team with the opportunity to maximize his or her personal contribution.”³⁶ And Fortune 500 company SuperValu’s “goal is to create an environment of diversity and inclusion for people of all backgrounds. ...[W]e’ll have an atmosphere where each person feels comfortable and eager to contribute fully.”³⁷

Public Sector Clients

Some employers mention all of these ties between diversity and profitability, along with meeting public sector contract requirements. For example, top 50 federal contractor and top 50 Fortune 500 company McKesson states that “diversity and inclusion are good for business” because these values allow the company to “reflect and respond to a diverse customer base; keep pace with changing demographics; improve productivity, creativity and quality; improve teamwork and decision-making; demonstrate corporate citizenship; and support government contracts.”³⁸

Corporate Values

In addition to stating that diversity is good for the bottom line, several of the top 50 contractors and the top 50 Fortune 500 companies value diversity for reasons not directly related to corporate financial success. Among these reasons, fairness and respect for employees appeared the most often. For example, federal contractor Oshkosh Truck supports diversity in the company because it believes in treating employees “with dignity, respect, and fairness.”³⁹ Fortune 500 company Chevron states that diversity is “good business practice,” but also that it is “the right thing to do.”⁴⁰ Similarly, Fortune 500 company CVS Caremark states that “diversity is consistent with our values of respect and openness, and we believe it is the right thing to do.”⁴¹

Conclusion

Nearly all federal contractors and Fortune 500 companies reviewed in this study have stated that diversity is good for the bottom line. Most of these companies explicitly include sexual orientation and gender identity in their non-discrimination policies, and many explicitly state that differences in sexual orientation and gender identity contribute to the diversity of a workforce. In addition to showing that policies that promote diversity in general make good business sense, a number of employers have also expressly linked the inclusion of sexual orientation and/or gender identity, or the extension of domestic partner benefits, to positive business outcomes.

Endnotes


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- ⁶ Chas Sisk, *Halsam Reverses Metro's Anti-Discrimination Law*, THE TENNESSEAN, May 24, 2011.
- ⁷ A list of companies that publicly support ENDA, as well as written testimonies submitted to Congress in support of ENDA are available at: http://www.hrc.org/issues/business_coalition_workplace_fairness.htm
- ⁸ Companies include: Alcoa Inc., The Bank of New York Mellon Corp., Bingham McCutchen LLP, Boehringer Ingelheim Pharmaceuticals, Inc., Bristol-Myers Squibb Co., Clear Channel Communications, Inc., Dow Chemical Co., Eli Lilly and Company, Hanover Direct Inc., IBM Corp., KeyCorp, Kimpton Hotels & Restaurant Group, Marriot International Inc., Morgan Stanley, Motorola Inc., Nationwide Mutual Insurance Co., Replacements Ltd., & Whirlpool Corp. These statements are available at: http://www.hrc.org/issues/business_coalition_workplace_fairness.htm.
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- ¹² General Dynamics, Diversity, <http://www.generaldynamics.com/careers/diversity/>.
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- ¹⁶ HUMAN RIGHTS CAMPAIGN, HRC CORPORATE EQUALITY INDEX: 2008 EMPLOYER STATEMENTS (2008), available at <http://www.hrc.org/issues/7580.htm>.
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- ³⁶ L-3 Communications, Diversity, <http://www.gses.l-3com.com/careers/diversity.php>.
- ³⁷ Supervalu, Diversity, <http://careers.supervalu.com/diversity/diversity.html>.
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**Economic Motives for Adopting LGBT-Related Workplace Policies
Corporate Statements, Top 50 Federal Contractors, 2009**

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
 <p>Rank: 1 Policies*: SO, GI, DPB Company Name: Lockheed Martin Corp.</p> <p>Ken Disken, Senior Vice President, Lockheed Martin, "Lockheed Martin is committed to providing the most supportive and inclusive environment for all employees. Ensuring a positive, respectful workplace and robust set of benefits for everyone is critical to retaining employees and helping them develop to their fullest potential. Our efforts to provide the best environment possible for all employees support the corporation's business objectives and the professional aspirations of employees as we support our nation and its allies."</p> <p>Human Rights Campaign, HRC Corporate Equality Index (2009), available at https://222.hrc.org/issues/workplace/11139.htm</p>	<p>In 2003, Megan Meriman, a Lockheed Martin spokesperson said of extending domestic partner benefits: "We felt this was a good business decision that will contribute to our success in the future. We want to attract and retain talented employees."</p> <p>Ezra Fieser, Lockheed Martin Improves Corporate Policies Regarding Gay, Lesbian Employees, The Daily Record, Aug. 25, 2003.</p> <p>Ken Disken, Senior Vice President, Lockheed Martin, "Lockheed Martin is committed to providing the most supportive and inclusive environment for all employees. Ensuring a positive, respectful workplace and robust set of benefits for everyone is critical to retaining employees and helping them develop to their fullest potential. Our efforts to provide the best environment possible for all employees support the corporation's business objectives and the professional aspirations of employees as we support our nation and its allies."</p> <p>Human Rights Campaign, HRC Corporate Equality Index (2009), available at https://222.hrc.org/issues/workplace/11139.htm</p>	<p>We are committed to creating one company, one team, all-inclusive, where diversity contributes to the Lockheed Martin vision. Diversity at Lockheed Martin is an inclusive team that values and leverages each person's individuality.</p> <p>It's about living our values of doing what's right, respecting others and performing with excellence. We recognize that our success depends on the talent, skills and expertise of our people and our ability to function as an integrated team.</p> <p>Lockheed Martin, Commitment to Inclusion and Respect, http://www.lockheedmartin.com/aboutus/diversity/diversity.html</p>

* SO = sexual orientation non-discrimination policy; GI = gender identity non-discrimination policy; DPB = offers domestic partner benefits; UNK = unknown



Rank: 2
Policies: SO, GI, DPB
Company Name: Boeing Co.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>After adding gender identity to Boeing's non-discrimination policy in 2006, Global Diversity & Employee Rights team member, Connie Jack said, "That was a major celebration for us. Diversity is itself a core business strategy of the company. It is our intent to create an inclusive environment that provides for a fully engaged workforce."</p> <p>Todd Henneman, Companies that Embrace Equality, The Advocate, Oct. 10, 2006.</p>	<p>James B. Dagnon, Boeing's senior vice president for personnel, said the move [to offering Domestic Partner Benefits] was made for two reasons: "First to attract and retain talented employees, and second to walk the talk on diversity. Diversity, with a capital D, means acknowledging employees have different backgrounds, preferences and interests."</p> <p>Boeing Extends Health Benefits To Same-Sex Partners; Proposal Affects Only Nonunion Salaried Workers; Unmarried Heterosexuals Are Excluded, St. Louis Post-Dispatch, Oct. 24, 1999</p>	<p>Diversity and inclusion are part of Boeing's values at the highest level. Having diverse employees, business partners and community relationships is vital to creating advanced aerospace products and services for our diverse customers around the world.</p> <p>The company's commitment to diversity means providing a work environment for all employees that is welcoming, respectful and engaging, with opportunities for personal and professional development. This in turn increases productivity, quality, creativity and innovation.</p> <p>Boeing, Diversity, http://www.boeing.com/aboutus/diversity/</p>
 <p>Rank: 3 Policies: SO, GI, DPB Company Name: Northrop Grumman Corp.</p>	<p>Upon extending benefits to employees' domestic partners in 2003, Northrop Grumman Spokesperson Bob Bishop said: "We want to hire the best employees available. We benchmark our benefits against the industry, and we strive to offer a competitive benefits package. We think this helps us do just that."</p> <p>Northrop Latest on Domestic Partner Benefit Bandwagon, Plansponsor.com, May 19, 2003.</p>	<p>The 120,000 men and women who make up Northrop Grumman are a talented and diverse team. Their diversity in terms of culture, background, experience, thoughts, ideas and work styles allows us to design and build some of the most sophisticated next generation products and services for our customers.</p> <p>At Northrop Grumman, we look at diversity and inclusion as being integrated into all our business practices. We take pride in creating a working environment where diversity and inclusion is valued and leveraged to foster creativity and innovation, thereby allowing us to meet the business challenges of tomorrow.</p> <p>Northrop Grumman defines valuing diversity as a management philosophy that when we recognize, acknowledge, become more aware and embrace the differences in culture and backgrounds that all colleagues bring to the company, then and only then can the company leverage our dynamic assets to drive business success..</p> <p>In pursuit of becoming the industry's employer of choice, Northrop Grumman seeks to develop and nurture its diversity. The company believes that diversity among its workforce strengthens the organization, stimulates creativity, promotes the exchange of ideas and enriches the work lives of all employees.</p> <p>Northrop Grumman, Corporate Commitment, http://www.northropgrumman.com/corporate-responsibility/diversity/corporate-commitment.html.</p>

Raytheon

Rank: 4
Policies: SO, GI, DPB
Company Name: Raytheon Co.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Hayward Bell, Chief Diversity Officer, Raytheon, "We are proud to have once again achieved a perfect score on the Corporate Equality Index, since it directly reflects the strides that our company has made to build a culture that recognizes, respects and leverages individual and cultural differences. Our commitment to diversity and inclusion is our undeniable pathway to success for individuals and the company – for everyone, every day and everywhere."</p> <p>Human Rights Campaign, HRC Corporate Equality Index (2008), available at http://www.hrc.org/documents/HRC_Corporate_Equality_Index_2008.pdf.</p>		<p>We recognize the importance of retaining, attracting and developing a diverse range of world-class talent in our employee ranks to maximize the potential of the company, and to bring the most value to our shareholders.</p> <p>Raytheon, 2009 Corporate Responsibility Report (2009), available at http://media.corporate-ir.net/media_files/irol/84/84193/RTN_CSR_2009/index.html.</p>
<p>GENERAL DYNAMICS</p> <p>Rank: 5 Policies: SO, GI Company Name: General Dynamics Corp.</p> <p>Appreciating differences involves respecting the underlying characteristics that make each of us unique. These differences include personal points of view, beliefs and ways of thinking, as well as tangible differences such as age, gender, ethnicity, national origin, physical ability, military experience and sexual orientation, among others. General Dynamics recognizes that the best ideas and solutions are developed by gathering input from people who have these different perspectives as well as these tangible differences.</p> <p>General Dynamics, Diversity, http://www.generaldynamics.com/careers/diversity/</p>		



Rank: 6
 Policies: SO, GI, DPB
 Company Name: United Technologies Corp.



communications

Rank: 7
 Policies: SO
 Company Name: L-3 Communications Holdings Inc.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
		<p>As a global organization that relies on teamwork and a multiplicity of viewpoints, we actively seek a diverse work force. For UTC, diversity is a competitive asset that enables us to more closely reflect and respond to the diverse needs of our markets, customers and communities. Our goal is a workplace where all employees are encouraged to reach their fullest potential and where everyone values, accepts and respects the differences in our work force.</p> <p>Maintaining a diverse work force is a key component of our ability to meet the demands of a global business. We strive to remove all barriers - cultural or otherwise - so that we hire, develop, promote and retain the very best talent from around the world.</p> <p>United Technologies, Diversity, http://careers.utc.com/text/diversity_action.asp</p> <p>UTC will attract, motivate and retain competent, dedicated people by designing compensation and benefits programs that are competitive in our worldwide marketplace.</p> <p>UTC, Code of Ethics, http://www.pratt-whitney.com/StaticFiles/Sikorsky/Assets/Attachments/Supplier_Licensing/ethics.pdf</p>
		<p>Our vision is to provide the best value for our customers by investing in and evolving our products. To reach this goal we need creative and innovative thinkers. Every individual in our company brings to the table a unique background and perspective, a unique set of abilities. Those differences are assets and resources that will determine our success. To compete and win in this industry we continually strive to create an environment where everyone is a valued member of the team with the opportunity to maximize his or her personal contribution. Limitless possibilities exist when different ideas, backgrounds and ways of getting the job done exist. We want you to be a part of our varied workforce.</p> <p>GS&ES's strong commitment to workforce diversity encourages inclusion of all people by maintaining a work environment supported by policies and procedures that foster a nondiscriminatory work place. Equal Employment Opportunity and Affirmative Action principles and policies are demonstrated in the practice of L-3 GS&ES's values and are incorporated into the daily operations of the company in every personnel decision and action.</p> <p>L-3 Communications, Diversity, http://www.gses.l-3com.com/careers/diversity.php</p>



Rank: 8
Policies: SO
Company Name: Oshkosh Truck Corp.



Rank: 9
Policies: SO, DPB
Company Name: Science Applications International Corp.



Rank: 10
Policies: SO
Company Name: BAE Systems Inc.

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
		<p>We treat each other with dignity, respect and fairness. We appreciate the diversity of our work force and the uniqueness of each employee. All individuals are valued, without regard to gender, ethnic or educational background.</p> <p>Oshkosh Defense, People, http://www.oshkoshdefense.com/people#</p>
		<p>Our commitment to diversity and inclusion shapes how we view: Talent, both internally and externally, to create a diverse and engaged workforce Our diversity and inclusion approach that aligns with SAIC's business objectives and strategic goals. SAIC Core Values and how they link to our leadership and cultural competencies to provide added value to our customers, employees, and other stakeholders. Our commitment to diversity and inclusion helps us attract and retain talented, engaged individuals who want to become part of our team</p> <p>SAIC, Why SAIC? An Inclusive Workforce, available at http://www.saic.com/career/why-saic/inclusive/</p>
		<p>An inclusive workplace where all individuals are valued and respected, encourages innovation and supports the retention of skilled employees. It also increases our attractiveness as an employer to potential recruits. Greater diversity is supported by expanding our recruitment and succession planning processes to include talented people from a variety of backgrounds, experiences and perspectives, and through training, mentoring and employee networks.</p> <p>BAE Systems, Strategy and Performance, http://bae-systems-corporate-responsibility-report-2009.production.investis.com/workplace/strategy-and-performance.aspx</p>



Rank: 11
 Policies: SO, DPB
 Company Name: McKesson Corp.



Rank: 12
 Policies: SO, GI, DPB
 Company Name: Computer Sciences Corp.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
		<p>Diversity and Inclusion is good for business: it allows us to reflect and respond to a diverse customer base; keep pace with changing demographics; improve productivity, creativity and quality; improve teamwork and decision making; demonstrate our corporate citizenship; and support our government contracts.</p> <p>McKesson, Diversity and Inclusion, http://www.mckesson.com/en_us/McKesson.com/About%2BUs/Corporate%2BCitizenship/Diversity%2Band%2BIInclusion.html</p>
		<p>We value the diversity of our employees and the unique perspectives they bring to CSC. Diversity at CSC includes functional roles within the company, the markets and industries we serve, length of service, geographic location, educational background, age, race, gender, ethnicity and whether employees joined CSC independently or through an acquisition. By valuing differences, we demonstrate our commitment to treating everyone with fairness and respect.</p> <p>Computer Sciences Corp., Diversity-- One Great Mix, http://www.csc.com/careersmy/ds/11882-diversity_one_great_mix</p> <p>CSC's approach to benefits and compensation is based on a simple truth: We know we're only as good as our people. Recognizing this, and acknowledging that our employees are our greatest asset, we offer a comprehensive benefits package that includes paid time off, healthcare coverage for you and your family.</p> <p>Computer Sciences Corp., CSC Benefits, http://www.csc.com/careersmy/ds/11883-csc_benefits</p>



Rank: 13
 Policies: SO, DPB
 Company Name: Bechtel Group Inc.

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
<p>Summary of Bechtel Policy Under the Bechtel Covenants, we encourage openness, teamwork, and trust. Our success depends on our ability to build dynamic, diverse, mobile teams whenever and wherever they are needed. We respect each other and value the diversity that comes from our different backgrounds, experience, and views. Bechtel is an equal opportunity employer and bases employment decisions on merit, experience, skills, and potential. Employment decisions are made without regard to race, color, gender, age, religion, national origin, ancestry, physical or mental disability, veteran status, sexual orientation, and other grounds for discrimination prohibited by applicable law.</p> <p>...</p> <p>How does Bechtel benefit from diversity? Bechtel's commitment to maximizing the unique talents and perspectives of our workforce gives us a competitive advantage because we can leverage those differences to achieve better results. This enables Bechtel to better understand and meet the diverse requirements and expectations of our global customers. Diversity and inclusion also helps Bechtel attract and retain highly talented employees around the globe.</p> <p>Bechtel, Bechtel Business Ethics: Our Code of Conduct, http://www.bechtel.com/assets/files/PDF/CodeofConduct/Bechtel_Code_of_Conduct_%20Web.pdf</p>	<p>Company spokesperson Leamon Abrams said the company extended benefits because "it's a good idea to be responsive to a customer, an important customer like San Francisco [referring to a San Francisco city ordinance that required city contractors to extend equal benefits to domestic partners]."</p> <p>Rachel Gordon, Bechtel Agrees to Extend Its Benefits Policy, SFGate, May 4, 2000.</p>	<p>Summary of Bechtel Policy Under the Bechtel Covenants, we encourage openness, teamwork, and trust. Our success depends on our ability to build dynamic, diverse, mobile teams whenever and wherever they are needed. We respect each other and value the diversity that comes from our different backgrounds, experience, and views. Bechtel is an equal opportunity employer and bases employment decisions on merit, experience, skills, and potential. Employment decisions are made without regard to race, color, gender, age, religion, national origin, ancestry, physical or mental disability, veteran status, sexual orientation, and other grounds for discrimination prohibited by applicable law.</p> <p>...</p> <p>How does Bechtel benefit from diversity? Bechtel's commitment to maximizing the unique talents and perspectives of our workforce gives us a competitive advantage because we can leverage those differences to achieve better results. This enables Bechtel to better understand and meet the diverse requirements and expectations of our global customers. Diversity and inclusion also helps Bechtel attract and retain highly talented employees around the globe.</p> <p>Bechtel, Bechtel Business Ethics: Our Code of Conduct, http://www.bechtel.com/assets/files/PDF/CodeofConduct/Bechtel_Code_of_Conduct_%20Web.pdf</p> <p>At Bechtel, we built a world-class organization by providing exciting work environments, challenging projects, and opportunities for career growth. We reward performance and results with competitive compensation packages that include some of the most sought-after benefits in the business. Bechtel recognizes registered domestic partners for all applicable benefits.</p> <p>Profile: Bechtel Corporation, Jobing.com, http://www.jobingtech.com/company_profile.asp?ViewMode=c&i=12463</p>



Rank: 14
 Policies: SO, DPB
 Company Name: URS Corp.



Rank: 15
 Policies: UNK
 Company Name: KBR Inc.



Rank: 16
 Policies: SO, DPB
 Company Name: Humana Inc.



Rank: 17
 Policies: SO, GI, DPB
 Company Name: Health Net Inc.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
		<p>Our corporate strategic focus is on growth, innovation, and meeting the needs of consumers. Because we understand that diversity serves as a catalyst for creative thinking, we recognize that diversity is a business imperative.</p> <p>Humana, Diversity, http://www.humana.com/resources/about/careers/diversity.aspx</p>
		<p>Diversity at Health Net is an essential component in driving our company vision. Health Net's very own President and Chief Executive Officer, Jay Gellert, sets the tone:</p> <p>Whatever job you're considering, keep in mind that opportunities at Health Net are geared toward development and upward mobility. All associates, including minorities, women, the disabled and veterans benefit from a work environment and value system that demonstrates fairness and equity in selection, compensation, benefits and personal growth. Not only is this a reflection of our commitment to equal opportunity, it's a critical business strategy for us. The best way to serve our diverse member base is by maintaining a diverse workforce.</p> <p>Health Net, Diversity, http://www.careersathealthnet.com/diversity.asp</p>



Rank: 18
 Policies: SO, GI
 Company Name: Harris Corp.





Rank: 19
 Policies: SO, DPB
 Company Name: General Electric Co.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
		<p>At Harris, our commitment to building, maintaining and expanding a globally inclusive culture is central to our organization's ongoing success. With effective Global Inclusion, we are more innovative in providing for and supporting our customer needs and satisfying our own development internally. We're advancing inclusion in our global workforce every day. Our goal is to continuously "create an environment where we all can do our best work." We do this by encouraging drivers and agents of organizational change and efficacy, and keeping management accountable. We have also cultivated a workplace climate of genuine respect, equity of opportunity, superior morale, and high performance by inspiring multicultural teamwork and collaboration, and cross-cultural communication across our global work communities. All of this empowers us – allowing us to collectively do our best to contribute to our success.</p> <p>We realize that creative solutions and success come from working together and supporting each other to achieve our goals. This collaboration extends across all areas of our global business, throughout the entire Harris organization.</p> <p>We further recognize that bringing a variety of backgrounds and perspectives to the table generates the best innovation. By leveraging our individual creative bandwidth, ingenuity, and differences, we will continue to enable, deliver and drive high performance at Harris.</p> <p>Harris Corporation, Global Inclusion, http://www.harris.com/harris/careers/global/</p>
	<p>At a companywide meeting in March, Mr. Immelt [then Chairman and Chief Executive of General Electric], who succeeded Mr. Welch nearly two years ago and is 20 years younger than Mr. Welch, made it clear he supported such benefits. "It's very important for us to have an inclusive culture where everyone feels comfortable that they can get any job when they walk through the door and people can prosper in this company," he told employees. "That's been true about gender and about race and it's going to be true in the future about gay and lesbian rights."</p> <p>Matt Murray, Wal-Mart Shift Shows Job Sites Welcome Gays, The Wall Street Journal, July 7, 2003.</p>	<p>Having an environment in which fair employment practices are implemented and executed helps GE compete for and attract a high quality and increasingly diverse workforce. The company will continue to make good faith efforts to recruit and retain diversified pools of applicants and employees.</p> <p>Diversity initiatives complement GE's fair employment obligations and are aimed at bringing about a greater recognition of the value and enhanced competitiveness of a workforce that includes people from many different cultural backgrounds. This also involves implementing management processes that develop and maintain a workplace in which all employees can contribute to their full potential.</p> <p>General Electric, Fair Employment Practices Policy, Oct. 2000, http://www.ge.com/files_citizenship/pdf/ge_fair_employment.pdf</p>



Rank: 20
Policies: UNK
Company Name: Triwest Healthcare Alliance Co.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
 <p>Rank: 21 Policies: SO, GI, DPB Company Name: ITT Corp.</p> <p>We, at ITT, are committed to building a workforce that mirrors the world in which we do business. This will lead to improved creativity, innovation, decision-making, and customer service and is essential to achieving premier status.</p> <p>Our concepts of inclusion and diversity embrace differences in race, religion, gender, disability, nationality, age, sexual orientation, ethnic background and more. Our culture, work practices and programs will value and support the contribution of each individual that results from diverse work and life experiences.</p> <p>The ITT Management System including our common Vision and Values will allow us to leverage differences and generate innovation that results from a diverse and inclusive culture and sustain our success in the global marketplace. ITT, Inclusion & Diversity Commitment Statement, http://www.itt.com/careers/diversity-statement/</p>	<p>In 2005, ITT began offering domestic partner benefits to all employees, and extended its anti-discrimination policy to encompass sexual orientation. By establishing a benefits policy that includes our company's gay and lesbian employees – and prohibiting discrimination based on sexual orientation – we are making our company more welcoming to a growing and vital part of the world</p> <p>ITT, 2005 Global Citizenship Report (2005), available at http://www.itt.com/docs/responsibility/2005_gcr/supplier_relations/systems_tools/</p>	<p>We, at ITT, are committed to building a workforce that mirrors the world in which we do business. This will lead to improved creativity, innovation, decision-making, and customer service and is essential to achieving premier status.</p> <p>Our concepts of inclusion and diversity embrace differences in race, religion, gender, disability, nationality, age, sexual orientation, ethnic background and more. Our culture, work practices and programs will value and support the contribution of each individual that results from diverse work and life experiences.</p> <p>The ITT Management System including our common Vision and Values will allow us to leverage differences and generate innovation that results from a diverse and inclusive culture and sustain our success in the global marketplace.</p> <p>ITT, Inclusion & Diversity Commitment Statement, http://www.itt.com/careers/diversity-statement/</p>
 <p>Rank: 22 Policies: SO, GI, DPB Entity Name: The Government of Canada</p>		



Rank: 23
 Policies: SO
 Company Name: Cerberus Capital Management



Rank: 24
 Policies: SO, GI, DPB
 Company Name: Honeywell Inc.



Rank: 25
 Policies: SO
 Company Name: CACI International Inc.

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
		<p>At Honeywell, diversity is the foundation of a performance culture that promotes respect, understanding, and appreciation of different perspectives, backgrounds, and experiences.</p> <p>It is part of the energy that has and will continue to help the company achieve a sustainable and global competitive advantage for many years to come. It enables our global teams to generate new and better ideas faster and to collaborate and innovate more effectively.</p> <p>Each year, our leadership team and employees are assessed on their ability to foster diversity and teamwork. This makes our work environment more productive, more dynamic, and more positive. It enables us to come together and deliver the kind of outstanding results Honeywell has come to expect.</p> <p>Honeywell, Our Commitment to Diversity, http://honeywell.com/Citizenship/Pages/our-commitment-to-diversity.aspx</p>
		<p>In our commitment to being the best in all we do, CACI embraces diversity and inclusion as central to our business strategy. Our corporate culture values each individual's unique contributions to the success of our company, our employees, and our clients.</p> <p>At CACI, we know that a diverse workforce produces innovative thinking. It improves our potential for recruiting and retaining highly qualified employees. And it makes us a more attractive business partner.</p> <p>Having a diverse workforce enables us to approach problems from a variety of perspectives. A multiplicity of viewpoints gives us a greater pool of ideas from which to select and develop the best solutions for our clients. What's more, as our clients become more diverse, they look for diversity in their business partners.</p> <p>CACI, Embracing Diversity is Good business - and The Right Thing to Do. http://www.caci.com/job/diversity.shtml</p>

Bell-Boeing Joint Project



Rank: 26
Policies: SO, GI, DPB (Boeing); SO, DPB (Textron/Bell)
Company Names: Bell-Boeing Joint Project, a joint effort of Bell Helicopter (a Textron Subsidiary) and Boeing Co.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Boeing: After adding gender identity to Boeing's non-discrimination policy in 2006, Global Diversity & Employee Rights team member, Connie Jack said, "That was a major celebration for us. Diversity is itself a core business strategy of the company. It is our intent to create an inclusive environment that provides for a fully engaged workforce."</p> <p>Todd Henneman, Companies that Embrace Equality, The Advocate, Oct. 10, 2006.</p>	<p>Boeing: James B. Dagnon, Boeing's senior vice president for personnel, said the move [to offering Domestic Partner Benefits] was made for two reasons: "First to attract and retain talented employees, and second to walk the talk on diversity. Diversity, with a capital D, means acknowledging employees have different backgrounds, preferences and interests."</p> <p>Boeing Extends Health Benefits To Same-Sex Partners; Proposal Affects Only Nonunion Salaried Workers; Unmarried Heterosexuals Are Excluded, St. Louis Post-Dispatch, Oct. 24, 1999.</p> <p>Bell (Textron): Textron's benefits and compensation programs are designed to reflect our commitment to attracting and retaining talented and motivated people. Our comprehensive program incorporates pay programs that are designed to help talented employees excel – both at work and at home. Textron employees and their families, which includes same gender partners with respect to most benefits, have the opportunity to take an active role in managing the quality and the cost of their own benefits.</p> <p>Textron, Benefits & Compensation, http://www.textron.com/careers/benefits-and-compensation/index.php</p>	<p>Boeing: Diversity and inclusion are part of Boeing's values at the highest level. Having diverse employees, business partners and community relationships is vital to creating advanced aerospace products and services for our diverse customers around the world.</p> <p>The company's commitment to diversity means providing a work environment for all employees that is welcoming, respectful and engaging, with opportunities for personal and professional development. This in turn increases productivity, quality, creativity and innovation.</p> <p>Boeing, Diversity, http://www.boeing.com/aboutus/diversity/</p> <p>Bell (Textron): Diversity as a Catalyst for Growth You know what matters, and so do we. Our diversity and inclusion program is strategically aligned with Textron enterprise business objectives. By sustaining key growth goals, diversity supports our intention to be recognized as premier. Building a diverse workforce and strengthening our inclusive culture have a vital impact on three business objectives that will help generate growth: Globalization and Expansion – as we expand globally, we'll benefit from unique viewpoints of diverse and international employees. Your viewpoint may be the one that helps solve a service problem or anticipates a market entry concern. Continual Innovation – we must innovate to beat the competition and anticipate customer needs. We know from experience that input from our diverse workforce is important in these efforts. Attract Top Talent – we want the best people to recognize us as a great place to work and to build a career. Smart, driven applicants – like you – must consider Textron as a welcoming, inclusive workplace.</p> <p>Textron, Diversity at Textron, http://www.textron.com/about/commitment/diversity.php</p> <p>Textron's benefits and compensation programs are designed to reflect our commitment to attracting and retaining talented and motivated people. Our comprehensive program incorporates pay programs that are designed to help talented employees excel – both at work and at home. Textron employees and their families, which includes same gender partners with respect to most benefits, have the opportunity to take an active role in managing the quality and the cost of their own benefits.</p> <p>Textron, Benefits & Compensation, http://www.textron.com/careers/benefits-and-compensation/index.php</p>



Rank: 27
 Policies: SO
 Company Name: Battelle Memorial Institute



Rank: 28
 Policies: SO, DPB
 Company Name: Textron Inc.




<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
		<p>The Diversity Business Case is compelling and clearly expresses the rationale for diversity at Battelle:</p> <p>Better attraction, recruitment, and retention across various diversity dimensions. Increased competition in the industry for science and engineering talent. Improved understanding of markets will lead to enhanced customer service and loyalty.</p> <p>A diverse workforce increases creativity and innovation. Successful expansion into global markets. Adhere to the provisions of the Will of Gordon Battelle through social responsibility. It's the right thing to do!</p> <p>Battelle, Vision, http://www.battelle.org/diversity/vision.aspx</p>
	<p>Textron's benefits and compensation programs are designed to reflect our commitment to attracting and retaining talented and motivated people. Our comprehensive program incorporates pay programs that are designed to help talented employees excel – both at work and at home. Textron employees and their families, which includes same gender partners with respect to most benefits, have the opportunity to take an active role in managing the quality and the cost of their own benefits.</p> <p>Textron, Benefits & Compensation, http://www.textron.com/careers/benefits-and-compensation/index.php</p>	<p>Diversity as a Catalyst for Growth</p> <p>You know what matters, and so do we. Our diversity and inclusion program is strategically aligned with Textron enterprise business objectives. By sustaining key growth goals, diversity supports our intention to be recognized as premier. Building a diverse workforce and strengthening our inclusive culture have a vital impact on three business objectives that will help generate growth:</p> <p>Globalization and Expansion – as we expand globally, we'll benefit from unique viewpoints of diverse and international employees. Your viewpoint may be the one that helps solve a service problem or anticipates a market entry concern.</p> <p>Continual Innovation – we must innovate to beat the competition and anticipate customer needs. We know from experience that input from our diverse workforce is important in these efforts.</p> <p>Attract Top Talent – we want the best people to recognize us as a great place to work and to build a career. Smart, driven applicants – like you – must consider Textron as a welcoming, inclusive workplace.</p> <p>Textron, Diversity at Textron, http://www.textron.com/about/commitment/diversity.php</p> <p>Textron's benefits and compensation programs are designed to reflect our commitment to attracting and retaining talented and motivated people. Our comprehensive program incorporates pay programs that are designed to help talented employees excel – both at work and at home. Textron employees and their families, which includes same gender partners with respect to most benefits, have the opportunity to take an active role in managing the quality and the cost of their own benefits.</p> <p>Textron, Benefits & Compensation, http://www.textron.com/careers/benefits-and-compensation/index.php</p>

Los Alamos National Security



Rank: 29
Policies: SO, DPB (Bechtel); SO, GI, DPB (U. of Cal.); None (Babcock & Wilcox); SO, DPB (URS)
Company Name: Los Alamos National Security LLP, a joint effort of Bechtel Inc., University of California, Babcock & Wilcox Co. and URS Corp.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Bechtel: Under the Bechtel Covenants, we encourage openness, teamwork, and trust. Our success depends on our ability to build dynamic, diverse, mobile teams whenever and wherever they are needed. We respect each other and value the diversity that comes from our different backgrounds, experience, and views. Bechtel is an equal opportunity employer and bases employment decisions on merit, experience, skills, and potential. Employment decisions are made without regard to race, color, gender, age, religion, national origin, ancestry, physical or mental disability, veteran status, sexual orientation, and other grounds for discrimination prohibited by applicable law.</p> <p>...</p> <p>How does Bechtel benefit from diversity? Bechtel’s commitment to maximizing the unique talents and perspectives of our workforce gives us a competitive advantage because we can leverage those differences to achieve better results. This enables Bechtel to better understand and meet the diverse requirements and expectations of our global customers. Diversity and inclusion also helps Bechtel attract and retain highly talented employees around the globe.</p> <p>Bechtel, Bechtel Business Ethics: Our Code of Conduct, http://www.bechtel.com/assets/files/PDF/CodeofConduct/Bechtel_Code_of_Conduct_%20Web.pdf</p>	<p>Bechtel: Company spokesperson Leamon Abrams said the company extended benefits because "it's a good idea to be responsive to a customer, an important customer like San Francisco [referring to a San Francisco city ordinance that required city contractors to extend equal benefits to domestic partners]."</p> <p>Rachel Gordon, Bechtel Agrees to Extend Its Benefits Policy, SFGate, May 4, 2000.</p> <p>University of California: The new policy [offering domestic partner benefits], UC officials said, will help them recruit and retain faculty they were losing to Stanford University, Harvard University, MIT, the University of Michigan and other schools that offer such benefits to same-sex partners.</p> <p>Kenneth Weiss, Dave Leshner, UC Regents Defy Wilson, OK Gay Partner Benefits; Politics: Measure Passes On 13-12 Vote Even Though Governor Hastily Appoints Two To The Board Friday In An All-Out Effort To Stop Passage, L.A. Times, at 1, Nov. 22, 1997.</p>	<p>Bechtel: Our success depends on our ability to build dynamic, diverse, mobile teams whenever and wherever they are needed. We respect each other and value the diversity that comes from our different backgrounds, experience, and views....Employment decisions are made without regard to race, color, gender, age, religion, national origin, ancestry, physical or mental disability, veteran status, sexual orientation, and other grounds for discrimination prohibited by applicable law.</p> <p>...</p> <p>How does Bechtel benefit from diversity? Bechtel’s commitment to maximizing the unique talents and perspectives of our workforce gives us a competitive advantage because we can leverage those differences to achieve better results. This enables Bechtel to better understand and meet the diverse requirements and expectations of our global customers. Diversity and inclusion also helps Bechtel attract and retain highly talented employees around the globe.</p> <p>Bechtel, Bechtel Business Ethics: Our Code of Conduct, http://www.bechtel.com/assets/files/PDF/CodeofConduct/Bechtel_Code_of_Conduct_%20Web.pdf</p> <p>At Bechtel, we built a world-class organization by providing exciting work environments, challenging projects, and opportunities for career growth. We reward performance and results with competitive compensation packages that include some of the most sought-after benefits in the business. Bechtel recognizes registered domestic partners for all applicable benefits.</p> <p>Profile: Bechtel Corporation, Jobing.com, http://www.jobingtech.com/company_profile.asp?ViewMode=c&i=12463</p> <p>University of California: Diversity is central to the mission of the University of California. To be successful, diversity cannot be seen as an optional initiative; it must be part of the way the University goes about its work—the way it teaches, does research, and engages with California’s communities. . . . Diversity enhances the quality of a UC education. The unique environment created by UC’s system of 10 top-tier public research universities contributes to the overall UC educational quality. An important aspect of this environment is the ability to take advantage of the important social, cultural and intellectual contributions made possible by having a diverse population of students, faculty and staff from a variety of underrepresented populations. A diverse University community enhances the quality of education by infusing perspectives and experiences from people of all walks of life in California and beyond, enriching and contributing to the educational environment.</p> <p>University of California, Diversity Annual Accountability Sub-Report (2010), available at http://www.universityofcalifornia.edu/diversity/documents/diversity-accountability-report-and-appendix-0910.pdf</p>

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Diversity is integral to who we are at Booz Allen, and our inclusion on this list is further evidence of our commitment to value people from all backgrounds, across all cultures, and regardless of sexual orientation or gender. We recognize that diverse teams brainstorm the best solutions for all problems, and that our people can serve our clients best when they can be authentic in the workplace.</p> <p>CRSwire, Booz Allen Receives Perfect Score on 2011 Corporate Equality Index for Second Year in a Row, Oct. 6, 2010.</p>		<p>At Booz Allen, workplace diversity is more than recognizing differences. It's about embracing and accommodating the panoply of ideas, thoughts, perspectives, abilities, needs, styles, and cultural backgrounds our people bring to work every day.</p> <p>We believe that embracing diversity in the workplace contributes to more innovative ideas, which lead to better results for our clients.</p> <p>So we weave diversity practices into day-to-day workplace life across the firm. We provide training, mentoring, and career development resources to help staff reach their goals. We apply the insights derived from our employee-led diversity forums to respond to the changing needs of our staff and our client community. And we annually assess leadership and staff on their workplace diversity and inclusion practices, one of the firm's core values.</p> <p>Booz Allen Hamilton, Workplace Diversity, http://www.boozallen.com/about/diversity-inclusion/workplace-diversity</p>
 <p>Rank: 31 Policies: UNK Company Name: Supreme Group Holding</p>		
 <p>Rank: 32 Policies: UNK Company Name: DynCorp International</p>		
 <p>Rank: 33 Policies: SO, GI, DPB Company Name: Jacobs Engineering Group Inc.</p>		<p>As a global industry leader, Jacobs employs a dynamic mix of people to create the strongest company possible. Drawing upon employees' differences and viewpoints, we are able to develop better, more innovative services for existing and potential customers. Come join an inclusive and diverse company with people of all different backgrounds, experiences, cultures, styles, and talents.</p> <p>Jacobs Engineering, Diversity & Inclusion, http://www.jacobs.com/careers.aspx?id=4420</p> <p>Employees are our greatest asset, so it makes sense to us to offer them a quality benefits package that helps them and their families stay healthy, enjoy time off, provide for their financial future, and allow them opportunities to save money.</p> <p>Jacobs Engineering, Benefits, http://www.jacobs.com/careers.aspx?id=4442</p>

Booz | Allen | Hamilton

Rank: 30
Policies: SO, GI, DPB
Company Name: Booz Allen Hamilton Inc.



Rank: 31
Policies: UNK
Company Name: Supreme Group Holding



Rank: 32
Policies: UNK
Company Name: DynCorp International



Rank: 33
Policies: SO, GI, DPB
Company Name: Jacobs Engineering Group Inc.

FLUOR

Rank: 34
 Policies: SO
 Company Name: Fluor Corp.

ADNOC

Rank: 35
 Policies: UNK
 Company Name: Abu Dhabi National Oil Company for Distribution

ATK

Rank: 36
 Policies: SO, GI, DPB
 Company Name: Alliant Techsystems Inc.

GENERAL ATOMICS

Rank: 37
 Policies: UNK
 Company Name: General Atomics Technology Corp.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
		<p>Fluor works to sustain a culture where all individuals are valued. Fluor's dedication to maintaining a respectful and inclusive work environment helps attract, develop, and retain the most talented people. With a workforce of over 42,000 men and women, Fluor continues to expand across continents and cultures, leveraging the unique perspectives that each individual brings to the workplace. Employees are educated about the importance of embracing diversity and practicing inclusive behavior from their first day with the company throughout their entire career. Through Fluor's comprehensive employment programs and practices that support both representation and inclusion, employees have opportunities to realize their full potential while meeting the company's business objectives.</p> <p>Fluor, Diversity and Inclusion in Action, http://www.fluor.com/sustainability/diversity_inclusion/Pages/diversity_inclusion_at_fluor.aspx</p>
		<p>We consider a diverse workforce to be essential to our success as well as an important social responsibility. We are a company that values and respects all people for who they are, for their differing opinions and viewpoints, and for the way they do things.</p> <p>Alliant Techsystems, Our Values, http://www.atk.com/values/values_ourvalues.asp</p>



Rank: 38
Policies: SO, GI, DPB
Company Name: Hewlett-Packard Co.





Rank: 39
Policies: SO
Company Name: United Space Alliance

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Marcela Perez de Alonso, Executive Vice President, Human Resources, Hewlett-Packard, "Hewlett-Packard Company is pleased to have once again received the Human Rights Campaign 100% rating on the Corporate Equality Index. The rating is a visible and welcome acknowledgment of the work many HP employees are doing every day to make our company innovative and competitive. HP is strongly committed to attracting, developing, promoting and retaining a diverse workforce to better serve our increasingly diverse customers, as well as providing an inclusive, flexible work environment that values differences, motivates employees to contribute their best, and is an open and safe place to work. We look forward to our continued partnership with the HRC on workplace and public policy issues."</p> <p>Human Rights Campaign, HRC Corporate Equality Index: 2005 Corporate Statements (2005), available at http://www.hrc.org/issues/4776.htm</p>	<p>"The extension of benefits to domestic partners continues HP's ongoing efforts to create an inclusive environment," said Lewis Platt, chairman and CEO. "We're also enhancing our competitiveness as a great place to work so we can attract and retain top talent."</p> <p>Hewlett-Packard Co.-Domestic Partner Benefits Program, available at https://www.schaap.hrc.org/documents/Sample-Policies-Hewlett-Packard.pdf</p>	<p>As HP has grown and expanded throughout the world, its work force has become more diverse. HP believes that this diverse work force helps the company realize its full potential. Recognizing and developing the talents of each individual brings new ideas to HP. The company benefits from the creativity and innovation that results when HP people who have different experiences, perspectives and cultures work together. This is what drives invention and high performance at HP. We believe a well managed, diverse work force expands HP's base of knowledge, skills and cross-cultural understanding, which in turn, enables us to understand, relate and respond to our diverse and changing customers throughout the world, connecting them to the power of technology. Our overall commitment is reflected in our diversity and inclusion philosophy.</p> <p>Hewlett-Packard, HP Non-Discrimination Policy, http://www.hp.com/hpinfo/abouthp/diversity/nondisc.html</p>
<p>In today's changing world, the need to build understanding and tolerance for diversity in the workplace is critical for a business to reach its full potential. Whether diversity manifests in the form of race, gender, sexual orientation, religion, age, geographic, background, education, economic background and thinking and communication styles, educating a workforce to appreciate diversity creates better working relationships, helps avoid miscommunication based on cultural differences, helps retain critical skills and saves time and money.</p> <p>United Space Alliance, Where Diversity Takes Flight, http://www.unitedspacealliance.com/about/Diversity_Report_ONLINE.pdf</p>		<p>In today's changing world, the need to build understanding and tolerance for diversity in the workplace is critical for a business to reach its full potential. Whether diversity manifests in the form of race, gender, sexual orientation, religion, age, geographic, background, education, economic background and thinking and communication styles, educating a workforce to appreciate diversity creates better working relationships, helps avoid miscommunication based on cultural differences, helps retain critical skills and saves time and money.</p> <p>United Space Alliance, Where Diversity Takes Flight, http://www.unitedspacealliance.com/about/Diversity_Report_ONLINE.pdf</p>



Rank: 40
 Policies: SO
 Company Name: Navistar International Corp.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
		<p>Our commitment to diversity brings Navistar a number of tangible benefits, including innovation, high-quality products and services, and improved customer relationships.</p> <p>.....</p> <p>Navistar continues to focus on achieving and exceeding ambitious spending goals with both minority-owned and women-owned suppliers. In both 2008 and 2009, Navistar was named one of the “Readers’ Choice Best Diversity Companies” by Diversity/Careers magazine, reflecting the company’s support for minorities and women, its attention to work/life balance and its commitment to supplier diversity.</p> <p>Navistar, Social Benefits, http://www.navistar.com/Navistar/Inside+Navistar/Sustainability/Social+Benefits</p>
 <p>Rank: 41 Policies: SO, GI Company Name: Mantech International Corp.</p>		<p>As a global company, ManTech International Corporation values diversity in a way that recognizes the uniqueness in every employee, values the contribution that each individual can make, and creates an inclusive work environment through which employees can achieve maximum professional growth. ManTech's top-down commitment to proactively managing diversity allows us to utilize the full talent of our workforce, at all levels, to effectively contribute to organizational goals. Diversity and inclusion are an inherent part of our culture and business growth worldwide.</p> <p>ManTech, ManTech Values Diversity and Inclusion, http://www.mantech.com/careers/careers.asp</p>
 <p>Rank: 42 Policies: SO Company Name: Creative Associates International</p>		<p>At Creative, we know that recruiting and retaining the best talent in our field is critical to our success.</p> <p>Creative celebrates and is committed to a vibrant and diverse workforce.</p> <p>Creative Associates International, Working at Creative, http://www.creativeassociatesinternational.com/</p> <p>In order to recruit and retain the best talent, Creative offers competitive salary and benefits packages.</p> <p>Creative Associates International, Working at Creative, http://www.creativeassociatesinternational.com/</p>



Rank: 43
Policies: SO (at DRS, US-based subsidiary)
Company Names:
 Finmeccanica Group



Rank: 44
Policies: SO, GI, DPB
Company Names: California Institute of Technology

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
		<p>DRS, Finmeccanica's US-based subsidiary:</p> <p>DRS has established a set of core values that form the basis of its social responsibility policy. Our core values are Integrity, Quality, Customer Focus, Diversity and Leadership.</p> <p>...</p> <p>Diversity We accept unconditionally the value that every human being has to offer. We cooperate together as a diverse workforce serving a diverse population.</p> <p>DRS, Core Values, http://www.drs.com/Sustainability/values.aspx</p>
	<p>The California Institute of Technology and NASA's Jet Propulsion Laboratory will offer family benefits beginning May 1 to employees with same-sex domestic partners, officials have announced.</p> <p>The California Institute of Technology and NASA's Jet Propulsion Laboratory will offer family benefits beginning May 1 to employees with same-sex domestic partners, officials have announced.</p> <p>In a memo to employees earlier this month, JPL officials said that offering such benefits is consistent with the university and the space lab's policies of non-discrimination.</p> <p>"It's certainly seen as a positive thing here on campus; we did it because we were being responsive to people here at Caltech and JPL," said Max Benavidez, a Caltech spokesman.</p> <p>Denise Hamilton, Caltech, JPL to Expand Benefits to Same-Sex Partners, LA Times, Mar. 30, 1995.</p>	<p>Caltech is a community dedicated to scientific and engineering exploration and to academic excellence. At the heart of our mission are unwavering commitments to honor, integrity, equity, and diversity. Together these values help create and sustain a community where all are committed to the goals of academic and personal achievement.</p> <p>California Institute of Technology, Diversity, http://diversity.caltech.edu/</p>



Rank: 45
Policies: SO, GI, DPB
Company Name:
 International Business
 Machines Corp.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Ted Childs, Vice President, Global Workforce Diversity, IBM, "...In our workplace, we are creating an environment that allows employees to operate in the marketplace and the workplace where they can personally influence client success, foster innovation, as well as exhibit trust and personal responsibility in achieving IBM's business goals. Our partnership with HRC has helped us to ensure that people who are gay, lesbian, bisexual or transgender feel safe, welcomed and valued within the global walls of our business. Our goal is to assemble the most talented workforce in our industry, and to use the skills of that diverse team to respond to the needs of our clients. The contributions that are made by GLBT IBMers accrue directly to our bottom line and ensure the success of our business."</p> <p>Human Rights Campaign, HRC Corporate Equality Index: 2005 Corporate Statements, available at http://www.hrc.org/issues/4776.htm</p> <p>Charles Lickel, general manager of IBM's Silicon Valley Lab in San Jose, says just tolerating gays and lesbians isn't enough. Real diversity requires building a work environment where differences are discussed openly in a positive light and embraced by leadership, he says. "We're an environment where the demand for technical skills is more and more and the shortage of those skills is greater and greater," says Lickel, who is gay. "You need to build that environment or you can't draw from the entire pool, and we will fail as a business if we don't."</p> <p>Kathleen Melymuka, Dabbling at Diversity, Computerworld, December 11, 2000.</p>	<p>A decision to extend equal benefits to domestic partners in 1996, IBM executives said, was "based largely on business strategy." "We're really doing this from a business point of view," said Jill Kanin-Lovers, IBM Vice President of Human Resources. "We want to be in a position to attract and retain a broad spectrum of employees."</p> <p>Rajiv Chandrasekaran, IBM to Offer Benefits Plans to Gays' Partners, LA Times, Sept. 20, 1996.</p>	<p>IBM has a long history of commitment to Diversity and has consistently taken the lead on Diversity policies long before it was required by law. It began in the mid-20th century, grounded in Equal Opportunity legislation and compliance (Diversity 1.0). We moved forward to Diversity 2.0 in the 1990s with a focus on eliminating barriers, and understanding regional constituencies and differences between the constituencies. As our demographics changed, we adapted our workplace to be more flexible and began our focus on work-life integration. In addition, over the past 5 years, we've introduced IBM's Values, which links to our diversity work.</p> <p>This strong foundation brings us to where we are today — Diversity 3.0. This is the point where we can take best advantage of our differences — for innovation. Our diversity is a competitive advantage and consciously building diverse teams helps us drive the best results for our clients.</p> <p>IBM, IBM Diversity 3.0, http://www-03.ibm.com/employment/us/diverse/</p>



<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Diversity is integral to who we are at Booz Allen, and our inclusion on this list is further evidence of our commitment to value people from all backgrounds, across all cultures, and regardless of sexual orientation or gender. We recognize that diverse teams brainstorm the best solutions for all problems, and that our people can serve our clients best when they can be authentic in the workplace.</p> <p>CRSwire, Booz Allen Receives Perfect Score on 2011 Corporate Equality Index for Second Year in a Row, Oct. 6, 2010.</p>		<p>At Booz Allen, workplace diversity is more than recognizing differences. It's about embracing and accommodating the panoply of ideas, thoughts, perspectives, abilities, needs, styles, and cultural backgrounds our people bring to work every day.</p> <p>We believe that embracing diversity in the workplace contributes to more innovative ideas, which lead to better results for our clients.</p> <p>So we weave diversity practices into day-to-day workplace life across the firm. We provide training, mentoring, and career development resources to help staff reach their goals. We apply the insights derived from our employee-led diversity forums to respond to the changing needs of our staff and our client community. And we annually assess leadership and staff on their workplace diversity and inclusion practices, one of the firm's core values.</p> <p>Booz Allen Hamilton, Workplace Diversity, http://www.boozallen.com/about/diversity-inclusion/workplace-diversity</p>
<p>University of Tennessee: In July 2007, Provost Robert Holub released a statement on his Web site condemning the omission [of sexual orientation from the school's non-discrimination policy]. He said sexual orientation's lack of inclusion in the policy harms the university. "We fool ourselves if we believe that the absence of a direct statement regarding discrimination against gays and lesbians does not harm our institution," Holub said. "We are probably hurt not only by gay and lesbian candidates preferring to go elsewhere, but by heterosexuals who are as horrified as I am that we will not pledge to treat gay and lesbian applicants without prejudice." One month after Holub's statement sexual orientation was added to the policy.</p> <p>Yasmine Alotaibi, Sexual Orientation Added to Hiring Policy, Oct. 1, 2007, available at http://utdailybeacon.com/news/2007/oct/1/sexual-orientation-added-to-hiring-policy/</p>		<p>Battelle: The Diversity Business Case is compelling and clearly expresses the rationale for diversity at Battelle:</p> <p>Better attraction, recruitment, and retention across various diversity dimensions. Increased competition in the industry for science and engineering talent. Improved understanding of markets will lead to enhanced customer service and loyalty.</p> <p>A diverse workforce increases creativity and innovation. Successful expansion into global markets. Adhere to the provisions of the Will of Gordon Battelle through social responsibility. It's the right thing to do!</p> <p>Battelle, Vision, http://www.battelle.org/diversity/vision.aspx</p>

Booz | Allen | Hamilton

Rank: 46
Policies: SO, GI, DPB
Company Name: Booz Allen Hamilton Holding



Rank: 47
Policies: UNK
Company Name: Evergreen International Airlines

UT-Battelle



Rank: 48
Policies: SO (Battelle); SO, GI (U. of Tenn.)
Company Name: UT-Battelle, a joint effort of the University of Tennessee and Battelle Memorial Institute



Rank: 49
Policies: SO, GI, DPB
Company Name: Lockheed Martin



Rank: 50
Policies: SO, GI, DPB
Company Name: FedEx Corp.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Lockheed Martin is committed to providing the most supportive and inclusive environment for all employees. Ensuring a positive, respectful workplace and robust set of benefits for everyone is critical to retaining employees and helping them develop to their fullest potential. Our efforts to provide the best environment possible for all employees support the corporation's business objectives and the professional aspirations of employees as we support our nation and its allies.</p> <p>Human Rights Campaign, HRC Corporate Equality Index (2009), available at https://222.hrc.org/issues/workplace/11139.htm</p>	<p>In 2003, Megan Meriman, a Lockheed Martin spokesperson said of extending domestic partner benefits: "We felt this was a good business decision that will contribute to our success in the future. We want to attract and retain talented employees."</p> <p>Ezra Fieser, Lockheed Martin Improves Corporate Policies Regarding Gay, Lesbian Employees, The Daily Record, Aug. 25, 2003.</p> <p>Lockheed Martin is committed to providing the most supportive and inclusive environment for all employees. Ensuring a positive, respectful workplace and robust set of benefits for everyone is critical to retaining employees and helping them develop to their fullest potential. Our efforts to provide the best environment possible for all employees support the corporation's business objectives and the professional aspirations of employees as we support our nation and its allies.</p> <p>Human Rights Campaign, HRC Corporate Equality Index (2009), available at https://222.hrc.org/issues/workplace/11139.htm</p>	<p>We are committed to creating one company, one team, all-inclusive, where diversity contributes to the Lockheed Martin vision. Diversity at Lockheed Martin is an inclusive team that values and leverages each person's individuality.</p> <p>It's about living our values of doing what's right, respecting others and performing with excellence. We recognize that our success depends on the talent, skills and expertise of our people and our ability to function as an integrated team.</p> <p>Lockheed Martin, Commitment to Inclusion and Respect, http://www.lockheedmartin.com/aboutus/diversity/diversity.html</p>
<p>"FedEx has always had a strong policy regarding discrimination, and we felt the language was inclusive," said spokesperson Sandra Munoz. "But we were asked by some shareholders to be more specific."</p> <p>Bianca Phillips, FedEx Adds Gender Identity to Non-Discrimination Policy, MiamiFlyer, July 13, 2009, available at http://www.memphisflyer.com/MemphisGaydar/archives/2009/07/13/fedex-adds-gender-identity-to-non-discrimination-policy</p>	<p>Internal pressure from LGBT and allied employees has prompted the Memphis, Tenn.-based shipping giant to expand its company-wide health-benefits package to include same-sex couples now that the package is up for annual review. "Several of our employees have been asking for the benefit and, because we knew the economy has improved, we're able to expand our benefits," said Munoz (company spokesperson)</p> <p>All FedEx Employees Finally Get Domestic Partner Benefits, DiversityInc., May 18, 2010, available at http://www.diversityinc.com/article/7653/All-FedEx-Employees-Finally-Get-DomesticPartner-Benefits/</p>	<p>From the very beginning, FedEx has operated on the philosophy of putting people first. We've grown to become an industry-leading Fortune 100 company with a truly global presence by understanding the unique needs of those we serve, and by meeting those needs while exceeding expectations.</p> <p>The secret of our success is the 275,000 FedEx employees and contractors who reflect the diverse world we serve. Here, talented people from all walks of life, with an amazing variety of skills and perspectives unite with a common purpose – exceptional customer service.</p> <p>Ours is a uniquely inclusive environment – a place where differences are celebrated as strengths, and the concept of diversity is woven throughout our entire organization – from top to bottom.</p> <p>At FedEx, we believe in the power of people. We embrace diversity as essential to our continued success in today's ever-changing global marketplace. And we value its role in helping us deliver on our promise of exceptional service for our customers, and exceptional opportunities for our employees.</p> <p>FedEx, Diversity at FedEx, http://fedex.hodesiq.com/careers/diversity.aspx?User_ID</p>

Corporate Statements, Top 50 Fortune 500 Companies, 2010

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>WALMART</p> <p>Rank: 1 Policies*: SO Company Name: Wal-Mart Stores Inc.</p> <p>"Our continued growth requires us to be one of the more desirable employers around, so we're clearly stating our acceptance for all of our associates," Tom Williams [company spokesman] said. "Otherwise, we could lose many talented employees, and we don't want that."</p> <p>Williams said company officials listened to employees and groups advocating the inclusion of gays and lesbians in anti-discrimination policies. The policy change "unfolded by itself," and last week's U.S. Supreme Court decision striking down anti-sodomy laws was not a factor in the decision, he said. "We want all of our associates to feel treated with respect and valued, with no exceptions at all," Williams said.</p> <p>Wal-Mart Extends Anti-Discrimination Policy to Include Gay and Lesbian Employees, Progressive Grocer, July 2, 2003, available at http://www.allbusiness.com/retail-trade/food-stores/4255216-1.html</p>		<p>At Walmart, we believe that business wins when everyone matters, and that the true strength of diversity is unleashed when each associate is encouraged to reach their full potential. Diversity then becomes the foundation for an inclusive, sustainable business that embraces and respects differences, develops our associates, serves our customers, partners with our communities, and builds upon an inclusive supplier base. We make diversity part of our business plan, ensuring we can continue to be a global leader in all aspects of Diversity and Inclusion.</p> <p>Diversity and Inclusion — It's part of our success. Our commitment to Diversity and Inclusion helps us serve our customers better. And, it helps us provide a positive work environment for our associates — 2.1 million worldwide.</p> <p>Wal-Mart, Diversity, http://walmartstores.com/diversity/</p>
<p>ExxonMobil</p> <p>Rank: 2 Policies: None Company Name: Exxon Mobil Corp.</p>		
<p>Chevron</p> <p>Rank: 3 Policies: SO, GI, DPB Company Name: Chevron Corp.</p> <p>Joe Laymon, vice president of Human Resources, Chevron, "Chevron Corporation is proud to receive the Human Rights Campaign Corporate Equality Index award with a 'perfect score' for the fifth consecutive year. Two important components of this award -- diversity and inclusion -- are integral attributes of Chevron's core company values. These are attributes we honor on a daily basis as part of 'The Chevron Way.' We are extremely proud to accept this distinction in recognition of Chevron's diversity and inclusion efforts, and the outstanding contributions our GLBT employees and the Chevron Pride Employee Network have made to the company."</p> <p>Human Rights Campaign, HRC Corporate Equality Index (2010), available at http://www.hrc.org/documents/HRC_Corporate_Equality_Index_2010.pdf</p>	<p>Chevron, which is based in San Francisco, follows a number of other companies that have offered similar programs since the city passed an ordinance in 1996 requiring companies doing business with the city to offer equal benefits to employees' partners.</p> <p>Chevron Plans to Offer Domestic Partner Benefits, New York Times, May 2, 1997.</p>	<p>We value a full spectrum of human experience - diversity of thought, education, national origin, gender, skills and experience. It's not just the right thing to do, it's good business practice and an important competitive advantage.</p> <p>Chevron, Diversity & Inclusion, http://careers.chevron.com/values_and_culture/diversity.aspx</p>

* SO = sexual orientation non-discrimination policy; GI = gender identity non-discrimination policy; DPB = offers domestic partner benefits; UNK = unknown



Rank: 4
Policies: SO, DPB
Company Name: General Electric Co.


<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
	<p>At a companywide meeting in March, Mr. Immelt [Chairman and Chief Executive of General Electric], who succeeded Mr. Welch nearly two years ago and is 20 years younger than Mr. Welch, made it clear he supported such benefits. "It's very important for us to have an inclusive culture where everyone feels comfortable that they can get any job when they walk through the door and people can prosper in this company," he told employees. "That's been true about gender and about race and it's going to be true in the future about gay and lesbian rights."</p> <p>Matt Murray, Wal-Mart Shift Shows Job Sites Welcome Gays, The Wall Street Journal, July 7, 2003.</p>	<p>Having an environment in which fair employment practices are implemented and executed helps GE compete for and attract a high quality and increasingly diverse workforce. The company will continue to make good faith efforts to recruit and retain diversified pools of applicants and employees.</p> <p>Diversity initiatives complement GE's fair employment obligations and are aimed at bringing about a greater recognition of the value and enhanced competitiveness of a workforce that includes people from many different cultural backgrounds. This also involves implementing management processes that develop and maintain a workplace in which all employees can contribute to their full potential.</p> <p>General Electric, Fair Employment Practices Policy, Oct. 2000, http://www.ge.com/files_citizenship/pdf/ge_fair_employment.pdf</p>
<p>The Bank of America is particularly focused on diversity in the workforce, with its global diversity and inclusion executive saying it has also been instrumental in improving such matters across the US in the last decade.</p> <p>Speaking to HR Magazine, Geri Thomas [Diversity and Inclusion Executive] explained that, to the financial institution, inclusion is key to furthering this aim and means respecting and valuing nationalities, cultures, sexual orientation, religions, economic and social backgrounds, and disabilities.</p> <p>To this end, the company has a dedicated diversity recruiting group which, Ms Thomas observed, works to find "top diverse talent for management and executive positions".</p> <p>"Encouraging a diverse, inclusive workplace gives you the business advantage of understanding and meeting the needs of diverse customers, clients and shareholders," she went on to say.</p> <p>Diversity 'Important' at Bank of America, Human Resources Intl., http://www.hri.com/about-hri/news-and-events/diversity-important-at-bank-of-america.html</p>		<p>Above all, we are about people. A philosophy of inclusion drives our organization every day and helps us win in a diverse, global marketplace.</p> <p>Bank of America, Diversity & Inclusion, http://careers.bankofamerica.com/learnmore/diversity.asp</p>



Rank: 5
Policies: SO, GI, DPB
Company Name: Bank of America Corp.



Rank: 6
 Policies: SO, DPB
 Company Name: ConocoPhillips Inc.

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
<p>"ConocoPhillips is and always has been deeply committed to fair and nondiscriminatory treatment for all employees," ConocoPhillips' management committee said in a statement.</p> <p>"The management committee has amended (effective immediately) the company's EEO policy to include the term 'sexual orientation' to more accurately reflect this commitment."</p> <p>Conoco Amends Staff Policy, International Oil Daily, Feb. 13, 2003.</p>		<p>At the heart of diversity and inclusion is respect for people of all backgrounds.</p> <p>Diversity and inclusion at ConocoPhillips work hand-in-hand to ensure that our commitment to values, performance and excellence are sustained. Diversity is about running the business better by creating a workforce that encompasses a wide variety of cultural experiences, backgrounds and ways of thinking. Inclusion supports diversity by ensuring that an environment exists where every individual's contributions and differences are respected and valued. A diverse and inclusive environment challenges our way of thinking by bringing together a variety of talents, backgrounds and experiences, and serves as a catalyst for new ideas and innovation.</p> <p>At ConocoPhillips, discovering and developing the best ways to make our differences work - for the good of our enterprise, our employees, our vendors and our communities - is an ongoing process.</p> <p>ConocoPhillips, What Diversity Means to ConocoPhillips, http://www.conocophillips.com/EN/susdev/policies/diversity_position/whatitmeans/Pages/index.aspx</p>
 <p>"ATT decided to place "sexual preference or orientation" in its Equal Opportunity Statement because of its long-standing policy against non-discrimination in the workplace, said company spokeswoman Cindy Neale.</p> <p>ATT Directors Recommendation against Shareholder Proposal, available at http://google.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHtmlSection1?SectionID=2257083-54344-57340&SessionID=ae4HHWFPE63d0P7</p>		<p>After all, diversity has a real power. It's an investment in our present and in our future. That's why we celebrate and respect the rich culture and differences of our employees, customers, business partners, and communities in which we do business.</p> <p>ATT, Diversity, http://att.jobs/diversity.aspx</p>

Rank: 7
 Policies: SO, GI, DPB
 Company Name: AT&T Inc.



Rank: 8
 Policies: SO, GI, DPB
 Company Name: Ford Motor Co.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>As Ford Motor Company celebrates its Centennial, the company also marks its historical commitment to diversity and the role diversity will play in its future.</p> <p>Today, Ford continues to attract a highly skilled committed workforce that reflects a broad spectrum of culture, ethnicity, race, perspective, age, religion, physical ability and sexual orientation.</p> <p>“Diversity is one of our founding principles, an important part of our business strategy today and key to our future success,” said Rosalind Cox, manager, Diversity and Worklife Planning. “In the end, our company is more successful and all our employees benefit.”</p> <p>Ford, Ford Centennial Marks History of Diversity, http://media.ford.com/print_doc.cfm?article_id=15657</p>	<p>Ford employee resource group (GLOBE) interview with Tom Murphy, Vice President of Human Resources at Ford: "Murphy: A number of our employees, as well as the Gay Lesbian Or Bisexual Employees group (GLOBE), have asked us to consider offering this benefit. Also, this issue was raised during the negotiations in 1999 with the UAW. We, along with DaimlerChrysler and General Motors, signed a memorandum of understanding that we would work toward offering this benefit. Finally, as we look at the marketplace for talent today, we see how many other Fortune 500 companies have offered the benefit. We believe it is the right time to offer this benefit to our employees who have same-sex partners.</p> <p>Murphy: This action is supportive of our diversity effort. It provides fairness to a group of employees who are part of the diverse makeup of Ford Motor Company. I think it's a demonstration of our commitment to diversity to our employees and potential employees of Ford Motor Company."</p> <p>Ford, Three Automakers Agree with UAW to Offer Health Care Coverage to Same-Sex Partners of U.S. Employees, June 8, 2000, available at http://fordglobe.org/2000/06/08fcn/big3uaw_dbp.html; Ford to Offer Same-Sex Domestic Partner Benefits, 2000, available at http://fordglobe.org/2000/06/08fcn/ford_dbp.html</p>	<p>Our diversity makes us a better company, a stronger company, by bringing in fresh ideas, perspectives, experiences and life responsibilities, and by fostering a truly collaborative workplace.</p> <p>Ford, Diversity in the Workplace, http://corporate.ford.com/careers/north-american-careers/diversity/diversity-in-workplace/ford-diversity-445p</p>



Rank: 9
 Policies: SO, GI, DPB
 Company Name: J.P. Morgan Chase & Co.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Gender, race, sexual orientation, age and physical ability are some of the differences that make people - employees and clients - unique. Having diverse points of view enables us to understand and serve our clients better. As a global organisation serving a diverse client base, building and sustaining an inclusive workforce makes economic sense.</p> <p>At J.P. Morgan we see diversity as a competitive advantage, as we believe that encouraging a working environment that promotes creativity, leadership and exceptional performance results in better performance in the businesses we operate. We can only win by creating and encouraging a culture of inclusion where everyone's opinion counts and all employees have the freedom to deliver their absolute best. This is why we work hard and invest in attracting and retaining a diverse workforce.</p> <p>J.P. Morgan, Diversity, http://careers.jpmorgan.com/student/jpmorgan/career/europe/diversity</p>	<p>"We feel that benefits ought to be equally accessible by all of our employees," says Sandy VanGilder, senior vice president and head of diversity for JP Morgan Chase & Co. "We have a strong commitment to diversity, to inclusion, to meritocracy. Ours is a service business, so it's all about the quality of the people we hire. In order to attract and retain the best talent, we have to create the most equitable environment we can." (JP Morgan was the first Wall Street Firm to provide domestic partner benefits).</p> <p>Jill Elswick, Employer Coalition Seeks Benefits, Tax Equity for Domestic Partners, Employee Benefits News, Jan. 1, 2006.</p>	<p>At J.P. Morgan, we are committed to creating an inclusive organization where everyone can succeed based on merit. We understand that with diversity comes strength. We aim to hire and develop a diverse group of talented men and women who find ways to solve our clients' problems using ideas that reflect the best of their different points of view.</p> <p>This goal was set by our senior management and is fostered by all levels of employees. Jamie Dimon, our Chairman and CEO, leads the Corporate Diversity Council, a group of senior leaders from across the company who set the vision and strategy for diversity at the firm.</p> <p>All employees are encouraged to participate in the promotion of inclusiveness. Over 20,000 of our colleagues belong to more than 70 Employee Networking Groups within the firm. These groups, initiated by and for our employees, in locations across the globe, are made up of colleagues who share a common cultural heritage, race, gender, age or interest. They provide members with a forum to communicate and exchange ideas, to develop a more extensive network of relationships across the firm, to access volunteer opportunities in the community, and to benefit from career development and mentoring support.</p> <p>We recruit people with unique experiences and diverse backgrounds because we believe that is a fundamental part of strengthening our global business capabilities. We understand that different perspectives bring strength and creativity to our work and lead to the best solutions for our clients. The firm sponsors internship opportunities and scholarships to students of diverse backgrounds and participates in a wide variety of career events that attract diverse candidates.</p> <p>J.P. Morgan, Diversity, http://careers.jpmorgan.com/student/jpmorgan/careers/europe/diversity</p>



Rank: 10
Policies: SO, GI, DPB
Company Name: Hewlett-Packard Co.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Marcela Perez de Alonso, Executive Vice President, Human Resources, "Hewlett-Packard Company is pleased to have once again received the Human Rights Campaign 100% rating on the Corporate Equality Index. The rating is a visible and welcome acknowledgment of the work many HP employees are doing every day to make our company innovative and competitive. HP is strongly committed to attracting, developing, promoting and retaining a diverse workforce to better serve our increasingly diverse customers, as well as providing an inclusive, flexible work environment that values differences, motivates employees to contribute their best, and is an open and safe place to work. We look forward to our continued partnership with the HRC on workplace and public policy issues."</p> <p>Human Rights Campaign, HRC Corporate Equality Index: 2005 Corporate Statements (2005), available at http://www.hrc.org/issues/4776.htm</p>	<p>"The extension of benefits to domestic partners continues HP's ongoing efforts to create an inclusive environment," said Lewis Platt, chairman and CEO. "We're also enhancing our competitiveness as a great place to work so we can attract and retain top talent."</p> <p>Hewlett-Packard Co.-Domestic Partner Benefits Program, available at https://www.schaap.hrc.org/documents/Sample-Policies-Hewlett-Packard.pdf</p>	<p>As HP has grown and expanded throughout the world, its work force has become more diverse. HP believes that this diverse work force helps the company realize its full potential. Recognizing and developing the talents of each individual brings new ideas to HP. The company benefits from the creativity and innovation that results when HP people who have different experiences, perspectives and cultures work together. This is what drives invention and high performance at HP. We believe a well managed, diverse work force expands HP's base of knowledge, skills and cross-cultural understanding, which in turn, enables us to understand, relate and respond to our diverse and changing customers throughout the world, connecting them to the power of technology. Our overall commitment is reflected in our diversity and inclusion philosophy.</p> <p>Hewlett-Packard, HP Non-Discrimination Policy, http://www.hp.com/hpinfo/abouthp/diversity/nondisc.html</p>
<p>Rank: 11 Policies: SO Company Name: Berkshire Hathaway Inc.</p>		
<p>Of adding gender identity to the company's non-discrimination policy, Citigroup director of workforce diversity, Ana Duarte said, "It's another facet of things we recognized. Some people may feel it's already part of our [equal employment] policy. But it makes the dialogue richer. It builds inclusion."</p> <p>And of its perfect score on the HRC Corporate Equality index, McCarthy said, "It's something we felt would help reaffirm ourselves as an employer choice."</p> <p>Amy Joyce, Companies Add Gender Identity to Anti-Bias Policies, The Washington Post, Nov. 3, 2004.</p>	<p>In a memo notifying employees that Citigroup would extend benefits to domestic partners, Citigroup said, "'Our competitive goal of becoming the employer of choice in the financial services industry requires that we continually evaluate the range of benefits.'"</p> <p>Daily Briefing, The Atlanta Journal and Constitution, Feb. 9, 2000</p>	<p>At Citi, we recognize diversity as one of our competitive advantages. In a global marketplace, it is imperative that an organization provide a wide range of ideas and solutions to its clients. A diverse workforce understands clients better and is more creative and innovative on their behalf. In turn, this can mean greater market share and greater returns for our shareholders. To seize this competitive advantage we must foster a workforce with different backgrounds, perspectives and ideas, and provide employees with a wide range of experiences and skills to develop to their full potential.</p> <p>Citigroup, Diversity, http://www.citigroup.com/citi/citizen/diversity/</p>



Rank: 12
Policies: SO, GI, DPB
Company Name: Citigroup Inc.



Rank: 13
Policies: SO, DPB
Company Name: Verizon Communications Inc.



Rank: 14
Policies: SO, GI, DPB
Company Name: Computer Sciences Corp.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
	<p>A leader in the emerging market of broadband services, Verizon provides compensation and benefits, including same-sex domestic partner benefits, to attract and retain the best and brightest work force.</p> <p>Verizon Honored for Commitment to Diversity and Workplace Equality: National Latino/a Lesbian, Gay, Bisexual, and Transgender Organization Presents Company with First Primo Visionario Award, News Release, Apr. 25, 2004, http://newscenter.verizon.com/press-releases/verizon/2004/page-29712688.html</p>	<p>Celebrating our differences and embracing our distinctive backgrounds is just a couple of the reasons why Verizon consistently leads the way. We truly understand that revolutionizing the method we do business and exceeding our customers' expectations necessitates a diverse team comprised of the best talents and viewpoints that bring about unique and unmatched solutions. We're proud of our employees and it's no wonder we've topped Diversity Inc's "Top 50 Companies for Diversity" and have been recognized by Hispanic Business Magazine, Working Mother, Black Enterprise and Business Week just to name a few.</p> <p>Verizon, Diversity, http://www22.verizon.com/jobs/working+here/diversity/diversity.htm</p> <p>Verizon's focus on diversity starts with Verizon CEO Ivan Seidenberg and other senior executives who emphasize to employees that diversity is an integral part of Verizon's business, influencing everything from work force development and supplier relationships to economic development and philanthropy.</p> <p>Verizon Named One of Top Four Companies for Diversity in Magazine Survey: DiversityInc. Ranks Company Among Best for Third Year in a Row, Verizon: News Release, Apr. 20, 2005, http://newscenter.verizon.com/press-releases/verizon/2004/page-29712688.html</p>
		<p>Diversity and Inclusion is good for business: it allows us to reflect and respond to a diverse customer base; keep pace with changing demographics; improve productivity, creativity and quality; improve teamwork and decision making; demonstrate our corporate citizenship; and support our government contracts.</p> <p>McKesson, Diversity and Inclusion, http://www.mckesson.com/en_us/McKesson.com/About%2BUs/Corporate%2BCitizenship/Diversity%2Band%2BInclusion.html</p>



Rank: 15
 Policies: SO, GI, DPB
 Company Name: General Motors Corp.

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
<p>Rod Gillum, vice president for corporate responsibility and diversity, General Motors Corp. "General Motors is proud to be a part of this ever-growing group of businesses that recognize that non-discrimination policies and practices help attract and retain talented employees. The perfect HRC Corporate Equality Index score is also our way of showing GLBT customers that we support the community and appreciate their business."</p> <p>Human Rights Campaign, HRC Corporate Equality Index: 2008 Employer Statements (2008), available at http://www.hrc.org/issues/7580.htm</p> <p>Employee Diversity: General Motors reflects the world in its multicultural workforce who are a critical link between the workplace and the marketplace. Moreover, employees' talents and diverse perspectives help GM drive innovation, understand the global marketplace, develop better products and deliver better services.</p> <p>GM is committed to creating a diverse and inclusive workplace. In addition to GM's commitment to comply with state and federal laws protecting individual civil rights, the company has a widely distributed written policy on equal employment opportunity and harassment. Harassment based on age, race, color, sex, religion, national origin, disability, sexual orientation or gender identity/expression is a violation of this policy. Harassment should be understood to mean a single incident or a pattern of behavior where the purpose, or the effect, is to create a hostile, offensive, or intimidating workplace environment.</p> <p>General Motors, Diversity Initiatives, http://www.gm.com/corporate/responsibility/diversity/employee_diversity.jsp</p>	<p>The "Big Three" automakers (Daimler AG, Ford and General Motors) were the first to offer same-sex benefits starting in 2001. They said that offering domestic partner benefits, including medical, dental and prescription coverage, is consistent with their commitment to promoting diversity in the workplace.</p> <p>Insure.com, Health Insurance Benefits for Domestic Partners, July 14, 2010.</p> <p>General Motors' Director of Diversity Initiatives, Lorna Utley said of extending domestic partnership benefits, "For us, it's a big change...The family has changed, and we need to adjust to that. Our goal is to improve the work environment for everyone."</p> <p>HireCentrix.com, Gay Recruiting- LGBT Staffing Critical to Diveristy, http://www.hirecentrix.com/gay-recruiting-lgbt-staffing-critical-to-a-diversity-strategy.html#</p>	<p>General Motors reflects the world in its multicultural workforce who are a critical link between the workplace and the marketplace. Moreover, employees' talents and diverse perspectives help GM drive innovation, understand the global marketplace, develop better products and deliver better services.</p> <p>GM is committed to creating a diverse and inclusive workplace. In addition to GM's commitment to comply with state and federal laws protecting individual civil rights, the company has a widely distributed written policy on equal employment opportunity and harassment. Harassment based on age, race, color, sex, religion, national origin, disability, sexual orientation or gender identity/expression is a violation of this policy. Harassment should be understood to mean a single incident or a pattern of behavior where the purpose, or the effect, is to create a hostile, offensive, or intimidating workplace environment.</p> <p>General Motors, Diversity Initiatives, http://www.gm.com/corporate/responsibility/diversity/employee_diversity.jsp</p>



Rank: 16
Policies: SO, GI, DPB
Company Name: American International Group

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
		<p>Excerpts from an interview for "Business Insurance" with Terri D. Austin, Chief Diversity Officer, AIG: "It's crucial. Without diversity, we don't have innovation.... You look at companies who have people from different backgrounds and you come up with different solutions. Whether you are increasing diversity of your employees, your products or your services or your clients or your suppliers, making sure that you have new and creative ideas is what's important. There's a huge business case. Of course, and I know we all agree, diversity is the right thing to do, but there is a huge business case for diversity at the corporation."</p> <p>"You can convince them it's worth their while with statistics like Catalyst showed that show when you have more women on your board of directors, you outperform other companies. Then it's not so hard to sell diversity because you have this innovation, this diversity of thought and your companies do better. When you have factual data to prove that companies that are diverse are outperforming financially companies whose boards at any rate are not as diverse, it's a little easier to convince people at any level."</p> <p>Diversity efforts blend social goals with corporate needs: Multifaceted approaches at AIG, AON and Chubb seek talent and innovation to reach new and existing customers, Business Insurance, Feb. 25, 2008, http://www.businessinsurance.com/article/99999999/PAGES/907</p>
<p>Cardinal Health is committed to a workforce that is free of discrimination. We are inclusive and work together with confidence and trust, respecting differences in culture, ethnicity, gender, sexual orientation, gender identity/expression, race and ability. We are committed to equal opportunity.</p> <p>At Cardinal Health we recognize and appreciate the collective mixtures of our differences and similarities. We value and seek out these differences as a strength in order to maximize our competitive advantage through innovation, profit and adaptability.</p> <p>Cardinal Health, Diversity & Inclusion, http://www.cardinal.com/mps/public!/ut/p/c0/04_SB8K8xLLM9MSSzPy8xBz9CP0os3giA3cDAwtfZ18fV2NTA09HL_dAYz8TQ4NQM_2CbEdFADfU32U!/?WCM_PORTLET=PC_7_20G008MCMLE350IAJGQ3N41014_WCM&WCM_GLOBAL_CONTEXT=/mps/wcm/connect/us/en/AboutUs/Diversity/</p>		<p>Cardinal Health is committed to a workforce that is free of discrimination. We are inclusive and work together with confidence and trust, respecting differences in culture, ethnicity, gender, sexual orientation, gender identity/expression, race and ability. We are committed to equal opportunity.</p> <p>At Cardinal Health we recognize and appreciate the collective mixtures of our differences and similarities. We value and seek out these differences as a strength in order to maximize our competitive advantage through innovation, profit and adaptability.</p> <p>Cardinal Health, Diversity & Inclusion, http://www.cardinal.com/mps/public!/ut/p/c0/04_SB8K8xLLM9MSSzPy8xBz9CP0os3giA3cDAwtfZ18fV2NTA09HL_dAYz8TQ4NQM_2CbEdFADfU32U!/?WCM_PORTLET=PC_7_20G008MCMLE350IAJGQ3N41014_WCM&WCM_GLOBAL_CONTEXT=/mps/wcm/connect/us/en/AboutUs/Diversity/</p>



Rank: 17
Policies: SO, GI, DPB
Company Name: Cardinal Health Inc.



Rank: 18
Policies: SO, DPB
Company Name: CVS Caremark Corp.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Why Diversity? Because diversity makes good business sense and good common sense. Our industry today is rapidly changing and increasingly complex. In this environment, having a broad range of ideas and viewpoints through a diverse workforce increases our chances of success with the customer. Diversity is consistent with our values of respect and openness, and we believe it is the right thing to do.</p> <p>How Diversity? By considering all the diverse talents and traits that our current and potential colleagues bring to our business and how those traits, combined with outstanding performance, can help make CVS Caremark the easiest pharmacy services provider for customers to use. Whether it's a difference of age, gender, family status, race, ethnicity, religion, disability, sexual orientation, appearance, thought, or mannerisms, we recognize the importance of these differences in making us a better company and meeting the needs of the diverse customers we serve.</p> <p>CVS Caremark, Diversity, http://www.cvscaremark.com/our-company/our-culture/diversity</p>		<p>Why Diversity? Because diversity makes good business sense and good common sense. Our industry today is rapidly changing and increasingly complex. In this environment, having a broad range of ideas and viewpoints through a diverse workforce increases our chances of success with the customer. Diversity is consistent with our values of respect and openness, and we believe it is the right thing to do.</p> <p>How Diversity? By considering all the diverse talents and traits that our current and potential colleagues bring to our business and how those traits, combined with outstanding performance, can help make CVS Caremark the easiest pharmacy services provider for customers to use. Whether it's a difference of age, gender, family status, race, ethnicity, religion, disability, sexual orientation, appearance, thought, or mannerisms, we recognize the importance of these differences in making us a better company and meeting the needs of the diverse customers we serve.</p> <p>CVS Caremark, Diversity, http://www.cvscaremark.com/our-company/our-culture/diversity</p>





Rank: 19
 Policies: SO, GI, DPB
 Company Name: Wells Fargo & Company

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Pat Crawford, head of Enterprise Diversity and Inclusion, "Wells Fargo is thrilled to receive a perfect rating on the Corporate Equality Index for the sixth year in a row. This outstanding recognition is a testament to our longstanding commitment to creating a diverse and inclusive environment for all our team members. We offer fair and equal policies for LGBT employees, provide great services and customized financial advice to our diverse customers, and our team members are actively involved in LGBT non-profit organizations and community programs across the country. We're proud of our score and will continue to invest in all aspects of diversity for our team members and our customers."</p> <p>Human Rights Campaign, HRC Corporate Equality Index (2010), available at http://www.hrc.org/documents/HRC_Corporate_Equality_Index_2010.pdf</p>	<p>"We specifically want to be inclusive," said Paula Roe, Wells Fargo vice president of compensation and benefits. The decision to offer domestic partner benefits may have been influenced, in part, by a San Francisco ordinance that requires municipal contractors to offer such benefits, she said. Wells Fargo is based there.</p> <p>Julie Forster, Domestic Partner Benefits Solid, Saint Paul Pioneer, March 14, 2004.</p> <p>Wells Fargo Bank, on the other hand, does offer domestic partner benefits to its 150,000 employees nationwide. About 1,200 employees are enrolled in those benefits, said Kathy Rhyner, president of the Wells Fargo branch in Edgar.</p> <p>"We view domestic partner benefits as a much broader mission called diversity," Rhyner said. "We're a community bank, and we believe in our responsibility to serve every segment of our community."</p> <p>David Paulsen, State Struggles with Couples Debate, Wausau Daily Herald, Sept. 14, 2003.</p>	<p>John G. Stump, Chairman and CEO, By making diversity a competitive advantage, we can:</p> <ul style="list-style-type: none"> Make Wells Fargo a better place to work Better understand our diverse customers' needs Give customers and communities outstanding service Deliver more value to our stockholders <p>Wells Fargo, Importance of Diversity, https://www.wellsfargo.com/about/diversity/importance/</p>



Rank: 20
Policies: SO, GI, DPB
Company Name:
 International Business
 Machines Corp.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Ted Childs, "...In our workplace, we are creating an environment that allows employees to operate in the marketplace and the workplace where they can personally influence client success, foster innovation, as well as exhibit trust and personal responsibility in achieving IBM's business goals. Our partnership with HRC has helped us to ensure that people who are gay, lesbian, bisexual or transgender feel safe, welcomed and valued within the global walls of our business. Our goal is to assemble the most talented workforce in our industry, and to use the skills of that diverse team to respond to the needs of our clients. The contributions that are made by GLBT IBMers accrue directly to our bottom line and ensure the success of our business."</p> <p>Human Rights Campaign, HRC Corporate Equality Index: 2005 Corporate Statements, available at http://www.hrc.org/issues/4776.htm</p> <p>Charles Lickel, general manager of IBM's Silicon Valley Lab in San Jose, says just tolerating gays and lesbians isn't enough. Real diversity requires building a work environment where differences are discussed openly in a positive light and embraced by leadership, he says. "We're an environment where the demand for technical skills is more and more and the shortage of those skills is greater and greater," says Lickel, who is gay. "You need to build that environment or you can't draw from the entire pool, and we will fail as a business if we don't."</p> <p>Kathleen Melymuka, Dabbling at Diversity, Computerworld, December 11, 2000.</p>	<p>A decision to extend equal benefits to domestic partners in 1996, IBM executives said, was "based largely on business strategy." "We're really doing this from a business point of view," said Jill Kanin-Lovers, IBM Vice President of Human Resources. "We want to be in a position to attract and retain a broad spectrum of employees."</p> <p>Rajiv Chandrasekaran, IBM to Offer Benefits Plans to Gays' Partners, LA Times, Sept. 20, 1996.</p>	<p>IBM has a long history of commitment to Diversity and has consistently taken the lead on Diversity policies long before it was required by law. It began in the mid-20th century, grounded in Equal Opportunity legislation and compliance (Diversity 1.0). We moved forward to Diversity 2.0 in the 1990s with a focus on eliminating barriers, and understanding regional constituencies and differences between the constituencies. As our demographics changed, we adapted our workplace to be more flexible and began our focus on work-life integration. In addition, over the past 5 years, we've introduced IBM's Values, which links to our diversity work.</p> <p>This strong foundation brings us to where we are today — Diversity 3.0. This is the point where we can take best advantage of our differences — for innovation. Our diversity is a competitive advantage and consciously building diverse teams helps us drive the best results for our clients.</p> <p>IBM, IBM Diversity 3.0, http://www-03.ibm.com/employment/us/diverse/</p>

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
 <p> Rank: 21 Policies: SO, GI, DPB Company Name: United Health Group Inc. </p>		<p>Diversity helps people live healthier lives. At United Health Group, we are committed to diversity and inclusion. By leveraging the depth of a diverse workforce, we can better meet the needs of the multicultural clients, communities, individuals and shareholders we serve. Our commitment to diversity and inclusion is actively integrated into our business responsibility – helping people live healthier lives.</p> <p>Diversity enhances the way we do business. We’re focused on integrating diversity into every level of our operations. Innovative products and programming are a direct by-product of hiring, retaining and developing the brightest and most diverse workforce. This focus keeps UnitedHealth Group at a competitive advantage and guarantees ultimate customer satisfaction.</p> <p>Diversity fosters a mutual respect in the workplace. Meeting the needs of our diverse stakeholders--from individuals we serve and health care providers, to business and advocacy partners--requires a diverse workforce. Throughout our history, we’ve held strongly to the importance of fostering an inclusive environment where every individual’s unique perspective, background and experiences are valued and recognized.</p> <p>United Health Group, Why Diversity, http://diversity.unitedhealthgroup.com/Why-Diversity.aspx</p>
 <p> Rank: 22 Policies: SO, GI, DPB Company Name: Procter & Gamble Co. </p>		<p>Diversity & Inclusion is a sustained competitive advantage for the continued growth of P&G. It is implicit in the company’s Purpose and Values and explicit in the company’s business strategy for success.</p> <p>It enables P&G to be the “employer of choice” that hires, engages, and retains the best talent from around the world, reflecting the markets and consumers we serve. It is at the core of being “in touch” so that we create brands and products to improve the lives of the world’s consumers now, and for generations to come. Through our focus on understanding each individual’s skills, passions, and our fundamental commonalities, we enable behaviors that lead to a culture of innovation.</p> <p>Procter & Gamble, Diversity & Inclusion: Fulfilling Our Potential, available at http://www.pg.com/en_US/company/purpose_people/diversity_inclusion.shtml</p>



Rank: 23
 Policies: SO, DPB
 Company Name: Kroger Co.

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
		<p>We want our associates at all levels to reflect the diversity of the communities where we live and work. The company is committed to fostering an environment where diversity is appreciated as a source of strength and vitality.</p> <p>Kroger, Diversity, http://www.kroger.com/company_information/careers/Pages/diversity.aspx</p>
		<p>AmerisourceBergen is committed to promoting a diverse and inclusive environment where all associates, business partners and community members are valued, respected and appreciated for the unique perspectives and talents that collectively make our Company a leader in healthcare distribution services and solutions.</p> <p>We understand the strength of our business, services and solutions are a reflection of the diversity that exists within our organization. We strive to create a culture which values inclusion and accepts diversity in all of its complexity. We aim to leverage that diversity for the benefits of our associates, the Company and our business and community partners.</p> <p>AmerisourceBergen, Our Culture, http://www.amerisourcebergen.com/abc/Careers/Who_We_Are/Our_Culture/index.jsp</p>
		<p>Diversity in our employee base as well as our Supplier base is an important aspect of our business; by developing and maintaining partnerships with certified minority and women owned businesses, we are able to explore new ideas and maintain a fresh approach to our business, while positively affecting the economic development in the communities where we do business.</p> <p>Costco, Supplier Diversity, http://shop.costco.com/About/Supplier-Diversity.aspx</p>



Rank: 24
 Policies: SO, DPB
 Company Name: AmerisourceBergen Corp.




Rank: 25
 Policies: SO, GI, DPB
 Company Name: Costco Wholesale Corp.



Rank: 26
 Policies: SO, DPB
 Company Name: Valero Energy Corp.



Rank: 27
 Policies: SO, DPB
 Company Name: Archer Daniels Midland Co.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
		<p>ADM is committed to developing the talent and creativity of employees. We nourish the entrepreneurial spirit, provide opportunities for employees to grow careers and reward efforts. As a result, ADM is making its mark on the world.</p> <p>ADM's culture promotes inclusion in all roles, at all levels. Our definition of diversity is broad, encompassing not only diversity in race, gender, ethnicity, economic and educational backgrounds; but also in experiences, perspectives and interests. But while our definition of diversity is wide-ranging, our focus on inclusion is precise.</p> <p>...</p> <p>Our colleagues grow and advance with clear expectations, and are allocated resources for training, educational and career advancement.</p> <p>Having an inclusive culture lets ADM and our employees cultivate innovation. We believe innovation arises from open-mindedness, multiple perspectives and willingness to experiment. When we put together people whose working and thinking styles vary, and encourage people to value other opinions, experimentation will follow. The results of those experiments are innovative solutions to business challenges.</p> <p>Archer Daniel Midland, Diversity at ADM, http://www.adm.com/en-US/careers/diversity/Pages/default.aspx</p>
 <p>Rank: 28 Policies: SO, GI, DPB Company: Boeing Co.</p> <p>After adding gender identity to Boeing's non-discrimination policy in 2006, Global Diversity & Employee Rights team member, Connie Jack said, "That was a major celebration for us. Diversity is itself a core business strategy of the company. It is our intent to create an inclusive environment that provides for a fully engaged workforce."</p> <p>Todd Henneman, Companies that Embrace Equality, The Advocate, Oct. 10, 2006.</p>	<p>James B. Dagnon, Boeing's senior vice president for personnel, said the move [to offering Domestic Partner Benefits] was made for two reasons: "First to attract and retain talented employees, and second to walk the talk on diversity. Diversity, with a capital D, means acknowledging employees have different backgrounds, preferences and interests."</p> <p>Boeing Extends Health Benefits To Same-Sex Partners; Proposal Affects Only Nonunion Salaried Workers; Unmarried Heterosexuals Are Excluded, St. Louis Post-Dispatch, Oct. 24, 1999</p>	<p>Diversity and inclusion are part of Boeing's values at the highest level. Having diverse employees, business partners and community relationships is vital to creating advanced aerospace products and services for our diverse customers around the world.</p> <p>The company's commitment to diversity means providing a work environment for all employees that is welcoming, respectful and engaging, with opportunities for personal and professional development. This in turn increases productivity, quality, creativity and innovation.</p> <p>Boeing, Diversity, http://www.boeing.com/aboutus/diversity/</p>



Rank: 29
 Policies: SO, GI, DPB
 Company Names: Home Depot Inc.



Rank: 30
 Policies: SO, GI, DPB
 Company Name: Target Corp.

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
	<p>Home Depot will begin offering health insurance to same-sex domestic partners beginning next year.</p> <p>"The company believes in creating and fostering an environment where associates feel included, respected and supported to perform at their full potential," Home Depot said in a prepared statement.</p> <p>Home Depot offers benefits to same-sex partners, NewsFax, Sept. 7, 2004</p>	<p>As the global leader in the home improvement industry, our ability to understand, embrace and operate in a multicultural world, where we serve a diverse array of customers, is critical to our success. In order to remain competitive, our workforce must mirror the diversity of the world we operate in.</p> <p>To serve our customers, we must know our customers. To know our customers, we must reflect our customers. The greater the diversity of our people, the greater our ability to serve our customers.</p> <p>Home Depot, Embracing Diversity, Creating Inclusion, https://careers.homedepot.com/cg/content.do?p=diversity</p>
<p>When we talk about diversity within Target, we define it as individuality. This individuality includes a wide spectrum of attributes such as personal style, age, race, gender, ethnicity, sexual orientation, language, physical ability, religion, family, citizenship status, socioeconomic circumstances, education and life experiences. To us, diversity is any attribute that makes an individual unique and does not interfere with effective job performance.</p> <p>Our ability to recruit and hire people from diverse backgrounds, thus creating a team with a rich variety of strengths, perspectives and lifestyles, is a key factor in our company performance. We know our guests better, and can give them a better shopping experience, when our team members reflect the diversity of our communities.</p> <p>Target, 2008 Corporate Responsibility Our Commitment to our Team, http://sites.target.com/site/en/company/page.jsp?contentId=WCMP04-034164</p>		<p>When we talk about diversity within Target, we define it as individuality. This individuality includes a wide spectrum of attributes such as personal style, age, race, gender, ethnicity, sexual orientation, language, physical ability, religion, family, citizenship status, socioeconomic circumstances, education and life experiences. To us, diversity is any attribute that makes an individual unique and does not interfere with effective job performance.</p> <p>Our ability to recruit and hire people from diverse backgrounds, thus creating a team with a rich variety of strengths, perspectives and lifestyles, is a key factor in our company performance. We know our guests better, and can give them a better shopping experience, when our team members reflect the diversity of our communities.</p> <p>Target, 2008 Corporate Responsibility Our Commitment to our Team, http://sites.target.com/site/en/company/page.jsp?contentId=WCMP04-034164</p>



Rank: 31
 Policies: SO, GI, DPB
 Company Name: WellPoint Inc.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>All five of Indiana's Fortune 500 companies have protection for lesbians and gays, including WellPoint, which also offers domestic partner benefits.</p> <p>"We firmly believe that our employee population should reflect the diverse customer base we serve," said James Kappel, a vice president in corporate media relations at WellPoint.</p> <p>Dana Knight, Firms rush to comply with gay-rights law The Indianapolis Star, Dec. 27, 2005.</p>		<p>At WellPoint we see diversity management as more than just a strategy, it's a fundamental part of how we do business. Focusing on diversity helps us to better understand and meet the health care needs of the unique communities we serve - while actually becoming part of their cultural fabric.</p> <p>WellPoint, Angela F. Braly, President & CEO, Diversity Welcome Statement, http://www.wellpointdiversity.com/index.asp</p> <p>We see diversity as a unique approach to solving business challenges, communicating with our various audiences and learning from our differences and similarities.</p> <p>From our Board of Directors, to our thousands of talented associates, diversity plays a vital role at every level of our organization. The result is a better understanding of the challenges we face, and a greater ability to create solutions that improve health care and quality of life.</p> <p>WellPoint, In the Workplace, http://www.wellpointdiversity.com/in-the-workplace.asp</p>



Rank: 32
 Policies: SO, GI, DPB
 Company Name: Walgreen Co.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
		<p>Bringing diverse perspectives together makes us a better company. Our adaptability, change management and customer focus are critical to our success. Diverse ideas and perspectives impact all of the above. At the beginning of my career with Walgreens in Store Operations, I was fortunate to work with a manager who understood the need for a diverse work force and emphasized the need to have a variety of perspectives. As a result, this is a value I practice in my leadership.</p> <p>"My personal and professional experience has shown that tolerance, respect and simply listening to different perspectives helps everyone better understand different viewpoints and opinions. Often times this understanding allows us to see things in a different way, which generates ideas and a better way of doing things."</p> <p>Kermit Crawford, Walgreens Executive Vice President, Pharmacy, http://www.walgreens.com/topic/sr/diverse_perspective.jsp</p> <p>"Diversity is important for our business to grow and to continue to be successful. A company with people who think, look and act the same won't work in today's marketplace.</p> <p>"In today's market environment, diversity in leadership is key to business success and critical to attracting and retaining new customers and employees. This is certainly part of our overall business plan. Our Company's culture of treating everyone with respect and fairness, coupled with our commitment to organic growth goes a long way toward affording everyone an opportunity to grow.</p> <p>Roberto Valencia, Walgreens Vice President Commercialization, http://www.walgreens.com/topic/sr/respect_walgreens.jsp</p> <p>"Our customers come from all walks of life, and it would be impossible for us to serve them well if we developed identical, instead of individual, employees. I've found the best way to recognize individuality is by taking time to learn each employee's skills, interests and background. Everyone has potential and, as managers, it's our job to develop that ability."</p> <p>Mark Wagner, Walgreens Executive Vice President, Operations & Community Management, http://www.walgreens.com/topic/sr/individuality_walgreens.jsp</p> <p>"I have felt genuinely welcomed. Our 70,000 healthcare professionals, along with all beauty advisors, photo specialists and Walgreens associates touch 5 million people every day. The sheer magnitude of Walgreens' impact on these diverse daily lives underscores the importance of respecting and celebrating unique perspectives and personal experiences."</p> <p>Kim Feil, Walgreens Vice President and Chief Marketing Officer, http://www.walgreens.com/topic/sr/diversity_walgreens.jsp</p>



Rank: 33
Policies: SO, GI, DPB
Company Name: Johnson & Johnson

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Diversity is a central part of the cultures across the Johnson & Johnson Family of Companies. It's a key to our people's passion for improving the health and well-being of people the world over. Further, our commitment to diversity and inclusion is deeply rooted in the values instilled by Our Credo and is exemplified in a number of our companies' programs and activities.</p> <p>We recognize that differences in age, race, gender, nationality, sexual orientation, physical ability, thinking style and background bring richness to our work environments. Such differences help us connect better with the health needs of people in communities around the world.</p> <p>We believe that attracting, developing and retaining a base of employees that reflects the diversity of our customers is essential to our success. We also believe success hinges on relationships with diverse professional and patient organizations, civic groups and suppliers.</p> <p>Johnson & Johnson, Our People & Diversity, http://www.inj.com/connect/about-inj/diversity/</p> <p>Ron Falcon, MD; senior director, Tibotec Therapeutics Clinical Affairs Division of Centocor Ortho Biotech Services LLC; co-chair, GLOBAL, Johnson & Johnson, "Scoring 100% on the Human Rights Campaign's Corporate Equality Index is a clear demonstration of the commitment of the Johnson & Johnson Family of Companies to GLBT employees. It shows the GLBT community and consumers that Johnson & Johnson companies are diverse and inclusive employers, and makes our companies more attractive places to work for high quality GLBT candidates researching prospective employers."</p> <p>Human Rights Campaign, HRC Corporate Equality Index 2009: Statements from Employers Rated at 100 Percent, http://www.hrc.org/issues/11139.htm</p>		<p>Diversity is a central part of the cultures across the Johnson & Johnson Family of Companies. It's a key to our people's passion for improving the health and well-being of people the world over. Further, our commitment to diversity and inclusion is deeply rooted in the values instilled by Our Credo and is exemplified in a number of our companies' programs and activities.</p> <p>We recognize that differences in age, race, gender, nationality, sexual orientation, physical ability, thinking style and background bring richness to our work environments. Such differences help us connect better with the health needs of people in communities around the world.</p> <p>We believe that attracting, developing and retaining a base of employees that reflects the diversity of our customers is essential to our success. We also believe success hinges on relationships with diverse professional and patient organizations, civic groups and suppliers.</p> <p>Johnson & Johnson, Our People & Diversity, http://www.inj.com/connect/about-inj/diversity/</p>



Rank: 34
Policies: SO, GI
Company Name: State Farm Insurance Co.



Rank: 35
Policies: SO, DPB
Company Name: Medco Health Solutions Inc.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
		<p>Integrating diversity and inclusion into our culture is fundamental to our success as a company. Diversity and inclusion are crucial to attraction and retention, agent and employee development, product development and services, and customer satisfaction. We engage the diverse talents, backgrounds and experiences of our agents and employees to support business objectives.</p> <p>Statefarm Insurance Companies, Workplace, http://www.statefarm.com/aboutus/diversity/workplace/workplace.asp</p> <p>At State Farm, diversity isn't a program. It's a state of mind. The variety of experiences and points of view contained in our large and diverse group of associates strengthens the organization. It helps us to understand the marketplace and how we can do an even better job of serving our customers. It helps ensure our future.</p> <p>Ed Rust, Jr., Chairman & CEO, State Farm Insurance Companies, Diversity and Inclusion, http://www.statefarm.com/aboutus/diversity/workplace/definition.asp</p>
		<p>While Medco has been a publicly held company for only a short while, our organization's commitment to diversity is long-standing. It's important that our workforce mirror the diversity of our clients and their members so that we can better understand and serve their needs. The unique perspectives that our employees bring to work each day enable creative and innovative solutions for our company and for our clients.</p> <p>Karin Princivale, senior vice president of human resources, Medco, Our Commitment to Diversity, http://www.medcohealth.com/medco/corporate/home.jsp?articleID=CorpDiversity</p>



Rank: 36
 Policies: SO, GI, DPB
 Company Name: Microsoft Corp.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>On Friday, Microsoft CEO Steve Ballmer announced that the company would support a . . . gay-rights bill in future. "I've concluded that diversity in the workplace is such an important issue for our business that it should be included in our legislative agenda," Ballmer wrote in an e-mail to employees.</p> <p>After A Detour, Microsoft Again Backs Gay-Rights Bill, San Jose Mercury News, May 10, 2005.</p> <p>Steve Ballmer, CEO, Microsoft, "Microsoft is proud to be recognized by the Human Rights Campaign Foundation for our efforts to create an equitable workplace. We value the ideas and leadership of all our employees. An inclusive approach is crucial to our business, and we are working to be an industry leader in diversity."</p> <p>Steve Ballmer, CEO, Microsoft Corporation, Gay Lesbian bisexual transgender Employees At Microsoft, http://www.microsoft.com/about/diversity/en/us/programs/ergen/gleam.aspx</p>	<p>"Microsoft's benefits program for domestic partners is an essential component of our culture of respect for all employees," said Jack Krumholtz, managing director of Microsoft's federal government affairs.</p> <p>Correcting Workplace Injustice In Domestic Partnership Benefits, States News Service, Mar. 29, 2007.</p> <p>At Microsoft Corp., which is based in Washington and has employees in Oregon, deciding to offer benefits to domestic partners was a matter of keeping valuable employees.</p> <p>"We don't have any machines on an assembly line," said Randy Massengale, Microsoft's senior diversity manager. "It's intellectual capital and horsepower that runs this business. So we have to take steps to keep employees."</p> <p>Companies Say Benefits For Gay, Lesbian Partners A Boon, The Oregonian, Aug. 15, 1996</p>	<p>At Microsoft we recognize that the U.S. and global diverse markets represent tremendous sources of value in the workplace and marketplace. The growth of diverse populations worldwide and the potential of these segments make them important targets as prospective employees. By the year 2050, 85% of the entrants into the U.S. workforce will be people of color and women. Moreover, developing regions, such as China, Brazil, India, and Africa, make up an increasing share of the world population. They will account for approximately 88% of the global population by 2050, and increase in absolute size from 1.6 billion persons in 1950 to nearly 7.5 billion persons by 2050.</p> <p>Economically, the diverse markets represent a growing source of market consumption and buying power. They are an important customer group for Microsoft. Worldwide, diverse populations account for 44% of World GDP. Within the U.S., diverse populations generate over \$9 Trillion dollars in buying power. By increasing the diversity of our workforce we will create a team that effortlessly designs products with the needs of these growing customers in mind.</p> <p>Microsoft, The Business Case for Diversity and Inclusion, A Vision and Strategy for the Future, http://www.microsoft.com/about/diversity/en/us/vision.aspx</p> <p>The collaborative energy that is created when talented people from different backgrounds come together to focus on innovation has helped fuel Microsoft's success for more than 30 years. As we bring our innovations into more and more markets around the world, and as we strive to bridge the digital divide so that people at all levels of society can benefit from the opportunities of the global knowledge economy, we recognize that it's more important than ever to honor diversity, both inside Microsoft and in the communities where we live and work.</p> <p>Bill Gates, Microsoft Chairman, Executive Commitment to Diversity at Microsoft, http://www.microsoft.com/about/diversity/en/us/exec.aspx</p> <p>This means that diversity and inclusion are not just words on paper for us; they are core values and business imperatives. We promote diversity at every level within our organization and strive for inclusiveness in everything we do. We believe that employing the world's top talent from all groups within our communities—from many backgrounds and with varied experiences—helps us to better serve our customers and gives us a competitive advantage in the global marketplace.</p> <p>Steven A. Ballmer, Microsoft Chief Executive Officer, Id.</p>



Rank: 37
 Policies: SO, GI, DPB
 Company Name: United Technologies Corp.



Rank: 38
 Policies: SO, GI, DPB
 Company Name: Dell Inc.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
		<p>As a global organization that relies on teamwork and a multiplicity of viewpoints, we actively seek a diverse work force. For UTC, diversity is a competitive asset that enables us to more closely reflect and respond to the diverse needs of our markets, customers and communities. Our goal is a workplace where all employees are encouraged to reach their fullest potential and where everyone values, accepts and respects the differences in our work force.</p> <p>Maintaining a diverse work force is a key component of our ability to meet the demands of a global business. We strive to remove all barriers - cultural or otherwise - so that we hire, develop, promote and retain the very best talent from around the world.</p> <p>United Technologies, Diversity, available at http://careers.utc.com/text/diversity_action.asp</p> <p>UTC will attract, motivate and retain competent, dedicated people by designing compensation and benefits programs that are competitive in our worldwide marketplace.</p> <p>UTC, Code of Ethics, http://www.pratt-whitney.com/StaticFiles/Sikorsky/Assets/Attachments/Supplier_Licensing/ethics.pdf</p>
<p>Gil Casellas, Vice President of Corporate Responsibility, "Dell is celebrating our perfect score on HRC's corporate equality index for the fifth year in a row. Recognition always pushes Dell to move to the next level and so we'll continue our efforts advocating for gay, lesbian, bisexual, and transgender equality. It's part of our global diversity efforts, which aren't just corporate goals, rather they are a critical component of our leadership and business success."</p> <p>Daniel Brennan, Dell Scores Perfectly with HRC, Sept. 2, 2008, http://en.community.dell.com/dell-blogs/Direct2Dell/b/direct2dell/archive/2008/09/02/dell-scores-perfectly-with-hrc.aspx</p>		<p>At Dell, and in any economic environment, we consider diversity and inclusion to be an integral part of our business strategy. By continuing to drive diversity and inclusion initiatives throughout the company, we're able to harness each individual's full potential, drive innovation and make Dell a better place to work-- ultimately ensuring that we're providing the best customer experience.</p> <p>Dell, Diversity & Inclusion, http://content.dell.com/us/en/corp/cr-diversity-diversity-and-inclusion.aspx</p>





Rank: 39
Policies: SO, GI, DPB
Company Name: Goldman Sachs Group

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>At Goldman Sachs, diversity is a business imperative. Our commitment to cultivating and sustaining a diverse work environment is absolute. As our business has become more global and complex, the firm is called upon to deliver unique and innovative solutions to clients in a wide range of circumstances. To respond to the needs of corporate, government, institutional and private clients with world-class service, we know the talent and creativity of our people are paramount to exceptional performance. Goldman Sachs succeeds by having people who represent the full spectrum of ethnicities, national origins, sexual orientation, gender identity, beliefs, religions, cultures, and levels of physical ability.</p> <p>Goldman Sachs, Our People, http://www2.goldmansachs.com/our-firm/our-people/diversity/index.html</p> <p>We strive for excellence. To be the best firm we must have the best people, and the best people are drawn from the broadest pool of applicants. The people we hire can be found only by looking across the full spectrum of gender, ethnicity, national origin, sexual orientation, gender identity, religion, culture and level of physical ability.</p> <p>Goldman Sachs, Diversity & Inclusion, http://www2.goldmansachs.com/our-firm/our-people/diversity/index.html</p>		<p>Goldman’s Commitment to Diversity Our commitment to creating and sustaining a diverse work environment is absolute, for three reasons:</p> <p>For the Firm We strive for excellence. To be the best firm we must have the best people, and the best people are drawn from the broadest pool of applicants. The people we hire can be found only by looking across the full spectrum of gender, ethnicity, national origin, sexual orientation, gender identity, religion, culture and level of physical ability.</p> <p>For our People Ours is a culture of team-work. For our teams to excel, all members must feel that they are operating in an inclusive environment that welcomes and supports differences, and that encourages input from all perspectives. Our people have the right to expect a workplace in which the richness of their lives and experience is welcomed and valued by their team and by the firm.</p> <p>For our Clients Our clients’ interests always come first. To continue to provide our clients with creative ideas and solutions for operating effectively in a complex global economy, we must be fully capable of dealing with different cultures in an informed and nuanced manner. Experience has shown us that by tapping the insights, talents and judgments of a diverse workforce we will best serve our clients’ interests.</p> <p>Goldman Sachs, Diversity & Inclusion, http://www2.goldmansachs.com/our-firm/our-people/diversity/index.html</p>



Rank: 40
Policies: SO, GI, DPB
Company Name: Pfizer Inc.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Our company is sustained on innovation — which seeks a nourishing environment in which ideas and perspectives can flourish. Pfizer’s diversity provides just such this opportunity. It is an array of unique characteristics, perspectives, and life experiences which define us as individuals. Diversity encompasses our visible differences such as gender, age, ethnicity, physical appearance, plus other underlying characteristics including thinking styles, sexual orientation, religious or national identity, and education. Inclusion is an environment where our people feel valued, involved, supported and respected.</p> <p>Pfizer, Diversity and Inclusion, http://www.pfizer.com/about/diversity/diversity.jsp</p> <p>Pfizer Inc today announced that it has earned a score of 100 — the highest possible — in the 2010 Corporate Equality Index, which evaluates U.S.-based businesses on their treatment of lesbian, gay, bisexual and transgender (LGBT) employees, investors and consumers.</p> <p>The Corporate Equality Index — published annually by the Human Rights Campaign Foundation (HRCF), the largest LGBT advocacy organization in the United States — rates businesses using a scale of 0-100. For the 2010 edition, 590 businesses were rated, and the average rating was 86. Pfizer was the first pharmaceutical company to score 100 and has achieved a 100 rating for six consecutive years.</p> <p>“Pfizer operates in just about every nation with a flag and a seat in the United Nations,” said Pfizer Chief Diversity Officer Karen Boykin-Towns. “Our corporate culture is rich in unique perspectives from what may be the world’s most diverse colleague population. Our goal now is to broaden our action beyond the traditional talent perspective and use our remarkable diversity to transform the ways we bring better health to more of the world’s people.”</p> <p>Pfizer was recognized both for its diversity and inclusion platform, which includes sexual orientation ...</p>		<p>Our company is sustained on innovation — which seeks a nourishing environment in which ideas and perspectives can flourish. Pfizer’s diversity provides just such this opportunity. It is an array of unique characteristics, perspectives, and life experiences which define us as individuals. Diversity encompasses our visible differences such as gender, age, ethnicity, physical appearance, plus other underlying characteristics including thinking styles, sexual orientation, religious or national identity, and education. Inclusion is an environment where our people feel valued, involved, supported and respected.</p> <p>Pfizer is committed to sustaining and expanding a culture of Diversity and Inclusion in everything we do. Our culture is unique and our commitment to people is without peer. Our customers enjoy the greatest rewards of our efforts by having access to products that improve their health and well-being. Our employees also benefit from our commitment by embracing an environment that is open, diverse and truly supportive.</p> <p>Pfizer, Diversity and Inclusion, http://www.pfizer.com/about/diversity/diversity.jsp</p> <p>Diversity and inclusion are core business elements of our commitment to improving the health of people around the world. We place a high value on leaders and colleagues exhibiting inclusive behaviors and respect for individuals, communities and cultures. We also see diversity and inclusion as a way to leverage the unique traits and abilities of our workforce, and better connect with patients, consumers, customers and suppliers in order to succeed in the marketplace.</p> <p>Pfizer, Colleagues:Diversity and Inclusion, http://www.pfizer.com/investors/financial_reports/annual_reports/2010/colleagues-diversity.jsp</p>

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
<p>(Pfizer, Cont.) and gender identity, and for its equal opportunity policy, which bars discrimination on the basis of sexual orientation, gender identity or gender expression. The company also offers benefits coverage for same-sex domestic partners where legally permissible, donates resources to LGBT community- and health-related organizations, and sponsors various site-based LGBT colleague resource groups.</p> <p>For Sixth Consecutive Year, Pfizer Earns Highest Score in Human Rights Campaign Foundation LGBT Ranking, Sept. 23, 2009, available at http://www.pymnts.com/for-sixth-consecutive-year-pfizer-earns-highest-score-in-human-rights-campaign-foundation-lgbt-ranking-20090923005774/.</p>		
 <p>Rank: 41 Policies: SO Company Name: Marathon Oil Co.</p>		<p>At Marathon, diversity and inclusion is a vital part of our business strategy and building a high performance team culture is one of our core values. Our diverse workforce and inclusive environment makes us more than just a multi-faceted employer. The corporate culture that comes from a focus on diversity and inclusion gives us the ability to be a multi-dimensional competitor. That is today's Marathon.</p> <p>Marathon, Diversity and Inclusion at Marathon, http://www.marathon.com/About_Marathon/Our_Values/Diversity/</p>
 <p>Rank: 42 Policies: SO, DPB Company Name: Lowe's Companies Inc.</p>		<p>Diversity & Inclusion efforts are led by Chairman and CEO Robert Niblock, and supported throughout the organization at every level.</p> <p>Clearly, Lowe's is committed to maintaining an environment of inclusion, fairness, and respect by understanding and valuing the many ways people are different and can contribute to the company's success. In addition to recognizing employees' diverse talents and thoughts, Lowe's builds winning teams by showing mutual respect for one another, despite differences. Lowe's culture of caring creates an atmosphere where people feel their unique contributions are valued. Lowe's is a magnet for great people.</p> <p>We strive to lead by example - and drive for results, knowing that a workforce with diverse talents and thoughts will provide customer-valued solutions with the best prices, products and services to make Lowe's the first choice for home improvement.</p> <p>Lowe's, Our Pledge, https://careers.lowes.com/diversity_pledge.aspx</p>



Rank: 43
Policies: SO, GI, DPB
Company Name: United Parcel Service Inc.



Rank: 44
Policies: SO, GI
Company Name: Mantech International Corp.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>In today's world, UPS understands that diversity encompasses more than race and gender. It extends to the full myriad of issues ranging from ethnicity to sexual orientation to physical ability. Inclusiveness, respect and cooperation are core values that help drive the way we do business with our customers and suppliers - and strengthen our bonds with a multi-cultural community of friends and neighbors.</p> <p>UPS, Diversity in Business, http://www.responsibility.ups.com/Diversity</p>		<p>Diversity is leveraging our unique experiences and contributions because they add value to our culture and contribute to the success of our company....Through workforce, customer and supplier diversity, the company's goal is to help communities thrive by embracing and leveraging the unique ideas, cultures, and ideas of its people.</p> <p>UPS, Diversity in Business, http://www.responsibility.ups.com/Diversity</p>
<p>Ken Disken, Senior Vice President, Lockheed Martin, "Lockheed Martin is committed to providing the most supportive and inclusive environment for all employees. Ensuring a positive, respectful workplace and robust set of benefits for everyone is critical to retaining employees and helping them develop to their fullest potential. Our efforts to provide the best environment possible for all employees support the corporation's business objectives and the professional aspirations of employees as we support our nation and its allies."</p> <p>Human Rights Campaign, HRC Corporate Equality Index (2009), available at https://222.hrc.org/issues/workplace/11139.htm</p>	<p>In 2003, Megan Meriman, a Lockheed Martin spokesperson said of extending domestic partner benefits: "We felt this was a good business decision that will contribute to our success in the future. We want to attract and retain talented employees."</p> <p>Ezra Fieser, Lockheed Martin Improves Corporate Policies Regarding Gay, Lesbian Employees, The Daily Record, Aug. 25, 2003.</p> <p>Ken Disken, Senior Vice President, Lockheed Martin, "Lockheed Martin is committed to providing the most supportive and inclusive environment for all employees. Ensuring a positive, respectful workplace and robust set of benefits for everyone is critical to retaining employees and helping them develop to their fullest potential. Our efforts to provide the best environment possible for all employees support the corporation's business objectives and the professional aspirations of employees as we support our nation and its allies."</p> <p>Human Rights Campaign, HRC Corporate Equality Index (2009), available at https://222.hrc.org/issues/workplace/11139.htm</p>	<p>We are committed to creating one company, one team, all-inclusive, where diversity contributes to the Lockheed Martin vision. Diversity at Lockheed Martin is an inclusive team that values and leverages each person's individuality.</p> <p>It's about living our values of doing what's right, respecting others and performing with excellence. We recognize that our success depends on the talent, skills and expertise of our people and our ability to function as an integrated team.</p> <p>Lockheed Martin, Commitment to Inclusion and Respect, http://www.lockheedmartin.com/aboutus/diversity/diversity.html</p>



Rank: 45
 Policies: SO, GI, DPB
 Company Name: Best Buy Co.

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
		<p>Diversity is not just about race and gender. It's about honoring all of the ways we are similar and different. Best Buy believes an inclusive environment is critical to finding- and keeping- the most qualified talent to meet the unique needs of our employees and customers.</p> <p>Best Buy, Can You Be You?, http://www.canyoubeyou.com/home.html</p>
<p>Jerry Pritchett, global director of Talent Management and Diversity & Inclusion, Dow, stated, "This is a great honor for Dow to receive. We believe that embracing the diversity and differences our people bring to the workplace and cultivating an inclusive work environment creates competitive advantage for Dow. Without a doubt, by truly embracing diversity and inclusion, we are differentiating Dow as an employer of choice for the best and the brightest; a supplier of choice for customers around the world; and a partner of choice as we grow in new and emerging parts of the world."</p> <p>The CEI rated 583 businesses in total, evaluating GLBT-related policies and practices including non-discrimination policies, transgender health benefits and domestic partner benefits. Dow's efforts in ensuring GLBT equality in each of the survey's main criterion earned it the prestigious 100 percent ranking."</p> <p>Dow Chemical, Dow Earns Top Marks in 2009 Corporate Equality Index, Sept. 3, 2008, http://mobile.dow.com/news/archive/get-news.htm?url=corporate/2008/20080903a.htm</p>		<p>Innovation is necessary to solve the major challenges in our world today. The ability to think boldly and approach the serious challenges facing humanity with fresh perspectives is the engine for our growth. Dow cannot innovate or grow if our people think the same way, do the same things, are a product of the same environments.</p> <p>Every day, Dow's 43,000 employees in 40 countries - our human element - combine their different perspectives to constantly improve our organization and the products and services we deliver. Because we know that the diversity of our employees gives us a distinct competitive advantage, our vision is to build a workforce that reflects the populations we recruit from in the places we do business today and tomorrow. We make an effort to ensure that our beliefs about the importance of diversity and inclusion enhance our employees' experience at Dow.</p> <p>Dow Chemical, Diversity and Inclusion, http://www.dow.com/diversity/index.htm</p>



Rank: 46
 Policies: SO, GI, DPB
 Company Names: Dow Chemical Co.



Rank: 47
Policies: SO, GI, DPB
Company Names: Supervalu Inc.

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
<p>“We are proud to share this honor with some of the most well-respected companies and brands in the country. As a leading food retailer, it’s critical that our company mirror our customer base—a richly woven tapestry of diverse cultures,” said Jeff Noddle, SUPERVALU chairman and CEO. “Embracing diversity and creating a culture of inclusion is a key component of our business strategy, and essential to achieving our goal of being the best place to work, shop and invest in the grocery retail industry.”</p> <p>“At SUPERVALU, we’re committed to deepening our understanding of diversity and inclusion and building a diverse culture, one that values, encourages and respects the ideas, experiences and contributions of all associates,” said Darnell Allen, SUPERVALU vice president of diversity and inclusion. “Our diversity and inclusion efforts range from the workplace to the in-store shopping experience to the partnerships we have with our vendors and suppliers. Diversity and inclusion energizes associates, creates a competitive edge and drives improved performance. Achieving the top rating on the Corporate Equality Index is a testament to our efforts.”</p> <p>Supervalu, Supervalu Receives Perfect Score on Human Rights Campaign Foundation's Corporate Equality Index: Company First Grocery Retailer to Achieve Highest Rating for Its GLBT-Related Policies and Practices, http://www.supervalu.com/sv-webapp/downloads/SUPERVALU_2008_Corporate_Equality_Index_Release.pdf</p>		<p>At SUPERVALU, our goal is to create an environment of diversity and inclusion for people of all backgrounds. This environment will give us a competitive edge and enable us to build an associate population that more accurately mirrors the customers who shop in our stores. What's more, we'll have an atmosphere where each person feels comfortable and eager to contribute fully.</p> <p>Supervalu, Diversity, http://careers.supervalu.com/diversity/diversity.html</p>



Rank: 48
 Policies: SO, GI, DPB
 Company Name: Sears Holdings Corp.

<u>Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People</u>	<u>Domestic Partner Benefits Statements</u>	<u>General Diversity & Benefits Statements</u>
<p>Sears Holdings joins the ranks of 259 other major U.S. businesses which get top marks for their treatment of lesbian, gay, bisexual, and transgender (LGBT) employees and consumers.</p> <p>Gina Turner, vice president of talent acquisition, diversity and relocation, stated "This is the fourth consecutive year that Sears Holdings has achieved a 100% rating and we remain committed to continuing to score a 100%. Diversity is embedded in our culture and expressed through our vision, mission, pace and values. We value diverse people. Our formula for success is sharing ideas, communicating honestly and respecting each other as people and co-workers."</p> <p>Sears Holdings, Sears Holdings Gets 100 in Human Rights Campaign Foundation's Seventh Annual Index, http://www.searsholdings.com/pubrel/pressOne.jsp?id=2008-09-04-0004874852</p>		<p>Diversity is embedded in our culture and expressed through Our Vision, Our Mission, Our Pace and Our Values. We value diverse people. Our formula for success is sharing ideas, communicating honestly and respecting each other.</p> <p>Everything that we do starts and ends with the customer. Our customer base is becoming increasingly diverse and we are working to gain allegiance from all segments of the population. As such, we want to be representative of America's rich diversity of culture, people and ideas.</p> <p>We want diverse people who bring ideas, experiences and talent that will help us achieve the Five Key Pillars of Our Strategy. We want our company to reflect the diversity that is uniquely American. Our leaders do and will represent our diverse customer base. We will work to ensure that there are no artificial barriers that limit our associates from attaining their goals and dreams working in our company.</p> <p>Diversity is a business imperative</p> <p>Sears Holdings, Diversity, http://www.searsholdings.com/careers/why%20us/diversity/</p>



Rank: 49
 Policies: UNK
 Company Name: INTLFCStone Inc.



Rank: 50
 Policies: SO, GI, DPB
 Company Name: PepsiCo

Statements Directly Tied to Non-Discrimination Policies and/or Creating a Diverse Workforce That Includes LGBT People	Domestic Partner Benefits Statements	General Diversity & Benefits Statements
<p>While a diverse workforce is important, we must also create an inclusive environment where every- one — regardless of race, gender, physical ability or sexual orientation — feels valued, engaged, and wants to be part of our growth. It is only through inclusion that we will fully unleash innovation and growth for our business.</p> <p>PepsiCo, PepsiCo Annual Report (2005), available at http://www.pepsico.com/Download/2005-Annual-English.pdf</p>	<p>By offering benefits to committed same-sex domestic partners, we are demonstrating our deep commitment to the importance of Diversity and Inclusion for our business. The recognition of committed same-sex domestic partner relationships is also a demonstration of the respect and fairness that are the foundations of our Code of Conduct. PepsiCo also realizes that domestic partner benefits are increasingly prevalent among our peer companies.</p> <p>Many of our lesbian, gay, bisexual, and transgender (LGBT) employees are living in committed relationships and would enter into marriage if it were legally possible to do so. The extension of benefits to same-sex domestic partners is designed to help treat the families of committed LGBT employees on an equivalent basis with the families of our married heterosexual employees, since the well-being of our employees and their families is of utmost importance.</p> <p>PepsiCo, Questions & Answers about Same-Sex Domestic Partner ("Domestic Partner") Coverage, http://webcache.googleusercontent.com/search?q=cache:tHgkVXYPPbQJ:www.pepsicoemployee.com/portal.jsp%3F%3D4220167%26context%3DDOCUMENT%26doc%3D3336%26sec%3D1+pepsico+%22domestic+partner+benefits%22&cd=4&hl=en&ct=clnk&gl=us&client=safari&source=www.google.com</p>	<p>At PepsiCo, we approach diversity and inclusion as fundamental business priorities.</p> <p>Our company's growth requires leaders and associates who can understand the world's evolving nutrition needs, the global environmental challenges and the economic and social needs of developed and developing countries.</p> <p>We intend to continuously evolve our culture so our leaders and associates are recognized for their contributions and valued for the unique differences they bring to the workplace.</p> <p>PepsiCo, Diversity & Inclusion, http://www.pepsico.com/Purpose/Talent-Sustainability/Diversity-and-Inclusion.html</p>



Ensuring Workplace Fairness Is Not Expensive

America's Small Businesses Say ENDA-like Policies Have Minuscule or No Costs



SOURCE: AP/J. Scott Applewhite

Senate Minority Leader Mitch McConnell (R-KY) erroneously argues that the Employment Nondiscrimination Act “would impose significant regulatory burdens and costs on small businesses.”

By **Crosby Burns, Jeff Krehely** | October 12, 2011

Last week, the Center for American Progress **released** initial findings of a poll that shows a majority of small business owners support policies that shield gay and transgender employees from discrimination.[1] In addition to demonstrating their support for workplace fairness, a majority of small businesses also report no costs associated with implementing and maintaining nondiscrimination policies based on sexual orientation and gender identity.

The poll showed that 63 percent of small business owners support the Employment Nondiscrimination Act, or ENDA, a federal law that would prohibit public and private employment discrimination against gay and transgender workers. This support among the small business community mirrors the public's support for ENDA. A **CAP poll** from June 2011 shows that three out of four (73 percent) likely 2012 voters also support legislation to combat discrimination against the gay and transgender workforce, including clear majorities of self-identified independents and Republicans.

Other data and research show that ENDA is sorely needed. Gay and transgender employees continue to face alarmingly high rates of discrimination in the workplace, as CAP has **written about** in the past. Unfortunately, our polls show that 89 percent of likely voters **erroneously believe** that gay and transgender Americans already have federal employment protections, as do 89 percent of small business owners. Some states have laws that offer these protections, but in most states it is perfectly legal to fire someone for being gay or transgender. Until Congress passes ENDA, discrimination will continue to force otherwise qualified employees out of work simply based on their sexual orientation and gender identity—**factors completely irrelevant to performance on the job.**

Despite the widespread support and the pressing need for federal legislation, conservative opponents of workplace fairness continue to propagate misleading and often false claims about ENDA, including the erroneous claim that it imposes burden and costs on our nation's small businesses.

Case in point: Senate Minority Leader Mitch McConnell (R-KY) **told a constituent** in August 2010 that ENDA “would impose significant regulatory burdens and costs on small businesses.” Similarly, Focus on the Family **sent a letter** to members of the House of Representatives in September 2009, which falsely claims that “ENDA will...increase compliance costs for businesses—costs that small business can ill-afford, particularly during this economic downturn.”

It is unknown where these conservatives are finding these facts that are devoid of hard numbers. But they are certainly not looking to small business owners themselves, the vast majority of whom report absolutely no costs associated with gay- and transgender-inclusive nondiscrimination policies. The companies that did cite costs also noted that they are negligible, usually representing less than 1 percent of

annual operating costs.

Looking at the 69 percent of small businesses that already prohibit discrimination against gay employees, 67 percent said there were zero costs associated with the initial inclusion of sexual orientation within their nondiscrimination policies. But of the 25 percent of companies that said there were costs associated with implementation, 65 percent said those costs represented less than 1 percent of annual operating costs. Nine percent said they did not know if there were implementation costs associated with these policies.[2]

Even fewer of these small businesses cited costs associated with maintaining their company's sexual orientation nondiscrimination policy in the medium and long term. Eighty percent said there were no costs associated with maintaining their policy prohibiting discrimination against gay workers. Only 12 percent said there were costs associated with its maintenance. Looking at just this 12 percent, 68 percent said those costs represented less than 1 percent of annual operating costs. Eight percent said they did not know if there were maintenance costs associated with these policies.

Transgender-inclusive policies are similarly inexpensive. Looking at the 62 percent of small businesses that already prohibit discrimination against transgender employees, 68 percent said there were no costs associated with the implementation of this policy. Of the minority of businesses that said there were costs (22 percent), 76 percent said those costs represented less than 1 percent of annual operating costs. Eleven percent did not know if there were implementation costs associated with these policies.

Small business owners also report zero or insignificant costs associated with maintaining their policy against gender identity discrimination. Seventy-six percent said there were no costs associated with maintaining their policy prohibiting discrimination against transgender workers. Only 14 percent said there were costs associated with maintaining this policy. Of that group, 86 percent said the maintenance cost represented less than 1 percent of annual operating costs. Ten percent said they did not know if there were maintenance costs associated with these policies.

The results are clear. An overwhelming majority of small business owners report no or very small costs associated with gay- and transgender-inclusive nondiscrimination policies.

But what about those small businesses that do not have these policies on their books? Do they cite costs as a reason for not having inclusive nondiscrimination policies? Of those small businesses that do not prohibit discrimination based on sexual orientation, only 2 percent said costs deterred them from offering protections to gay employees. Only 4 percent cited costs as a deterrent to prohibiting discrimination on the basis of gender identity.

Most of these businesses said that they simply never thought to adopt these policies or that they did not have gay or transgender employees currently in their workplace. Costs, however, were not a factor.

Nevertheless, conservatives will continue to falsely assert that ENDA and similar policies will heap unnecessary costs onto our nation's small businesses. They are wrong. When ENDA is eventually passed, it will simply ensure that no one is forced out of a job simply because they are gay or transgender.

ENDA has recently been introduced in both the Senate and the House of Representatives. With likely voters and small businesses exhibiting strong support for workplace fairness, Congress should pass this law, and pass it immediately.

Crosby Burns is Special Assistant for LGBT Progress and Jeff Krehely is Director of the LGBT Research and Communications Project.

See also:

- [Small Businesses Support Fairness](#) by Crosby Burns and Jeff Krehely
- [Interactive Quiz: Gay and Transgender \(In\)equality in the Workplace](#) by Crosby Burns
- [Gay and Transgender People Face High Rates of Workplace Discrimination and Harassment](#) by Crosby Burns and Jeff Krehely
- [Polls Show Huge Public Support for Gay and Transgender Workplace Protections](#) by Jeff Krehely

Endnotes

[1]. Small businesses were defined as businesses that employ 3 to 100 employees. In this column, the term "gay" is used as an umbrella term for people who identify as lesbian, gay, or bisexual.

Implementing nondiscrimination policies

- Sixty-seven percent of businesses with sexual orientation nondiscrimination policies said there were no costs associated with implementing those policies.
- Only 25 percent said there were costs, of which most (65 percent) said those costs represented less than 1 percent of annual operating costs. Nine percent did not know either way.

Maintaining nondiscrimination policies

- Eighty percent of businesses with sexual orientation nondiscrimination policies said there were no costs associated with maintaining those policies.
- Only 12 percent said there were costs, of which most (68 percent) said those costs represented less than 1 percent of annual operating costs. Eight percent did not know either way.

[2]. Figures may not add up to 100 percent due to rounding.

To speak with our experts on this topic, please contact:

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Equal Benefits for Gay Couples Are Inexpensive

Small Businesses Report Low Costs Offering Health Insurance to Employees and Their Families



SOURCE: AP/Keith Srakocic

Workers make biscotti dough at the Enrico Biscotti Co. in Pittsburgh, Pennsylvania. Many small-business owners offer equal health insurance benefits to gay employees and their families, including same-sex domestic partners, spouses, and legally adopted children.

By **Crosby Burns, Jeff Krehely** | October 19, 2011

For the past two weeks, CAP has reported on the results of a nationwide poll of small businesses that we commissioned last month.[1] These results show a majority of **small-business owners support laws** such as the **Employment Non-Discrimination Act**, or ENDA, which would outlaw employment discrimination against gay and transgender workers.[2] This poll also reveals that most small-business owners **already prohibit discrimination** on the basis of sexual orientation and gender identity, and that the majority report **zero costs** associated with their inclusive nondiscrimination policies. Another finding is that many small-business owners offer equal health insurance benefits to gay employees and their families, including same-sex domestic partners, spouses, and legally adopted children. The results demonstrate that the costs associated with equal health care benefits are insignificant for most small businesses.

Of small businesses that offer health benefits to straight employees and their dependents, 51 percent also offer equivalent benefits to their gay employees and their family members. Of the remaining businesses that offer these benefits to straight employees, but do not currently offer parity in benefits to gay employees and their families, 51 percent also say that they would extend those benefits if they had an employee with a same-sex partner. This means that three out of four (76 percent) of these small businesses either currently offer or are willing to offer equal benefits to gay employees and their families.

When asked about costs, 49 percent of small-business owners that offer health insurance benefits to gay couples say there are no costs associated with offering equal benefits because nobody had actually enrolled in them. That is, around half of these small businesses offer equal benefits, but do not have a gay employee with a partner or spouse who has enrolled in those benefits. Twenty-one percent said these health benefits represented less than 1 percent of overall health expenditures. These findings comport with **research findings** on domestic partner benefits, which show the take-up rate for these benefits is extremely low, as are the costs themselves.

Of those small businesses that do not offer equal benefits to gay employees and their family members, only 4 percent cite costs as a deterrent to offering parity in benefits. In fact, costs were the least cited reason for not offering equal benefits. Instead, most of these small-business owners said they simply did not have employees in a same-sex partnership.

Health insurance benefits are an important component of employment compensation to all workers, but they are especially important to gay employees. In fact, offering employees health insurance benefits for their same-sex partners and other dependents is one of the most important ways a company can effectively recruit and retain qualified gay employees. Compared to 19 percent of straight workers, 43 percent of gay and lesbian workers said **they would have stayed** with their former employer had they offered better benefits. Similarly, another study found that 7 out of 10 workers said their benefits package was the **reason they joined their company**, and 8 out of 10 said their benefits package

was the reason they remained with their current employer.

Offering equal benefits to gay employees and their family members—namely, health insurance benefits—gives businesses a crucial edge in recruiting the best and the brightest employees. Those that do not extend equal benefits to potential and existing employees lack a crucial low-cost tool that would otherwise give them an edge in the increasingly competitive market for talented and qualified employees. This is why most small businesses already do or would offer them to their gay employees. This is also why **57 percent** of Fortune 500 companies and **83 percent** of Fortune 100 companies offer health insurance benefits to same-sex domestic partners.

The results of CAP's poll are clear. Small-business owners favor workplace fairness, both with respect to their internal nondiscrimination and benefits policies, and with respect to laws such as ENDA. They favor treating all employees equally—gay or straight, transgender or not transgender—and doing so is not a costly endeavor.

Conservatives love to claim that policies and laws that advance workplace fairness **are costly** to our nation's small businesses. These claims should finally be put to rest. Small businesses have spoken, and they have spoken in favor of fairness.

Crosby Burns is Special Assistant for LGBT Progress and Jeff Krehely is Director of the LGBT Research and Communications Project.

See also:

- **Ensuring Workplace Fairness Is Not Expensive** by Crosby Burns and Jeff Krehely
- **Small Businesses Support Fairness** by Crosby Burns and Jeff Krehely

Notes:

[1]. Small businesses were defined as businesses that employ 3 to 100 employees.

[2]. In this column, the term "gay" is used as an umbrella term for people who identify as lesbian, gay, or bisexual.

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Center for American Progress



Workplace Fairness for Gay and Transgender Workers

Big Benefits, Few-to-No Costs



SOURCE: AP/Elaine Thompson

Marsha Botzer, a board member of the gay advocacy group Pride Foundation, sits with foundation employees Jeffrey Hedgepeth, left, and Sara Elward as she displays a letter they received from Wal-Mart Stores, Inc. Many companies of all sizes, including Wal-Mart, have incorporated sexual orientation and gender identity into their employment nondiscrimination policies.

By Crosby Burns, Jeff Krehely | January 27, 2012

See also: [Ensuring Workplace Fairness Is Not Expensive](#) by Crosby Burns and Jeff Krehely

Earlier this week, President Barack Obama forcefully made the case for an American economy that works for everyone in his annual State of the Union address before Congress. The economy, however, is not working for far too many gay and transgender workers, who continue to face **staggeringly high rates of discrimination** on the job or when seeking employment.*

Fully 42 percent of gay workers say they have experienced employment discrimination, while 90 percent of transgender individuals report being harassed, mistreated, or discriminated against on the job. Yet studies confirm that workplace equity for gay and transgender employees is good for the bottom line of businesses large and small.

Unfortunately there is currently no federal policy that makes it illegal for private companies to fire people simply because they are gay and transgender. That needs to change.

In the absence of federal policy, however, businesses can minimize discrimination against gay and transgender workers by instituting common-sense human resource policies. Namely, businesses can incorporate “sexual orientation” and “gender identity” into their nondiscrimination policies, which helps ensure that job applicants and employees are evaluated based on their skills and qualifications—not on characteristics completely irrelevant to job performance.

Many businesses small and large have taken this step and report no or negligible associated costs. Importantly, even when there are costs—which are minimal—they are outweighed by the significant benefits of this action, including recruiting and retaining the most qualified individuals for the position, enhancing job performance and productivity, and avoiding costly litigation. In other words these policies are a win-win—they help gay and transgender job applicants and employees, and they help businesses operate more efficiently and profitably.

This column summarizes recent research on companies of all sizes that have incorporated sexual orientation and gender identity into their employment nondiscrimination policies and their motivations for doing so. We also explain the ways in which discrimination detracts from a company’s bottom line.

Big business and workplace fairness

Not coincidentally America's largest and most successful companies are also the most likely to prohibit discrimination against gay and transgender workers. Eighty-five percent of Fortune 500 companies have enacted nondiscrimination policies that include sexual orientation, and 49 percent include gender identity. Looking at the very top of the Fortune ladder, the proportion of companies offering employment protections in the Fortune 100 skyrockets to 93 percent for sexual orientation, and 74 percent for gender identity.

Businesses often directly attribute their gay and transgender-inclusive workplace policies as enhancing their bottom line and ability to outperform the competition:

- *Chevron Corp.*: On its fully inclusive nondiscrimination policies, which include sexual orientation and gender identity: "We value a full spectrum of human experience. ... it's not just the right thing to do, **it's good business practice and an important competitive advantage.**"
- *The Boeing Co.*: After adding gender identity to its nondiscrimination policy in 2006, Global Diversity & Employee Rights Team Member Connie Jack said: "That was a major celebration for us. Diversity is itself **a core business strategy** of the company. It is our intent to create an inclusive environment that provides for a fully engaged workforce."
- *JPMorgan Chase & Co.*: "Gender, race, sexual orientation, age, and physical ability are some of the differences that make people—employees and clients—unique. ... as a global organization serving a diverse client base, building and sustaining **an inclusive workforce makes economic sense.** ... at J.P. Morgan we see diversity as a competitive advantage. ... this is why we work hard and invest in attracting and retaining a diverse workforce."

A recent report from the Williams Institute, a UCLA-based think tank advancing sexual orientation and gender identity law and policy, confirms that the vast majority of America's largest and most successful companies directly link workplace fairness with their profitability:

Overall, we find that almost all of the top 50 Fortune 500 companies and the top 50 federal government contractors (92 percent) state that, in general, diversity policies and generous benefit packages are good for their business. In addition, the majority (53 percent) have specifically linked policies prohibiting sexual orientation and gender identity discrimination... **to improving their bottom line.**

Small business and workplace fairness

Many smaller businesses also recognize that fair and inclusive workplaces are good for their bottom lines. A 2011 **CAP poll of small business owners** found that a majority (69 percent) already prohibit discrimination based on sexual orientation, and that a majority (61 percent) also does so on the basis of gender identity.

More importantly, most of these businesses report that there have been absolutely no costs associated with the initial inclusion of sexual orientation in their nondiscrimination policies. Sixty-seven percent said there were zero costs associated with the initial inclusion of sexual orientation within their nondiscrimination policies. Of the 25 percent of companies that said there were costs associated with implementation, 65 percent said those costs represented less than 1 percent of annual operating costs. Small businesses report comparably low-cost figures for the initial inclusion of gender identity in their nondiscrimination policy.

Even fewer of these small businesses cited costs associated with maintaining their company's sexual orientation nondiscrimination policy in the medium and long term. Eighty percent said there were no costs associated with maintaining their policy prohibiting discrimination against gay workers. Only 12 percent said there were costs associated with its maintenance. Looking at just this 12 percent, 68 percent said those costs represented less than 1 percent of annual operating costs. Small businesses report comparably low-cost figures associated with maintaining gender identity in their nondiscrimination policy.

But what about those small businesses that do not have these policies on their books? Of those small businesses that do not prohibit discrimination based on sexual orientation, only 2 percent said costs deterred them from offering protections to gay employees. Only 4 percent cited costs as a deterrent to prohibiting discrimination on the basis of gender identity. Most of these businesses said that they simply never thought to adopt these policies or that they did not have gay or transgender employees currently in their workplace.

The real costs lie in discrimination, not nondiscrimination

The small costs that a few businesses do incur when implementing these policies—updating human resource guidelines and training materials—are essentially erased when the high price of discrimination is factored into the equation. Consider the following examples:

- **Recruitment:** Discrimination needlessly excludes qualified gay and transgender candidates from employment. These inefficient hiring practices result in a substandard workforce in an economic climate where talent is increasingly essential to outperforming the competition.

Implementing nondiscrimination policies

- Sixty-seven percent of businesses with sexual orientation nondiscrimination policies said there were no costs associated with implementing those policies.
- Only 25 percent said there were costs, of which most (65 percent) said those costs represented less than 1 percent of annual operating costs. Nine percent did not know either way.

Maintaining nondiscrimination policies

- Eighty percent of businesses with sexual orientation nondiscrimination policies said there were no costs associated with maintaining those policies.
- Only 12 percent said there were costs, of which

- **Retention:** Discrimination needlessly forces qualified employees out of the workforce and into the ranks of the unemployed. Employers must then devote significant company resources to replacing that lost employee. One study calculated the **recruiting and staffing costs** to replace a departing employee are somewhere between \$5,000 and \$10,000 for an hourly worker and between \$75,000 and \$211,000 for an executive who makes \$100,000 per year. most (68 percent) said those costs represented less than 1 percent of annual operating costs. Eight percent did not know either way.
- **Job productivity:** Discrimination and hostility in the workplace prevents employees from performing their core functions on the job. Moreover, it introduces unnecessary costs by increasing absenteeism, lowering productivity, and fostering a less motivated, less entrepreneurial, and less committed workforce.
- **Litigation:** Workplace discrimination exposes firms to potentially costly lawsuits. In 2010 the top 10 private plaintiff employment discrimination lawsuits cost firms **more than \$346 million**.

Alternatively businesses that weed out discrimination based on sexual orientation and gender identity reap the significant financial benefits of recruiting a qualified workforce, decreasing retention rates and turnover costs, bolstering productivity, and avoiding lengthy and embarrassing discrimination lawsuits. These benefits certainly outweigh the minimal costs that a minority of companies have experienced when adding “sexual orientation” and “gender identity” to their nondiscrimination policies.

Conclusion

Businesses small and large in America agree: When it comes to profitability, discrimination is costly and fairness brings economic benefits. But despite the commonsense steps that many companies have taken to establish gay- and transgender-inclusive workplaces, federal policy is needed to ensure that all Americans have a fair shot at succeeding in the workplace. It is time for policymakers to show leadership on this issue, and implement policies that end discrimination against gay and transgender employees, and boost the efficiency of our nation's businesses.

Crosby Burns is Special Assistant for LGBT Progress at American Progress. Jeff Krehely is the Director of the LGBT Research and Communications Project at American Progress.

*We use “gay” as an umbrella term to include people that identify as lesbian, gay, or bisexual.

See also:

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HUMAN
RIGHTS
CAMPAIGN
FOUNDATIONTM

BUYING FOR WORKPLACE EQUALITY 2012

A GUIDE TO COMPANIES, PRODUCTS AND SERVICES THAT SUPPORT
LESBIAN, GAY, BISEXUAL AND TRANSGENDER WORKPLACE INCLUSION

A FEW WAYS YOU CAN HELP FIGHT
FOR EQUALITY EVERY DAY:

TAKE ACTION FOR EQUALITY

1

Share this information with your friends, family and co-workers. Help them become supporters of workplace equality by factoring the information from this guide into purchasing decisions.

2

Advocate for equality in the workplace. If your company isn't on this list or you think it can do better, go to www.hrc.org/cei to find out how to engage your employer.

3

Get active about equality. Sign up for newsletters and Action Alerts at www.hrc.org/workplace.

More than ever, consumers are sending a message to businesses that they are watching. They are watching to see if the businesses they patronize understand and honor issues important to them, giving buying power to issues ranging from LGBT inclusiveness to environmental protection. Corporate social responsibility has become an imperative for a successful business. With *Buying for Workplace Equality*, we hope to harness that power by providing you with the most accurate review of a business's workplace policies toward LGBT employees.

From offering benefits to domestic partners to extending workplace protections to transgender workers, there is a tidal wave of business support for LGBT workplace inclusion. This year's guide includes results from the 2012 *Corporate Equality Index*, which features 190 businesses that scored a perfect 100 percent. All scores are based on the same set of criteria, rating 40 LGBT-related policies, benefits and corporate practice among the largest U.S. businesses. This year, the CEI raised the bar across 32 of the criteria by requiring parity across all benefits offerings (both domestic partner benefits and transgender-inclusive benefits), a ramped-up category on internal diversity and inclusion best practices, and furthering the requirements of positive, respectful public engagement with the LGBT community.

Whether you are buying a cup of coffee or renovating your home, by supporting businesses that support workplace equality you send a powerful message that LGBT inclusion is good for the bottom line. We hope that you will use this guide as one component when determining if a business's social practices make it worthy of your dollars.

The *Buying for Workplace Equality* guide is also available in web and mobile versions. For more information, visit www.hrc.org/buyersguide.

QUESTIONS AND ANSWERS

Where do the scores in this guide come from?

The information in this guide comes from the 2012 *Corporate Equality Index*, the Human Rights Campaign Foundation's annual report card on corporate America's treatment of lesbian, gay, bisexual and transgender employees.

How are the scores calculated?

Businesses are rated on a scale from 0 to 100, based on whether or not they have policies that support LGBT employees. These include anti-discrimination protections, domestic partner benefits, diversity training and transgender-inclusive benefits. We provide an estimated score to businesses that have not, after repeated attempts, responded to the survey. An estimated score is reflective of the information that HRC has been able to collect without help or input from a business.

Why don't I see a business listed?

The Human Rights Campaign Foundation researches policies at more than 1,800 companies (including the Fortune 1000 and American Lawyer 200). However, we do not provide a business with an official score until we have collected and verified all the information we need. In all, we officially rated 636 companies in the 2012 CEI.

How can I get a business listed?

Any business with 500 or more U.S. employees can be rated. If you don't see a company listed, contact the Human Rights Campaign Foundation with any information you have about its policies on LGBT issues. Or, contact and motivate businesses to participate by letting them know that you make purchasing decisions based on how they scored in this guide.

FOR MORE INFORMATION OR
TO CONTACT US, PLEASE VISIT
WWW.HRC.ORG/BUYERSGUIDE

HOW TO USE THIS BUYER'S GUIDE

EACH BUSINESS/BRAND IS ASSIGNED ONE OF THREE COLORS BASED ON ITS SCORE IN OUR REPORT: **GREEN**, **YELLOW** OR **RED**.

HOME AND GARDEN

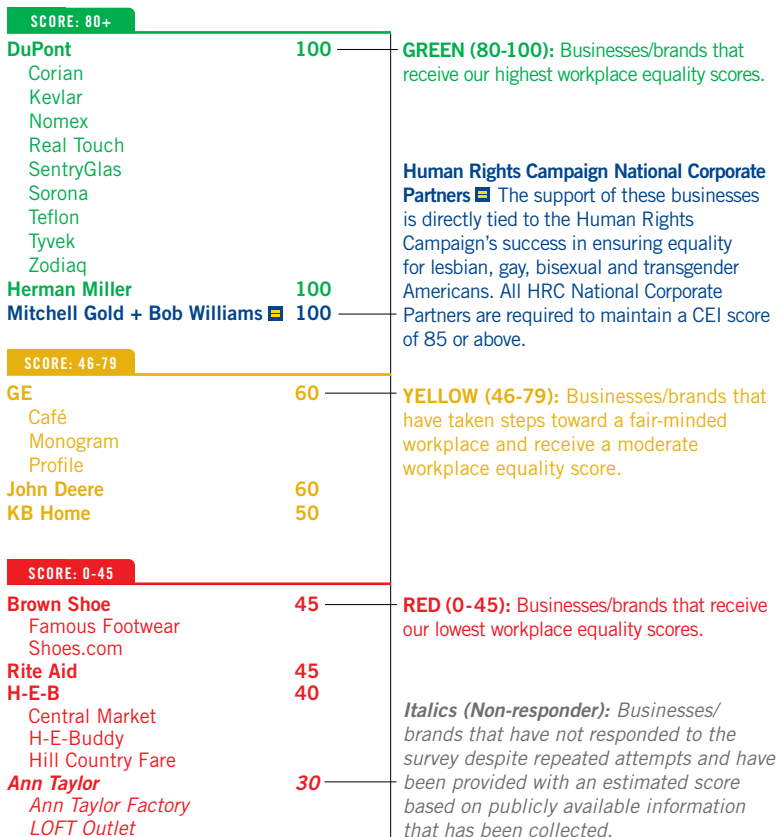


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RETAILERS



SCORE: 80+

Barnes & Noble	100	Office Depot	100
Best Buy	100	Sears	100
Dynex		Kmart	
Future Shop		Staples	100
Geek Squad		Corporate Express	
Insignia		SUPERVALU	100
Magnolia Home Theater		Acme Markets	
Rocketfish		Albertsons	
Delhaize America	100	Cub Foods	
Bloom		Farm Fresh	
Bottom Dollar Food		Hornbacher's	
Food Lion		Jewel-Osco	
Hannaford		Lucky	
Harveys		Osco Pharmacy	
Healthy Accents		Sav-on	
Home 360		Save-A-Lot	
My Essentials		Shaws	
Nature's Place		Shop 'n Save	
Reids		Shoppers Food	
Sweetbay		Star Market	
Taste of Inspirations		TJX	100
eBay	100	HomeGoods	
Half.com		Amazon.com	90
Rent.com		Diapers.com	
Shopping.com		Soap.com	
StubHub		Wag.com	
Limited Brands	100	Woot	
Bath & Body Works		Yoyo.com	
C.O. Bigelow		Zappos.com	
Henri Bendel		Costco	90
La Senza		Hallmark Cards	90
Victoria's Secret		Walgreens	90
White Barn Candle Company		Beauty.com	

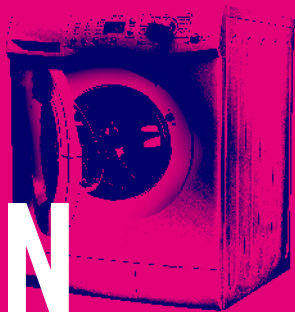
drugstore.com			
Duane Reade			
VisionDirect.com			
Kroger	85		
Baker's			
City Market			
Dillon Food Stores			
Food 4 Less			
Foods Co.			
Fred Meyer			
Fry's			
Gerbes			
Jay C			
King Soopers			
Kwik Shop			
		Loaf 'N Jug	
		Owen's	
		Pay Less	
		Quality Food Centers	
		Quik Stop	
		Ralphs	
		Scott's	
		Smith's	
		Tom Thumb	
		Turkey Hill Minit Markets	
		OfficeMax	85
		Safeway	85
		Target	85
		Home Depot	80

SCORE: 46-79




CVS	75		
Caremark Pharmacy			
GameStop	75		
EB Games			
Whole Foods	75		
Hanover Direct	70		
Company Kids			
Domestications			
Scandia Home			
The Company Store			
Harry & David	70		
REI	65		
Toys 'R' Us	65		
Babies 'R' Us			
		eToys.com	
		FAO Schwarz	
		Toys.com	
		PetSmart	60
		Wal-Mart	60
		Marketside	
		Sam's Club	
		Ahold USA	55
		Giant	
		Martin's	
		Peapod	
		Stop & Shop	

Brown Shoe	45	Winn-Dixie Stores	15
Famous Footwear		Thrifty Maid	
Shoes.com		Winn & Lovett	
Rite Aid	45	Zales	15
H-E-B	40	Gordon's Jewelers	
Central Market		Piercing Pagoda	
H-E-Buddy		Belk	0
Hill Country Fare		Discount Tires	0
Ann Taylor	30	Dollar General	0
Ann Taylor Factory		HSN	0
LOFT Outlet		Ballard Designs	
Bed Bath & Beyond	30	Cornerstone	
buybuy BABY		Frontgate	
Christmas Tree Shops		Garnet Hill	
Harmon		Grandin Road	
Dillard's	30	Improvements	
Dollar Tree	30	Smith + Noble	
Deal\$		Territory Ahead	
Dollar Bills		TravelSmith	
Family Dollar	30	Liberty Interactive	0
RadioShack	30	Backcountry.com	
Trader Joe's	30	Bodybuilding.com	
Wawa	30	Celebrate Interactive Holdings	
Meijer	25	Gifts.com	
Ace Hardware	15	QVC	
Bass Pro	15	O'Reilly Automotive	0
American Rod & Gun		Rent-A-Center	0
Outdoor World		Co lorTyme	
Big Lots	15	Get It Now!	
BJ's	15	The Great Atlantic & Pacific Tea Co.	0
Children's Place	15	A&P	
Dick's Sporting Goods	15	Food Basics	
Golf Galaxy		Pathmark Stores	
Jo-Ann Stores	15	Superfresh	
Kohl's	15	The Food Emporium	
Lowe's	15	Waldbaums	
Michaels	15	The Pantry	0
Aaron Brothers		Bean Street	
Overstock.com	15	Kangaroo Express	
Pier 1	15	True Value	0
Publix Super Markets	15	Grand Rental Station	
The Container Store	15	Home & Garden Showplace	
elfa		Party Central	
Weis	15	Taylor Rental	
Full Circle			
Save-A-Lot			
Scot's Lo-Cost			
Top Care			
Valu Time			

HOME AND GARDEN



SCORE: 80+

DuPont	100	Sears	100
Corian		Country Living	
Kevlar		Craftsman	
Nomex		DieHard	
Real Touch		Kenmore	
SentryGlas		Weatherbeater	
Sorona		Whirlpool	100
Teflon		Amana	
Tyvek		Estate	
Zodiaq		Gladiator	
Herman Miller	100	Jenn-Air	
Mitchell Gold + Bob Williams 	100	KitchenAid	
Owens Corning	100	Magic Chef	
AttiCat		Maytag	
Berkshire		Roper	
Duration		Macy's Inc. 	90
EcoTouch		Hotel Collection	
FOAMULAR		Tools of the Trade	
INSUL-DRAIN		Newell Rubbermaid	90
INSULPINK		Amerock	
Oakridge		Calphalon	
PINK		Irwin	
PROPINK		Kirsch	
QuietR		Lenox	
QuietZone		Levolor	
RapidFlow		Pelouze	
Supreme		Vise-Grip	
VentSure		Target	85
WeatherGuard		Room Essentials	
Woodcrest		Smith & Hawken	
Woodmoor		Classified Ventures	80
Replacements, Ltd. 	100	Apartments.com	

HomeFinder.com HomeGain.com Home Depot Behr Glacier Bay	80	Hampton Bay Husky TrafficMaster Vigoro Monsanto Roundup	80
SCORE: 46-79			
GE Café Monogram Profile	60	John Deere KB Home	60 50
SCORE: 0-45			
Realogy Better Homes and Gardens Real Estate Century 21 Coldwell Banker ERA ONCOR International Sotheby's	45	<i>Margaritaville Cargo</i> <i>Mr. Coffee</i> <i>Oster</i> <i>Patton</i> <i>Pine Mountain</i> <i>Rival</i> <i>Seal-a-Meal</i> <i>Sunbeam</i> <i>VillaWare</i> <i>Zarfina</i>	
Emerson Electric ClosetMaid Emerson Tool Company InSinkErator Knaack Metro ProTeam RIDGID Therm-O-Disk WEATHER GUARD White-Rodgers	40	Stanley Black & Decker <i>Baldwin</i> <i>Black & Decker</i> <i>Bostitch</i> <i>DeWALT</i> <i>Emhart Teknologies</i> <i>Facom</i> <i>Kwikset</i> <i>Mac Tools</i> <i>Porter Cable</i> <i>Price Pfister</i> <i>Proto</i> <i>Stanley Hand Tools</i> <i>Stanley Security Solutions</i> <i>Stanley Vidmar</i> <i>Weiser</i>	25
Ethan Allen	30	Mohawk Industries Aladdin American Olean Bigelow Century Flooring Columbia Flooring Daltile Durkan	20
Jarden <i>Ball</i> <i>Bernardin</i> <i>Bionaire</i> <i>Coleman</i> <i>Crawford</i> <i>Crock-Pot</i> <i>Diamond</i> <i>Dicon</i> <i>First Alert</i> <i>FoodSaver</i> <i>Holmes</i> <i>Java Log</i> <i>Kerr</i> <i>Lehigh</i>	30		

Karastan		Krylon	
Lees		Martin-Senour	
Mohawk		Minwax	
Quick-Step		Red Devil	
Unilin		Thompson's WaterSeal	
Beazer Homes	15	Snap-on	15
Berkshire Hathaway	15	Toll Brothers	15
Benjamin Moore		Kohler Co.	0
Jordan's Furniture		Ann Sacks	
Nebraska Furniture Mart		Baker	
R.C. Willey Home Furnishings		Hytec	
Shaw Industries		Kallista	
Star Furniture Company		McGuire	
The Pampered Chef		Robern	
Fortune Brands	15	Sterling	
American Lock		La-Z-Boy	0
Aristokraft		American Drew	
Decorá		Bauhaus	
Homecrest		England	
Master Lock		Hammary	
MasterBrand		Kincaid	
Moen		La-Z-Boy Kidz	
Omega		Lea	
Schrock		Leggett & Platt	0
Simonton Windows		Sealy	0
Therma-Tru		Bassett	
Waterloo		Embody	
IKEA	15	Stearns & Foster	
Lennar	15	Trump Organization	0
Cambridge		40 Wall Street	
Village Builders		610 Park Avenue	
Masco	15	The Estates at Trump National	
Alsons		Trump Grande	
American Shower & Bath		Trump Hollywood	
Aqua Glass		Trump International Hotel & Tower	
BrassCraft		Trump Palace	
Brasstech		Trump Parc	
Cobra		Trump Park Avenue	
Delta Faucet		Trump Park Residences	
KraftMaid		Trump Place	
Liberty Hardware		Trump Plaza	
Masterchem		Trump Sales and Leasing	
Merillat		Trump Tower	
Quality Cabinets		Trump World Tower	
Vapor Technologies		Trump-Greenthal Sales and Leasing	
Watkins		Urban Outfitters	0
Sherwin-Williams	15	Terrain	
ArmorSeal			
Dutch Boy			

THE TOTAL BUYING POWER OF THE ADULT U.S. LESBIAN, GAY,
BISEXUAL AND TRANSGENDER POPULATION IS PROJECTED AT
\$743 BILLION.

Source: Witeck-Combs Communications and MarketResearch.com



BANKING AND FINANCE

American Express	100	Northern Trust	100
American Express Gift Cards		TD Bank 	100
American Express OPEN		TD Insurance	
American Express Travel		TD Wealth	
Serve		U.S. Bancorp	100
Ameriprise	100	Elavon Inc.	
Columbia Management		The Private Client Reserve	
J.W. Seligman & Co.		U.S. Bancorp Fund Services LLC	
RiverSource		U.S. Bancorp Investments Inc.	
Threadneedle		UBS	100
Bank of America 	100	UBS Financial Services	
Bank of America Home Loans		UBS Wealth Management US	
Bank of America Merrill Lynch		Wells Fargo	100
Merrill Lynch Wealth Management		Wachovia	
U.S. Trust		Wells Fargo Advisors	
Bank of New York Mellon	100	Comerica	95
BNY Mellon Asset Management		Wilson, Kemp & Associates	
Dreyfus		World Asset Management, Inc	
Mellon Capital Management		State Farm	95
Pershing		State Farm Bank	
Barclays Capital	100	HSBC	90
BMO Bankcorp	100	Beneficial	
BMO Harris Bank		HFC	
Capital One	100	KeyCorp	90
Capital One Auto Finance		KeyBank	
Charles Schwab	100	Mastercard	90
optionsXpress		Cirrus	
Windhaven Investment Management		Maestro	
Citi 	100	Monex	
Banamex		Morningstar	90
Citi Capital Advisors		Ibbotson Associates	
Citi Cards		Morningstar Direct	
Citi Institutional Clients Group		Morningstar Investment Services	
Citi Investment Research		PNC	90
Citi Microfinance		Harris Williams & Co.	
Citi Private Bank		National City	
Citibank		Raymond James Financial	90
Citimortgage		Ballast Pointe Ventures	
OneMain Financial		Eagle Asset Management	
Women & Co.		State Street	90
Credit Suisse	100	SunTrust	90
Deutsche Bank	100	Principal Financial	85
Freddie Mac	100	RBC Wealth Management	85
Goldman Sachs 	100	Visa	85
J.P. Morgan Chase	100	Fannie Mae	80
Chase 		John Hancock	80
J.P. Morgan			
Morgan Stanley 	100		
Morgan Stanley Smith Barney			

SCORE: 46-79

BB&T	70
BB&T Financial, FSB	
CIBC	70
CIBC Imperial Service	
CIBC Retail Markets	
CIBC Wood Gundy	
CIBC World Markets	
Fifth Third Bancorp	70
Fifth Third Bank	
Mirador	
Robert W. Baird & Co.	70
E*TRADE Financial	60
E*TRADE Bank	

GE	60
GE Capital	
GE Money	
Huntington Bancshares	60
Sky Financial Group	
H&R Block	50
H&R Block Dollars & Sense	
The Tax Institute	

SCORE: 0-45

Discover Financial Services	45
Diners Club	
Pulse	
Sallie Mae	45
Academic Management Services Corp	
Arrow Financial Services	
General Revenue Corporation	
Nellie Mae	
Pioneer Credit Recovery Inc	
Sallie Mae Bank	
Student Assistance Corporation	
Student Loan Finance Association	
Student Loan Funding	
Upromise	
Franklin Resources	40
Franklin Templeton	
T. Rowe Price	40
D&B	30
AllBusiness	
DUNSRight	
Hoovers	
Fidelity National Financial	30
Ceridian Corporation	
Fidelity National Property and Casualty Insurance Group	

<i>Fidelity National Title Group</i>	
<i>IPX1031</i>	
<i>ServiceLink</i>	
Western Union	30
Invesco	15
<i>Atlantic Trust Private Wealth Management</i>	
<i>Invesco Perpetual</i>	
<i>Invesco PowerShares</i>	
<i>WL Ross & Co.</i>	
M&T Bank	15
<i>Allfirst Bank</i>	
NASDAQ	15
<i>NASDAQ OMX BX</i>	
<i>NASDAQ OMX Commodities Clearing Corp</i>	
<i>NASDAQ OMX Futures Exchange</i>	
<i>NASDAQ OMX PHLX</i>	
<i>NASDAQ OMX PSX</i>	
<i>NASDAQ Options Market</i>	
<i>The NASDAQ Stock Market</i>	
Sovereign Bancorp	15
USAA	0

KIDS



SCORE: 80+

Johnson & Johnson	100
Destin	
Johnson's	
Bayer	90
Flintstones Vitamins	
One A Day Kids	
Bright Horizons Family Solutions	90
Brookfield Academies	
College Coach	
Horizons Workforce Consulting	
Lipton Child Care	
Tuition Advisory Services	
Kimberly-Clark	90
GoodNites	
Huggies	
Little Swimmers	
Pull-Ups	

Newell Rubbermaid	90
Aprica	
Berol	
Graco	
Headsprout	
Teutonia	
Procter & Gamble	90
Luvs	
Pampers	

SCORE: 46-79

Abbott Laboratories	60
EleCare	
PediaLyte	
PediaSure	
Similac	

APPAREL AND ACCESSORIES



Abercrombie & Fitch	100	T.J.Maxx	
abercrombie kids		Bon-Ton Stores	90
Gilly Hicks		Bergner's	
Hollister		Boston Store	
Gap	100	Carson Pirie Scott	
Athleta		Elder-Beerman	
babyGap		Herberger's	
Banana Republic		Youngkers	
GapBody		Kenneth Cole	90
GapKids		Gentle Souls	
Old Navy		Kenneth Cole New York	
Piperlime		Kenneth Cole Reaction	
Levi Strauss	100	Le Tigre	
Denizen		Unlisted	
Dockers		Macy's Inc. 	90
Levi's		Alfani	
Signature by Levi Strauss & Co.		American Rag	
Limited Brands	100	Bar III	
Henri Bendel		Bloomingdale's	
La Senza		Charter Club	
Pink		Club Room	
Victoria's Secret		Epic Threads	
Nike 	100	First Impressions	
Cole Haan		Giani Bernini	
Converse		I.N.C.	
Hurley		Jenni by Jennifer Moore	
NIKE Golf		JM Collection	
Umbro		Martha Stewart Collection	
Nordstrom	100	Style & Co.	
1901		Tasso Elba	
Calibrate		Tiffany & Co.	90
Classiques Entier		J.C. Penney	85
Halogen		a.n.a	
HauteLook		Ambrielle	
Last Chance		American Living	
Nordstrom Direct		Arizona	
Nordstrom Rack		Arizona Jean Co.	
Public Opinion		cooks	
Trouvé		Decree	
Zella		east5th	
Sears	100	Every Day Matters	
Apostrophe		J. Ferrar	
Covington		Linden Street	
Jaclyn Smith		Okie Dokie	
Joe Boxer		St. John's Bay	
Lands' End		Stafford	
Structure		Studio	
TJX	100	Worthington	
Marshalls			

Liz Claiborne	85	Cherokee	
Acess		Circo	
Juicy Couture		Gilligan & O'Malley	
Kate Spade		Liz Lange	
Kensie		Merona	
Lucky Brand Jeans		Mossimo	
Mac & Jac		Xhilaration	
Mexx		American Eagle	80
Monet		77kids	
Target	85	aerie	
C9 by Champion			

SCORE: 46-79

Hanover Direct	70	Napier	
International Male		Nine West	
Silhouettes		Sam & Libby	
UnderGear		L.L. Bean	65
Jones Apparel	70	REI	65
Anne Klein		Novara	
Bandolino		Hanesbrands	60
Easy Spirit		Bali	
Enzo Angiolini		Barely There	
Evan-Picone		Champion	
Gloria Vanderbilt		Duofold	
Joan & David		Hanes	
Jones New York		Just My Size	
Judith Jack		L'eggs	
Kasper		Outer Banks	
I.e.i		Playtex	
Le Suit		Wonderbra	

SCORE: 0-45

Brown Shoe	45	Adidas	15
Buster Brown		Reebok	
Dr. Scholl's Shoes		Rockport	
Famous Footwear		TaylorMade	
Lifestride		American Apparel	15
Naturalizer		Berkshire Hathaway	15
Via Spiga		Acme Boot	
Ann Taylor	30	Fruit of the Loom	
LOFT		Garan	
J. Crew	30	H.H. Brown Shoe Company	
crewcuts		JERZEES	
Madewell		Justin Brands	
The Men's Wearhouse	30	Russell Athletics	
K&G		Spalding	
Twinhill		Burberry	15



RESTAURANTS

SCORE: 80+

Darden Restaurants	90	Starbucks ☑	90
Bahama Breeze		Seattle's Best Coffee	
LongHorn Steakhouse		BP ☑	85
Olive Garden		Wild Bean Café	
Red Lobster		Carlson	85
Seasons 52		T.G.I. Friday's	
The Capital Grille			

SCORE: 46-79

Chipotle	75	Brinker	60
McDonald's	75	Chili's	
The Palm	65	Maggiano's Little Italy	
		Burger King	55

SCORE: 0-45

Yum! Brands	45	Caribou Coffee	15
A&W		Jack in the Box	15
KFC		Qdoba Mexican Grill	
Long John Silver's		OSI Restaurant Partners	0
Pizza Hut		Bonefish Grill	
Taco Bell		Carrabba's Italian Grill	
WingStreet		Fleming's Prime Steakhouse	
Cracker Barrel Old Country Store	35	Outback Steakhouse	
Domino's Pizza	35	Roy's Hawaiian Fusion Cuisine	
Krispy Kreme	30		
Wendy's	30		
Berkshire Hathaway	15		
Dairy Queen			
Bob Evans	15		
Mimi's Café			

OIL AND GAS



SCORE: 80+

Chevron 	100	Amoco Ultimate	
Caltex		Arco	
Texaco		Shell Oil 	85
BP 	85		
am/pm			

SCORE: 46-79

ConocoPhillips	55		
76			
Conoco			
Phillips 66			

SCORE: 0-45

Wawa	30		
Hess	15		
Sunoco	15		
Tesoro	15		
Valero Energy	15		
Beacon			
Diamond Shamrock			
Shamrock			
Ultramar			
ExxonMobil	0		
Esso			
Exxon			
Mobil			

FOOD AND BEVERAGES



Brown-Forman	100
Bel Arbor	
Bonterra	
Canadian Mist	
Chambord	
Collingwood	
Don Eduardo	
Early Times	
el Jimador	
Fetzer	
Finlandia	
Five Rivers	
Gentleman Jack	
Herradura	
Jack Daniel's	
Jekel	
Korbel	
Little Black Dress	
Old Forester	
Pepe Lopez	
Sanctuary	
Sonoma-Cutrer	
Southern Comfort	
Tuaca	
Woodford Reserve	
Campbell Soup	100
Ecce Panis	
Pace	
Pepperidge Farm	
Prego	
Swanson	
V8	
Clorox	100
Hidden Valley	
KC Masterpiece	
Kitchen Bouquet	
Diageo	100
Bailey's	
Beaulieu Vineyard 	
Captain Morgan	
Cîroc	
Crown Royal	
Dom Perignon	
Don Julio	
Guinness	
Harp	
Hennessey	
Johnnie Walker	
Jose Cuervo	

Ketel One	
Red Stripe	
RÖKK VODKA	
Smirnoff	
Sterling Vineyards	
Tanqueray	
Wily Jack	
General Mills	100
Betty Crocker	
Bisquick	
Bugles	
Cascadian Farms	
Cheerios	
Chex	
Cinnamon Toast Crunch	
Diablitos Underwood	
Fiber One	
Frescarini	
Fruit by the Foot	
Fruit Gushers	
Fruit Roll-Ups	
Gardetto's	
Gold Medal	
Good Earth	
Green Giant	
Häagen-Dazs	
Hamburger Helper	
Jus-Rol	
Kix	
Larabar	
Lucky Charms	
Mountain High	
Muir Glen	
Nature Valley	
Old El Paso	
Pillsbury	
Progresso	
Totino's	
Trix	
Wheaties	
Yoplait	
Johnson & Johnson	100
Benecol	
Lactaid	
Splenda	
Viactiv	
Kellogg's	100
All-Bran	
Apple Jacks	

Austin
 Bear Naked
 Carr's
 Cheez-It
 Chips Deluxe
 Club
 Cocoa Krispies
 Corn Pops
 Crispix
 Eggo
 Famous Amos
 Froot Loops
 Frosted Flakes
 Gardenburger
 Gripz
 Honey Smacks
 Jack's
 Kashi
 Keebler
 Mini Wheats
 Morningstar Farm
 Murray
 Nutri-Grain
 Pop-Tarts
 Ready Crust
 Rice Krispies
 Sandies
 Smart Start
 Special K
 Stretch Island
 Toasteds
 Town House
 Wheatables
 Zesta

Kraft Foods**100**

100 Calorie Packs
 A.1.
 Balance Bar
 Boca Burger
 Breakstone's
 Cadbury
 Cheez Whiz
 Chips Ahoy!
 Claussen
 Cool Whip
 Corn Nuts
 Country Time
 Crystal Light
 Dentyne
 Easy Mac
 Grey Poupon

Honey Maid
 Jell-O
 Kool-Aid
 Louis Rich
 Lunchables
 Maxwell House
 Miracle Whip
 Nabisco
 Newtons
 Nilla
 Oreo
 Oscar Mayer
 Planters
 Premium
 Ritz
 Stove Top
 Teddy Grahams
 Toblerone
 Trident
 Triscuit
 Velveeta
 Wheat Thins

MillerCoors**100**

Blue Moon
 Coors
 Coors Light
 Foster's
 Grolsch
 IceHouse
 Keystone
 Killian's Irish Red
 Leinenkugel's
 Mickey's
 Miller
 Miller 64
 Miller Genuine Draft
 Miller Lite
 Milwaukee's Best
 Molson
 Olde English
 Peroni
 Pilsner Urquell
 Red Dog
 Sharp's
 Sparks
 Steel Reserve

Sodexo**100****SUPERVALU****100**

Culinary Circle
 Essential Everyday
 SHOPPERS VALUE

Stockman & Dakota Wild Harvest	
The Coca-Cola Company	100
Aquarius Spring!	
Barq's	
Bright & Early	
Chaudfontaine	
Coca-Cola	
Coke Light	
Coke Zero	
Dasani	
Diet Coke	
Fanta	
Fresca	
Full Throttle	
Fuze	
Gold Peak	
Hi-C	
Mello Yello	
Minute Maid	
Nestea	
NOS	
Odwalla	
Pibb Xtra	
POWERade	
Seagram's Ginger Ale	
Simply Orange	
Smartwater	
Sprite	
Tab	
Vault	
vitaminwater zero	
Unilever	100
Ben & Jerry's	
Bertolli	
Breyers Ice Cream	
Country Crock	
Good Humor	
Hellmann's	
I Can't Believe It's Not Butter!	
Klondike	
Knorr	
Lipton	
Popsicle	
Promise	
Ragu	
Skippy Peanut Butter	
Slim-Fast	
Wishbone	
PepsiCo	95
AMP	

Aquafina	
Aunt Jemima	
Cap'n Crunch	
Cheetos	
Cracker Jacks	
Diet Pepsi	
Dole Juices	
Doritos	
Flat Earth	
Frito Lays	
Gatorade	
Lays	
Life	
Lipton Iced Tea	
Mountain Dew	
Mug Root Beer	
Naked Juices	
Near East	
Pasta Roni	
Pepsi	
Pepsi Max	
Pepsi Natural	
Pepsi One	
Pepsi Throwback	
Pepsi Wild Cherry	
Propel	
Quaker Oats	
Rice-A-Roni	
Rold Gold	
Sierra Mist Natural	
Smartfood	
SoBe	
Stacy's	
SunChips	
Tostitos	
Tropicana	
Walkers	
Anheuser-Busch	90
Alexander Keith's	
Bass	
Beck	
Boddington's	
Bud Light	
Budweiser	
Busch	
Czechvar	
Goose Island	
Hoegaarden	
Hurricane Malt Liquor	
Kirin	
Landshark Lager	

Leffe		
Michelob		
Natural Ice		
O'Douls		
Redbridge		
Rolling Rock		
Shock Top		
Stella Artois		
Land O'Lakes	90	
Alpine Lace		
Dairy Ease		
Eggland's Best		
Grip n' Go		
Mini Moo's		
Starbucks ☞	90	
Ethos Water		
Frappuccino		
Seattle's Best Coffee		
Starbucks Discoveries		
Starbucks Doubleshot		
Starbucks VIA		
Tazo Teas		
Torrefazione Italia Coffee		
Hershey	85	
5th Avenue		
Almond Joy		
Breath Savers		
Bubble Yum		
Good & Plenty		
Heath		
Icebreakers		
Jolly Rancher		
Kit Kat		
Mauna Loa		
Milk Duds		
Mounds		
Mr. Goodbar		
Payday		
Reese's		
Rolo		
Skor		
Symphony		
Twizzlers		
York		
Zagnut		
Zero		
Safeway	85	
Eating Right		
Lucerne		
Mom to Mom		
O Organics		
Open Nature		
Primo Taglio		
Rancher's Reserve		
Sara Lee	85	
Ball Park		
Bryan		
Douwe Egberts		
Earthgrains		
Hillshire Farm		
Jimmy Dean		
State Fair		
Target	85	
Archer Farms		
Choxie		
Market Pantry		
Sutton & Dodge		
Wine Cube		

SCORE: 46-79

Coca-Cola Enterprises	75	Healthy Choice
ConAgra Foods	75	Hebrew National
ACT II		Hunt's
Alexia		Jiffy Pop
Andy Capps		Kid Cuisine
Banquet		La Choy
Blue Bonnet		Libby's
Chef Boyardee		Manwich
Crunch n' Munch		Marie Callender's
David Seeds		Orville Redenbacher's
Egg Beaters		Pam
Fiddle Faddle		Parkay
Gulden's		Penrose

Peter Vella
 Pölka Dot
 Rancho Zabaco
 Red Bicycleette
 Redwood Creek
 Red Rock Winery
 Sebekka
 Sheffield Cellars
 Starborough
 The Naked Grape
 Tisdale Vineyards
 Turning Leaf
 Whitehaven
 William Hill Estate
 Wild Vines
 Wycliff Sparkling

Hormel 60

Chi-Chi's
 Di Lusso Deli
 Dinty Moore
 El Torito
 Farmer John
 Herb-Ox
 House of Tsang
 Jennie-O
 Lloyd's Barbeque
 Manny's
 Not-So-Sloppy-Joe
 Saag's
 SPAM
 Stag
 Valley Fresh

SCORE: 0-45

Dean Foods 40

Country Fresh
Horizon Organic
International Delight
Meadow Gold
Silk
Swiss Premium
TruMoo

ADM 35

Ambrosia
deZaan
Merckens
NovaLipid
NutriSoy

Mars 55

3 Muskateers
 Altoids
 Big Red
 Combos
 Dolmio
 Doublemint
 Dove Chocolate
 Eclipse
 Extra
 Flavia
 Galaxy
 Juicy Fruit
 Kudos
 Life Savers
 M&M's
 Masterfoods
 Milky Way
 Orbit
 Seeds of Change
 Skittles
 Snickers
 Starburst
 Twix
 Uncle Ben's
 Wrigley

U.S. Foodservice 50

Chef's Line
 Glenview Farms
 Molly's Kitchen
 Next Day Gourmet
 Patuxent Farms
 Roseli
 Stock Yards

VegeFull

Domino's Pizza 35

Dole Food 30

GNC 30

Chiquita 15

Fresh Express

Del Monte 15

College Inn

Contadina

S&W

Green Mountain Coffee 15

Emeril's

K-Cup

Keurig

Timothy's Coffee			
Tully's Coffee			
Hostess	15		
Beefsteak			
Ding Dongs			
Dolly Madison			
Drake's			
Ho Hos			
Home Pride			
J.J. Nissen			
Merita			
Nature's Pride			
Ring Dings			
Twinkies			
Wonder			
McCormick	15		
Club House			
Lawry's and Adolph's			
Old Bay			
Simply Asia			
Thai Kitchen			
Zatarain's			
Solo Cup	15		
Tyson Foods	15		
Bonici			
Bruss			
Chairman's Reserve			
Golden Trophy			
Mexican Original			
Tyson K-12			
Weaver			
Wright			
Nestlé	10		
100 Grand			
Baby Ruth			
Buitoni			
Butterfinger			
Carnation			
Chunky			
Coffee-Mate			
Crunch			
DiGiorno			
Dreyer's			
Drumstick			
Edy's			
Goobers			
Hot Pockets			
Juicy Juice			
Laffy Taffy			
Lean Cuisine			
Lean Pockets			
Nerds			
Nesquik			
Nestea			
Powerbar			
Raisinets			
Stouffer's			
Sweet Tarts			
The Skinny Cow			
Toll House			
Tombstone			
Wonka			
Brookshire Grocery	0		
Chick-fil-A Inc.	0		
Chick-fil-A			
CHS	0		
Constellation	0		
Arbor Mist			
Corona			
Negra Modelo			
Svedka			
Woodbridge by Robert Mondavi			
Core-Mark Holding Company Inc.	0		
J.M. Smucker	0		
Crisco			
Eagle Brand			
Folgers			
Hungry Jack			
Jif			
Knott's Berry Farm			
Smuckers			
White Lily			
Murdock Holding	0		
Dole			
Pilgrim's Pride	0		
EatWellStayHealthy			
Fresh From Florida			
Smithfield Foods	0		
Armour			
Carando			
Cook's			
Curly's Food			
Eckrich			
Farmland			
Gwaltney			
Healthy Ones			
John Morrell			
Kretschmar Deli			
Margherita			
SYSCO	0		

FUN AND GAMES



SCORE: 80+

Caesars Entertainment 🇺🇸	100
World Series of Poker	
Microsoft 🇺🇸	100
Xbox	
The Walt Disney Co.	100
Disney Interactive Media Group	
Disney Interactive Studios	
Disney Online	
Disney Online Studios	
Playdom	
Electronic Arts	90
EA BioWare	

EA Casual Entertainment	
EA Games	
EA Interactive	
EA Play	
EA Sports	
Hallmark Cards	90
Crayola	
Silly Putty	
Sony	90
Playstation	

SCORE: 46-79

Mattel	75
American Girl	
Apples to Apples	
Barbie	
Fisher-Price	
Hot Wheels	
Little People	
Loopz	

Matchbox	
Monster High	
Pictionary Man	
Polly Pocket	
Power Wheels	
Radica	
Tyco R/C	
UNO	

SCORE: 0-45

Hasbro	25
Battleship	
Candy Land	
Chutes and Ladders	
Clue	
Connect Four	
Easy-Bake	
FurReal Friends	
GI Joe	
Jenga	
Lite-Brite	
Monopoly	
Mousetrap	
Mr. Potato Head	
My Little Pony	
Nerf	
Operation	
Pictionary	
Play-Doh	


Playskool	
Risk	
Scattergories	
Scrabble	
Sorry!	
The Game of Life	
Trivial Pursuit	
Twister	
Yahtzee	

AUTOMOTIVE



SCORE: 80+

AAA Northern California, Nevada and Utah	100
AAA Insurance-Home, Auto and Life	
Chevron 	100
Chevron Supreme	
Delo	
Havoline	
Chrysler	100
Dodge	
Jeep	
Ford	100
Lincoln	
Toyota	100
Lexus 	
Scion	
Cox Enterprises 	90
AutoTrader.com	
Manheim	
Volkswagen	90
Audi	
Bentley	
Bugatti	
Lamborghini	
BP 	85
CarMax	85

GM	85
Buick	
Cadillac	
Chevrolet	
GMC	
OnStar	
Shell Oil 	85
Black Magic	
Blue Coral	
Fix-A-Flat	
Jiffy Lube	
Pennzoil	
Quaker State	
Rain-X	
Subaru	85
Forester	
Impreza	
Legacy	
Subaru Outback	
Tribeca	
WRX-Sti	
Classified Ventures	80
Cars.com	
Ryder	80

SCORE: 46-79

Bridgestone	70
Firestone	
Pep Boys	70
Cornell	

Definity
Futura

SCORE: 0-45

Advance Auto Parts	30
Nissan	30
Infiniti	
Nissan Forklift	
Nissan Marine	
Cooper Tire & Rubber	25
Avon Tyres	
Dean	
Mastercraft	
Starfire	

AutoZone	15
Duralast	
Valucraft	
Goodyear Tire	15
Dunlop	
Kelly	
Harley-Davidson	15
Buell	
Dyna	

87% OF LGBT ADULTS SAY THEY ARE LIKELY TO CONSIDER A BRAND THAT IS KNOWN TO PROVIDE EQUAL WORKPLACE BENEFITS FOR ALL OF THEIR EMPLOYEES, ALONG WITH 75% OF NON-LGBT ADULTS.

Source: Witeck-Combs Communications/Harris Interactive



HOUSEHOLD PRODUCTS

SCORE: 80+

3M	100	Sharpie	
Ace		Uni-ball	
Command		Waterman	
Filtrete		Procter & Gamble	90
Futuro		Ariel	
Littmann		Bold	
Nexcare		Bounce	
O-Cel-O		Bounty	
Post-it		Cascade	
Scotch		Charmin	
Scotch-Brite		Cheer	
ScotchBlue		Comet	
Scotchguard		Dawn	
Scotchlite		Downy	
Thinsulate		Dreft	
Clorox	100	Duracell	
Brita		Era	
Clorox2		Febreze	
Formula 409		Gain	
Glad		Joy	
Green Works		Mr. Clean	
Handi-Wipes		Puffs	
Kingsford		Swiffer	
Lestoil		Tide	
Liquid-Plumr		S.C. Johnson & Son	90
Pine-Sol		Drano	
S.O.S.		Fantastik	
Tilex		Glade	
Wash'n Dri		Nature's Source	
Kimberly-Clark	90	OFF!	
Cottonelle		Oust	
Kleenex		Pledge	
Scott		Raid	
Viva		Saran	
Newell Rubbermaid	90	Scrubbing Bubbles	
CardScan		Shout	
Dymo		Windex	
Endicia		Ziploc	
Expo		Colgate-Palmolive	85
Liquid Paper		Ajax	
Mimio		Dermassage	
Paper Mate		Fabuloso	
Parker		Murphy Oil Soap	
Prismacolor		Palmolive	
Rolodex		Suavitel	
Rotring		Target	85
Rubbermaid		up & up	

SCORE: 0-45

Tupperware**15****Energizer****0***Eveready*

HEALTH AND BEAUTY



SCORE: 80+

Avon Products 100

Advance Techniques
ANEW
Avon Clearskin
Avon Color
Avon Naturals
Avon Solutions
Foot Works
Jillian Dempsey Professional
mark.
Skin-So-Soft
Smooth Minerals
Ultra Color Rich Lipstick

Clorox 100

Burt's Bees

GlaxoSmithKline 100

Abreva
Abtei
alli
Aquafresh
Breathe Right
Citrucel
Commit
Contac
Corega
Dr. Best
FiberChoice
Horlicks
Lucozade
Macleans
NicoDerm CQ
Nicorette
Odol

Os-Cal
Panadol
Poli-Grip
Polident
Ribena
Sensodyne
Tums
Zovirax

Johnson & Johnson 100

ACUVUE
AMBI
Aveeno
BAND-AID
Benadryl
BENGAY
Caladryl
Carefree
Clean & Clear
Comped
CORTAID
Daktarin
Imodium
K-Y
LISTERINE
Lubriderm
Motrin
Mylanta
NEOSPORIN
Neutrogena
o.b.
Pepcid
PURPOSE
REACH

71% OF LESBIAN AND GAY PEOPLE SAY THEY WOULD BE LIKELY TO REMAIN LOYAL TO A BRAND THAT THEY BELIEVE TO BE VERY FRIENDLY AND SUPPORTIVE OF LGBT ISSUES, EVEN IF IT COSTS MORE OR IS LESS CONVENIENT.

Source: Witeck-Combs Communications/Harris Interactive

REMBRANDT		
RoC		
Rogaine		
Rolaids		
SHOWER to SHOWER		
skin iD		
Stayfree		
SUDAFED		
TUCKS		
TYLENOL		
TYLENOL-PM 		
Visine		
ZYRTEC		
Pfizer	100	
Advil		
Alavert		
Anbesol		
Caltrate		
Celebrex		
Centrum		
Chantix		
ChapStick		
Depo Provera		
Detrol		
Dimetapp		
FiberCon		
Lipitor		
Lyrice		
Preparation H		
Robitussin		
ThermaCare		
Viagra		
Xanax		
Zoloft		
SUPERVALU	100	
Equaline		
Unilever	100	
Alberto VO5		
AXE		
Caress		
Consort		
Degree		
Dove		
FDS		
Just For Me!		
Lever 2000		
Motions		
Nexus		
Noxema		
Pond's		
Q-tips		
Soft & Beautiful		
St. Ives		
Suave		
TCB		
TIGI		
TRESemmé		
Vaseline		
Bayer	90	
Aleve		
Alka-Seltzer		
Arctic Wonder		
Bactine		
Bayer Aspirin		
Beyaz		
Bronkaid		

Campho-Phenique		
Citracal		
Climara		
Contour		
Domeboro		
Fergon		
Flintstones Vitamins		
Midol		
Mirena		
Natazia		
Neo-Synephrine		
One A Day		
Phillips'		
Rid		
Vanquish		
Yasmin		
YAZ		
Boehringer Ingelheim	90	
Dulcolax		
Zantac		
Kimberly-Clark	90	
Depend		
Kleenex		
Kotex		
Poise		
Scott		
Newell Rubbermaid	90	
ACE		
Goody		
Solano		
Procter & Gamble	90	
Align		
Always		
Aussie		
Braun		
Clairol		
CoverGirl		
Crest		
DDF		
Fekkai		
Fixodent		
Fusion		
Gillette		
Head & Shoulders		
Herbal Essences		
Ivory		
MACH3		
Max Factor		
Metamucil		
Nice 'n Easy		
Nioxin		
Olay		
Old Spice		
Oral-B		
Pantene		
Pepto-Bismol		
Prilosec OTC		
Puffs		
Scope		
Sebastian Professional		
Secret		
SK-II		
Tampax		
Venus		
Vicks		
Vidal Sassoon		
Wella		
Bausch & Lomb	85	
Advanced Eye Relief		
Alaway		
Biotrue		
Boston		
Collyrium		
Liposic		
Muro		
Ocuvite		
Opcon-A		
Optima		
PreserVision		
PureVision		
ReNu		
Sensitive Eyes		
Sight Saver		
SilSoft		
SofLens		
Soothe		
Colgate-Palmolive	85	
Afta		
Colgate		
Irish Spring		
Lady Speed Stick		
Skin Bracer		
Softsoap		
Speed Stick		
Target	85	
up & up		

Estée Lauder 75

American Beauty
 Aramis
 Aveda
 Bobbi Brown
 Bumble and bumble
 Clinique
 Darphin
 Ermenegildo Zegna
 Flirt!
 GoodSkin Labs
 Grassroots Research Labs
 Jo Malone
 La Mer
 Lab Series Skincare for Men
 M.A.C.
 Ojon
 Origins
 Prescriptives
 Smashbox

Novartis Pharmaceutical Corp. 75

4-Way
 AIR OPTIX
 AQUify
 Benefiber
 Buckley's
 Bufferin
 Clear Care
 Comtrex

DAILIES
 Desenex
 Ex-Lax
 Excedrin
 FreshLook Color Contact Lenses
 Gas-X
 Habitrol
 Keri
 Lamisil AT
 Maalox
 No-Doz
 Prevacid24HR
 Slow Fe
 Tavist
 Theraflu
 Triaminic
 Vagistat
 Voltaren

Hain Celestial Group 65

Alba Botanica
 AvalonOrganics
 JASON Natural Products
 Queen Helene
 Zia Natural Skincare

Abbott Laboratories 60

AdvantEdge
 EAS-Myoplex
 Ensure
 ZonePerfect

L'Oréal 15

Dermablend
 Garnier
 Kérastase Paris
 L'Oréal Paris
 La Roche-Posay
 Matrix
 Maybelline New York
 MIZANI
 Pureology
 Redken
 SkinCeuticals
 SoftSheen-Carson
 Vichy

Energizer 0

Banana Boat
 Hawaiian Tropic
 Playtex
 Shick

PET CARE



SCORE: 80+

Clorox	100
Ever Clean	
Fresh Step	
Scoop Away	
Bayer	90
Advantage	
K9 Advantix	
Procter & Gamble	90
Eukanuba	
Iams	

Colgate-Palmolive	85
Hill's Prescription Diet	
Hill's Science Diet	
Safeway	85
Priority Pet	

SCORE: 46-79

Novartis Pharmaceutical Corp.	75
Atopica	
Capstar	
Clomicalm	
Deramaxx	
Fortekor	
Interceptor	
Lopatal	
Milbemax	
Onsior	
Panolog	
Prac-tic	
Program	
Sentinel	
PetSmart	60
Authority	
Great Choice	
Sophisticat	

Mars	55
Cesar	
Crave	
Greenies	
Nutro	
Pedigree	
Royal Canin	
The Good Life Recipe	
Whiskas	

SCORE: 0-45

Nestlé Purina

45

Active Senior 7+
Alpo
Beggin'
Beneful
BREEZE
Busy
Cat Chow
Chef Michael's
Deli-Cat
Dog Chow
Fancy Feast
Fit & Trim
Friskies
FROSTY PAWS
Kit & Kaboodle
Kitten Chow
Mighty Dog
Moist & Meaty
Pro Plan
Puppy Chow

Purina ONE
Purina Veterinary Diets
secondnature
Snackin Slices
TBonz
Tidy Cats
Variety Snaps
Whisker Lickin's
Yesterday's News

ENTERTAINMENT

SCORE: 80+

The Walt Disney Co.	100	CBS	90
A&E Television Networks		CW	
ABC Family Channel		Flix	
ABC Television Network		Showtime	
Disney Channel		Simon Schuster	
ESPN		The Movie Channel	
History Channel		Cox Enterprises 📺	90
Lifetime		Cox Communications	
Marvel Entertainment		Cox Digital Solutions	
Miramax Films		Cox Media Group	
Pixar		Cox Target Media	
SOAPnet		Hallmark Cards	90
Toon Disney		Hallmark Channel	
Touchstone Pictures		Starbucks ☕	90
Walt Disney Pictures		Starbucks Hear Music	
Time Warner	100	Time Warner Cable	90
Adult Swim		Road Runner high-speed data	
Boomerang		Viacom	90
Cartoon Network		BET	
Cinemax		CMT	
CNN		Comedy Central	
CW		LOGO	
DC Entertainment		MTV	
HBO		Nick at Nite	
HLN		Nick Jr.	
New Line Cinema		Nickelodeon	
TBS		Paramount	
TCM		Paramount Pictures	
TNT		Spike	
truTV		TeenNick	
Turner Sports		TV Land	
Warner Bros.		Vh1	
AMC Entertainment	90	Comcast	80
AMC Theaters		Xfinity	
Loews Cineplex		Bravo	



CNBC
Comcast Sportsnet
E!
G-4 Videogame TV
Golf Channel
MSNBC
NBC

NBCUniversal
Oxygen
Style Network
Syfy
Telemundo
USA
VERSUS
Weather Channel

SCORE: 46-79

Clear Channel 75
iHeartRadio
Katz Media

DIRECTV 75
Game Show Network
Sirius XM Radio 75
Live Nation 70
House of Blues

SCORE: 0-45

Blockbuster 20
Verizon 20
FiOS TV
Cablevision 15
Clearview Cinemas
Optimum
Harpo 15
Harpo Films
OWN TV
The Oprah Winfrey Show
The Rosie Show
News Corp. 15
20th Century Fox
Blue Sky Studios
Fox
Fuel TV
FX
MyNetworkTV
National Geographic Channel

Regal Entertainment 15
Edwards Theatres
Regal Cinemas
United Artists
DISH Network 0
Martha Stewart Living 0
Everyday Food
Netflix 0
Scripps 0
Trump Organization 0
Miss Teen USA
Miss Universe
Miss USA
Trump Golf

TRAVEL AND LEISURE

SCORE: 80+

American Airlines 	100	Hotel Monaco	
American Eagle		Hotel Palomar	
Caesars Entertainment 	100	Orbitz 	100
Bally's		Adventure Finder	
Flamingo		Away.com	
Grand Biloxi		CheapTickets.com	
Harrah's		eBookers.com	
Harveys Lake Tahoe		GORP	
Horseshoe		HotelClub	
Imperial Palace		Rates To Go	
London Clubs International		Trip.com	
Paris		Starwood Hotels & Resorts	100
Rio		aloft	
Showboat		element	
Tunica Roadhouse		Four Points	
Choice Hotels	100	Le Meridien	
Ascend Collection		Luxury Collection	
Cambria Suites		Sheraton	
Clarion		St. Regis	
Comfort Inn		W Hotels	
Comfort Suites		Westin	
Econo Lodge		The Walt Disney Co.	100
MainStay Suites		Adventures by Disney	
Quality		Aulani	
Rodeway Inn		Disney Cruise Line	
Sleep Inn		Disney Vacation Club	
Suburban Extended Stay Hotel		Disneyland	
Hyatt	100	Walt Disney World Resorts	
Andaz		United Continental Holdings Inc.	100
Grand Hyatt		Continental Airlines	
Hyatt Place		MileagePlus	
Hyatt Regency		United Airlines	
Hyatt Summerfield Suites		United Vacations	
Park Hyatt		Alaska Airlines	90
Kimpton Hotel & Restaurant Group	100	Delta Air Lines	90



JetBlue Airways	90		
Marriott International	90		
AC Hotels by Marriott			
Autograph Collection			
Bulgari Hotels & Resorts			
Courtyard			
EDITION			
Fairfield Inn & Suites			
JW Marriott			
Renaissance			
Residence Inn			
SpringHill Suites			
The Ritz-Carlton			
TownePlace Suites			
MGM Resorts International 	90		
Aria			
Beau Rivage			
Bellagio			
Circus Circus			
Crystals at CityCenter			
Excalibur			
Luxor			
Mandalay Bay			
MGM Grand			
Monte Carlo			
New York-New York			
Vdara			
Southwest Airlines	90		
AirTran			
Virgin America	90		
Wyndham	90		
Baymont Inn & Suites			
Days Inn			
Dream Hotels			
Hawthorn Suites			
		Howard Johnson	
		Knights Inn	
		Microtel Inns & Suites	
		Night Hotels	
		Ramada	
		Super 8 Motel	
		Travelodge	
		TRYP	
		Wingate	
		Wynn Resorts	90
		Encore	
		Wynn Las Vegas	
		Carlson	85
		Carlson Wagonlit Travel	
		Country Inns & Suites	
		Park Inn	
		Park Plaza Hotels & Resorts	
		Radisson Hotels & Resorts	
		US Airways	85
		Dollar Thrifty	80
		Dollar Rent A Car	
		Thrifty Car Rental	
		Expedia	80
		Classic Vacations	
		Egencia	
		Expedia.com	
		ExpediaLocalExpert	
		Hotels.com	
		Hotwire	
		TripAdvisor	
		Venere.com	
		Travel Impressions	80
		TI Gay & Lesbian Travel	

SCORE: 46-79

Sabre Holdings	75
Travelocity	
Hertz	65
Advantage Rent A Car	
Connect	
Donlen	
Simply Wheelz	
InterContinental Hotels	65
Candlewood Suites	
Crowne Plaza	
Holiday Inn	
Holiday Inn Club Vacations	
Holiday Inn Express	
Hotel Indigo	
Staybridge Suites	
Travelport	65
Galileo	
Worldspan	
Avis Budget	60
Avis Rent A Car	

Budget Rent A Car	
Budget Truck Rental	
Hilton Worldwide	60
Conrad	
Doubletree	
Embassy Suites	
Hampton Inn	
Hilton Garden Inn	
Home2	
Homewood Suites	
Waldorf-Astoria	
Royal Caribbean Cruises	60
Azamara Club Cruises	
CDF Croisières de France	
Celebrity Cruises	
Pullmantur Cruises	
Royal Caribbean International	
Enterprise	50
Alamo Rent A Car	
Enterprise Rent-A-Car	
National Car Rental	

SCORE: 0-45




Loews Corp.	35
Host Hotels & Resorts	30
SkyWest	15
Atlantic Southeast Airlines	
ExpressJet Airlines	
Accor	0
Ibis	
Motel 6	
Novotel	
Sofitel	
Studio 6	
Boyd Gaming	0
Blue Chip Casino Hotel Spa	
Borgata Hotel Casino and Spa	
California Hotel Casino	
Delta Downs Racetrack Casino Hotel	
Eldorado Casino	
Fremont Hotel and Casino	
Gold Coast Hotel & Casino	
IP Casino Resort Spa	
Jokers Wild Casino	
Main Street Station Casino Brewery Hotel	
Par-A-Dice Hotel Casino	
Sam's Town Hotel & Gambling Hall	

<i>Suncoast Hotel & Casino</i>	
<i>The Orleans Hotel & Casino</i>	
<i>The Water Club</i>	
<i>Treasure Chest Casino</i>	
<i>Vacations Hawaii</i>	
Las Vegas Sands	0
Four Seasons Hotel Macao	
Sands	
The Palazzo	
The Venetian	
priceline.com	0
Agoda.com	
Booking.com	
TravelJigsaw	
Trump Organization	0
Mar-a-Lago Club	
Trump International Hotel	
Trump International Hotel & Tower	
Trump SoHo	

TECHNOLOGY



SCORE: 80+

Apple	100	XPS 15	
iCloud		eBay	100
iOS		Bill Me Later	
iPad		Half.com	
iPhone		PayPal	
iPod		Shopping.com	
iTunes		StubHub	
Mac		Google 	100
OS X		Android	
QuickTime		Blogger	
Safari		Chrome	
AT&T	100	Gmail	
U-verse		Knol	
Barnes & Noble	100	Orkut	
NOOK		Panoramio	
NOOK Color		Picasa	
NOOK Simple Touch		Picnik	
Cisco Systems	100	SketchUp	
Linksys		YouTube	
Scientific Atlanta		HP	100
WebEx		Compaq	
Corning	100	Snapfish	
Dell 	100	Intuit	100
Adamo		GoPayment	
Alienware		Mint.com	
Inspiron		QuickBooks	
Inspiron Duo		Quicken	
Inspiron R		TurboTax	
Latitude		Kodak	100
OptiPlex		EasyShare	
Precision		Kodak Gallery	
Streak		Microsoft 	100
Studio XPS		Bing	
Vostro		Hotmail	

Internet Explorer	
MSN	
Office	
Skype	
Windows	
Windows Live	
Windows Phone	
Zune	
Sprint Nextel	100
Assurance Wireless	
BB2Go	
Boost Mobile	
Common Cents	
Virgin Mobile	
Symantec	100
Norton 360	
Norton Antivirus	
Norton Internet Security	
Norton Online Backup	
Norton Online Family	
PC Tools	
VeriSign	
Xerox	100
Yahoo!	100
Flickr	
Intel	95
McAfee	
Wind River	
Adobe	90
Acrobat	
AIR	
Connect	
Creative Suite	
Digital Editions	
Dreamweaver	
Flash	
Omniture	
Photoshop	
Amazon.com	90
A9	
IMDb	
Kindle	
Kindle Fire	
Kindle Touch	
CDW	90
LexisNexis	90
Lawyers.com	
Lexmark	90
Perceptive Software	
Motorola Solutions	90
Motorola	
QUALCOMM	90
Sony	90
Alpha	
Bravia	
Handycam	
Sony Tablet	
VAIO	
Texas Instruments	90
TI-Nspire	
Thomson Reuters	90
Checkpoint	
CompuMark	
CS Professional Suite	
Elite	
FindLaw	
Hubbard One	
ONESOURCE	
PPC	
Sweet & Maxwell	
Westlaw	
Comcast	80

SCORE: 46-79

AMD	70
ATI All-in-Wonder	
ATI Theater	
ATI TV Wonder	
Imation	70
Memorex	
TDK	
XtremeMac	
Nokia	70
Ovi	

EarthLink	55
PeoplePC	
T-Mobile	55
CenturyLink Inc.	50
Qwest	
Sawis	

SCORE: 0-45

Acer	35
eMachines	
Gateway	
Packard Bell	
Verizon	20
Alltel	
CloudSwitch	
Terremark Worldwide	
IAC/InterActiveCorp	15
Ask.com	
Chemistry.com	
Citysearch	
CollegeHumor	
Daily Burn	
Dictionary Boss	
Dictionary.com	
Electus	
Excite	
Hatch Labs	
LoveandSeek.com	
Match.com	
OKCupid	
OurTime	
Popular Screensavers	
Pronto.com	
SeniorPeopleMeet.com	
Service Magic	

ShoeBuy.com	
SingleParentMeet.com	
Smiley Central	
Smiley Creator	
The Daily Beast	
Urbanspoon	
Vimeo	
Virgin Media	15
Virgin Broadband	
Liberty Interactive	0
Evite	
Monster	0
HotJobs	
U.S. Cellular	0



NEWSSTAND

SCORE: 80+

American Express	100
Food & Wine	
Travel & Leisure	
The Walt Disney Co.	100
Hyperion Publishing	
Time Warner	100
All You	
Coastal Living	
Cooking Light	
Entertainment Weekly	
Essence	
Fortune	
InStyle	
Money	
People	
Real Simple	
Southern Living	
Sports Illustrated	
Time	
Cox Enterprises 	90
Cox Newspapers	

McGraw-Hill	90
Architectural Record	
Avation Week	
JD Power & Associates	
Macmillan	
Standard & Poor's	
Morningstar	90
Morningstar Advisor Magazine	
New York Times	90
About.com	
The Boston Globe	
The International Herald Tribune	

SCORE: 46-79

UBM	60
Building	
CRN	
EBN	
EE Times	
Farmers Guardian	
Game Developer	

InformationWeek
Internet Evolution
Network Computing
Property Week
Psychiatric Times
Pulse

IT IS LEGAL IN **29** STATES TO FIRE SOMEONE FOR BEING LESBIAN, GAY OR BISEXUAL. IT IS LEGAL IN **34** STATES TO FIRE AN EMPLOYEE FOR BEING TRANSGENDER.

SCORE: 0-45





Gannett	45	Tribune	15
BNQT		<i>Baltimore Sun</i>	
Captivate Network		<i>Chicago Magazine</i>	
Clipper Magazine		<i>Chicago Tribune</i>	
Metromix.com		<i>Daily Press</i>	
Reviewed.com		<i>Los Angeles Times</i>	
ShopLocal.com		<i>Orlando Sentinel</i>	
USA Today		<i>RedEye</i>	
Scholastic	25	<i>Sun Sentinel</i>	
<i>Encyclopedia Americana</i>		<i>The Hartford Courant</i>	
Harpo	15	<i>The Morning Call</i>	
<i>O, The Oprah Magazine</i>		Martha Stewart Living	0
News Corp.	15	<i>Everyday Food</i>	
<i>Barron's</i>		<i>Martha Stewart Weddings</i>	
<i>Dow Jones</i>		<i>Whole Living</i>	
<i>HarperCollins</i>		Washington Post	0
<i>Inside Out</i>		<i>Cable ONE</i>	
<i>MarketWatch</i>		<i>Express</i>	
<i>New York Post</i>		<i>Foreign Policy</i>	
<i>SmartMoney</i>		<i>Kaplan</i>	
<i>The Wall Street Journal</i>		<i>Slate</i>	
Reader's Digest	15	<i>The Root</i>	
<i>Allrecipes</i>			
<i>Birds & Blooms</i>			
<i>Country</i>			
<i>Farm & Ranch Living</i>			
<i>freshHOME</i>			
<i>Reminisce</i>			
<i>Taste of Home</i>			
<i>The Family Handyman</i>			
<i>Weekly Reader</i>			

INSURANCE AND HEALTHCARE



WHEN ASKED ABOUT FACTORS TO CONSIDER WHEN CHOOSING AMONG PRIVATE HEALTHCARE CARRIERS, **82%** OF LGBT ADULTS SAY THAT IT IS IMPORTANT THAT THEIR HEALTH INSURANCE CARRIER PROVIDES DOMESTIC PARTNER COVERAGE IN EMPLOYER-OFFERED PLANS.

Source: Witeck-Combs Communications/Harris Interactive

Aetna	100	UnitedHealthcare	
Aon	100	State Farm	95
Affinity		CIGNA	90
Hewitt Associates		Group Health Permanente	90
Ward Financial Group		Hartford Financial Services	90
Blue Cross Blue Shield of Florida	100	American Maturity	
Comp Options Insurance Company		Humana	90
Health Options		Concentra	
Blue Cross Blue Shield of Minnesota	100	LifeSynch	
Chubb	100	RightSourceRx	
Executive Risk Indemnity Inc.		Kaiser Permanente	90
Executive Risk Specialty Insurance Company		MassMutual Life Insurance	90
Federal Insurance Company		Babson Capital	
Great Northern Insurance Company		Baring Asset	
Northwestern Pacific Indemnity Company		C.M. Life Insurance	
Pacific Indemnity Company		Cornerstone	
Texas Pacific Indemnity Company		MML Bay State Life Insurance	
Vigilant Insurance Company		OpenheimerFunds	
Group Health Cooperative	100	Progressive	90
Group Health Options		Travelers	90
KPS Health Plans		Constitution State Services	
ING	100	Discover Re	
ReliaStar		Northland Insurance	
Security Life of Denver		AIG	85
MetLife 	100	American General	
Nationwide 	100	Chartis	
Allied Insurance		SunAmerica	
CalFarm Insurance		Allstate	85
Colonial County Mutual Insurance		American Heritage Life	
Crestbrook Insurance		Answer Financial	
Depositors Insurance		Castle Key Insurance Company	
DVM Insurance		Deerbrook	
Farmland Mutual Insurance		Encompass	
Nationwide Insurance		Esurance	
Scottsdale Insurance		Lincoln Benefit	
Titan Insurance		CNA Insurance	85
Veterinary Pet Insurance 		Harvard Pilgrim Health Care	85
Victoria Insurance		HCSC	85
Western Heritage Insurance		Blue Cross Blue Shield of IL	
Prudential 	100	Blue Cross Blue Shield of NM	
Sun Life Financial	100	Blue Cross Blue Shield of OK	
MFS Investment Management		Blue Cross Blue Shield of TX	
TIAA-CREF	100	Dearborn National	
UnitedHealth Group	100	GHS Property and Casualty	
Evercare		Insurance Company	
Golden Rule		Hallmark Services Corporation	
Optum		HCSC Insurance Services Company	
		Health Care Service Corp.	

MedConnect, LLC	
MEDecision	
TMG Health, Inc	
New York Life	85
Principal Financial	85
The Principal	
WellPoint	85
Anthem Blue Cross	
Anthem Blue Cross and Blue Shield	
Blue Cross and Blue Shield of Georgia	

SCORE: 46-79

Unum	70
Colonial Life	
Paul Revere	
Provident	
Quest Diagnostics	65
Selective Insurance	65
Zurich	65
21st Century Insurance	
Farmers	

SCORE: 0-45

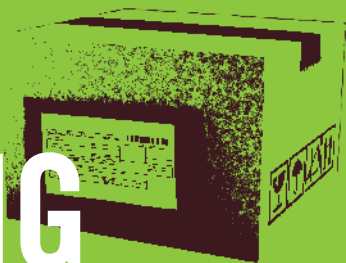
Vision Service Plan	45
Guardian Life	35
Berkshire Life	
Park Avenue Securities	
RS Investment Management	
AFLAC	30
CUNA Mutual Insurance	30
Genworth	30
Owens & Minor	25
MediChoice	
AEGON	20
Merrill Lynch Life Insurance	
Monumental	
Stonebridge	
Transamerica	
Berkshire Hathaway	15
Central States Indemnity	
GEICO	
General Re	
National Indemnity	
Hanover Insurance	15
Citizens Insurance Company of America	
Citizens Management	
Opus Investment Management	

Empire BlueCross BlueShield	
UniCare	
Assurant	80
Health Net	80
Managed Health Network	
John Hancock	80
Manulife	
Pacific Mutual	80
Pacific Life & Annuity	
Pacific Life Insurance	

Allianz Life	60
Blue Cross Blue Shield of North Carolina	60
Lincoln National	60
Mutual of Omaha Insurance	60
American Family Insurance Group	55
Northwestern Mutual	50
Russell Investments	

Auto-Owners Insurance	0
Auto-Owners Insurance Company	
Auto-Owners Life Insurance Company	
Home-Owners Insurance Company	
Owners Insurance Company	
Property-Owners Insurance Company	
Southern-Owners Insurance Company	
CNO Financial	0
40186	
Bankers Life	
Colonial Penn	
Conseco	
Washington National	
Liberty Mutual	0
America First Insurance	
Colorado Casualty	
Golden Eagle Insurance	
Indiana Insurance	
Liberty Agency Underwriters	
Liberty Northwest	
Montgomery Insurance	
Ohio Casualty	
Peerless Insurance	
Safeco Insurance	
USAA	0

SHIPPING



SCORE: 80+

UPS

100

SCORE: 46-79

FedEx

75

SCORE: 0-45

DHL

15

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Americans Overwhelmingly Support Executive Action to Ban Anti-LGBT Workplace Discrimination

WHAT DO ALL OF THESE GROUPS HAVE IN COMMON?

conservatives RURAL
20-somethings RESIDENTS
AFRICAN REPUBLICANS
AMERICANS liberals LATINOS
DEMOCRATS suburbanites seniors
ATHEISTS WHITES BORN AGAIN
city dwellers CHRISTIANS

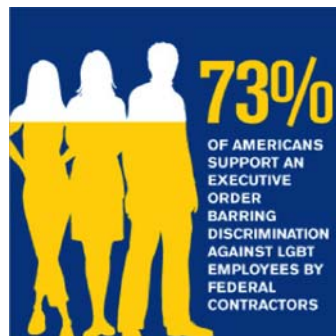
HRC
HUMAN RIGHTS CAMPAIGN

THEY ALL SUPPORT AN EXECUTIVE ORDER BANNING DISCRIMINATION AGAINST LGBT PEOPLE BY FEDERAL CONTRACTORS.

HRC.ORG/EXECUTIVEORDER

It's not often that an issue is supported by everyone from born again Christians to liberals to rural residents to Catholics. It goes to show the tremendous popularity of a common-sense [Executive Order that would ban discrimination by federal contractors](#) ([/resources/entry/an-important-step-toward-workplace-equality-an-executive-order-on-federal-c](#)) on the basis of sexual orientation or gender identity.

A new poll put out by HRC shows overwhelming support for this kind of executive order. 73 percent of 2012 likely voters favor such an order and support remains strong regardless of age, race, education, political ideology, and a number of other demographics.



When asked: "As you may know, under current federal law and in many states, gay, lesbian, bisexual and transgender people are NOT protected from discrimination in the work place. Would you support or oppose a policy that required companies that do business with the federal government to not discriminate against gay, lesbian, bisexual or transgender people in employment?" 73 percent said they supported the policy, 9 percent opposed the policy and 9 percent were unsure.

One striking result of the poll is the strength of support for an Executive

Order (EO) across usually divergent demographic groups:

	Favor	Oppose	Don't Know
Liberals	90	7	3
Moderates	77	15	8
Conservatives	60	28	12
Democrats	86	10	4
Independents	70	22	9
Republicans	61	24	15
Men	70	23	7
Women	75	14	11
18-29 year olds	69	27	4
30-49 year olds	79	11	10
40-49 year olds	75	16	9
50-64 year olds	70	19	10
65+ year olds	73	18	9
College educated	73	18	9
Non-college educated	73	18	9
White	72	18	10
Black	80	16	4
Hispanic	72	22	6
Protestant	68	22	10
Catholic	77	16	7
No religion	85	8	7
Born Again Christian	64	26	11
Christian, Not Born Again	77	16	8
Big city resident	76	18	6
Rural resident	73	18	9
Suburban	76	11	13

The poll also showed voters are unaware that current federal law does not prohibit discrimination on the basis of sexual orientation with 87 percent believing that kind of discrimination to be illegal and only 5 percent correctly knowing that it remains legal.

Policies of non-discrimination are among the best practices of Corporate America. [HRC's Corporate Equality Index \(/issues/workplace\)](#) reveals 86 percent of Fortune 500 companies have their own policies against sexual orientation non-discrimination and nearly half cover gender identity. Just a decade ago, 61 percent had sexual orientation policies and only three percent covered gender identity.

Under a standing Executive Order from the Johnson administration, government contractors are barred from discriminating on the basis of race, color, religion, sex or national origin. HRC first proposed that the administration add sexual orientation and gender identity to that list in our "[Blueprint for Positive Change \(/issues/pages/administrative-advocacy\)](#)" – a series of policy recommendations we presented to the Obama administration shortly after the election in November 2008. As

part of a coalition advocating for this order, HRC has met with officials across the administration including at the White House to advocate the President take this important step.

The national survey of 800 likely voters was conducted for HRC by Greenberg Quinlan Rosner Research from November 9 – 13, 2011. It has a margin of error of +/- 3.46 percentage points.

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Polls Show Huge Public Support for Gay and Transgender Workplace Protections

Americans Support a Federal Law Protecting Workers from Discrimination

Jeff Krehely May 2011

A new poll from the Center for American Progress shows that the American public strongly supports workplace nondiscrimination protections for gay and transgender people.* This support comes at a time when new research shows just how much discrimination and harassment this population faces on the job.

Greenberg Quinlan Rosner Research fielded the poll of likely 2012 voters in the first and second weeks of April 2011. Nearly three-fourths of voters (73 percent) support protecting gay and transgender people from workplace discrimination. This support cuts across political party affiliation, with 81 percent of Democrats, 74 percent of independents, and 66 percent of Republicans supporting workplace nondiscrimination laws for gay and transgender people.

Catholic (74 percent support) and senior citizen (61 percent support) voters are also clearly in favor of employment protections for gay and transgender people. Even among voters who identify themselves as feeling generally unfavorable toward gay people, a full 50 percent support workplace nondiscrimination protections for the gay and transgender population.

Since at least the early 1980s, a majority of Americans have supported equal rights and opportunities for gay people in the workplace. Polling questions about transgender workers have only been asked recently. But the CAP poll shows that voters support transgender protections at almost the same rate they support gay protections. Seventy-five percent of likely voters say they favor “protecting gay and lesbian people from discrimination in employment,” while 73 percent say they favor these protections for “gay, lesbian, and *transgender* people.” The responses are essentially identical.

The survey also found that 9 out of 10 voters erroneously think that a federal law is already in place protecting gay and transgender people from workplace discrimination. A similar

* In this column, the term gay is used as an umbrella term for people who identify as lesbian, gay, or bisexual.

number of voters also did not know whether their state had a gay and transgender workplace discrimination law. These numbers show the huge disconnect between voter perceptions about workplace protections and the realities that gay and transgender people face on the job.

As CAP recently reported, studies show that anywhere from 15 percent to 43 percent of gay people have experienced some form of discrimination and harassment at the workplace. An astonishing 90 percent of transgender people report some form of harassment or mistreatment on the job. Nearly half of transgender people also report experiencing an adverse job outcome because of their gender identity. This includes being passed over for a job (44 percent), getting fired (26 percent), and being denied a promotion (23 percent).

A federal law—such as the Employment Non-Discrimination Act, or ENDA, which has been introduced in both houses of Congress—is needed to bring uniform protections to all American workers, gay or straight, transgender or not. If passed, gay and transgender Americans would have similar workplace protections currently afforded to women, people of color, veterans, seniors, and the disabled.

A confusing patchwork of state and local laws and regulations currently offer some protections to gay and transgender workers. Many of these policies only apply to gay people, while some are inclusive of transgender employees. Even with these policies, however, a federal law such as ENDA is needed to provide full and adequate protections to gay and transgender Americans.

All of our nation's workers deserve to have a fair chance at earning an honest living and supporting themselves and their families. Congress should pass ENDA to make sure that gay and transgender people across the country have a fair shot at success in the workplace.

Policies that create fair workplaces have real, positive impacts on people's lives, and they reflect the best of our country's ideal of granting people equal treatment under the law.

Jeff Krehely is Director of the LGBT Research and Communications Project at the Center for American Progress.

Center for American Progress



Small Businesses Support Fairness

CAP Survey Finds Owners Back Employment Non-Discrimination Act



SOURCE: Flickr/[House Committee on Education and the Workforce](#)

Rep. Barney Frank (D-MA) testifies at a hearing on the Employment Non-Discrimination Act on June 16, 2009. Rep. Frank introduced ENDA in the House of Representatives earlier this year, where it has 153 co-sponsors. A recent CAP poll finds support for the legislation among small businesses.

By **Crosby Burns, Jeff Krehely** | October 5, 2011

A new Center for American Progress poll shows that most small businesses in America support workplace discrimination protections for people who are gay or transgender.[1]

The poll shows that 63 percent of small businesses support the Employment Non-Discrimination Act, or ENDA, which would provide American workers with federal protections against workplace discrimination on the basis of sexual orientation and gender identity.[2] Only 15 percent of small-business owners expressed opposition to ENDA. Meanwhile, a CAP poll from earlier this year showed that 73 percent of likely voters in 2012 support legislation to combat gay and transgender discrimination in the workplace, including a majority of self-identified independent and Republican voters.

CAP previously documented that people who are gay or transgender face **high rates of discrimination** in the workplace. Such discrimination leads to higher unemployment rates for gay and transgender people, and it heaps unnecessary costs on business by pushing away otherwise qualified employees from employment simply because they are gay or transgender. ENDA would help combat employment discrimination against the gay and transgender workforce, which would also lead to greater employment stability for this population and reduce inefficient discriminatory hiring practices among employers.

Members in both chambers of Congress introduced ENDA legislation earlier this year. Sen. Jeff Merkely (D-OR) introduced ENDA in the Senate, where it has 41 co-sponsors. Congressman Barney Frank (D-MA) introduced ENDA in the House of Representatives, where it has 153 co-sponsors. Twenty-one states and the District of Columbia currently prohibit public and private employment discrimination on the basis of sexual orientation. Fifteen states and the District of Columbia also prohibit discrimination based on gender identity. Further, 87 percent of **Fortune 500 businesses** prohibit sexual orientation discrimination and about half prohibit gender identity discrimination.

But no federal law—such as ENDA—currently provides gay and transgender workers the same workplace protections currently afforded to women, veterans, and people of color. Until Congress passes ENDA, it will remain legal in a majority of states to fire someone based on their sexual orientation or gender identity.

And despite the pressing need to pass this important legislation, a robust lobby of extreme right-wing organizations continues to oppose ENDA. Based simply on their dislike and fear of gay and transgender people, these groups work to spread a wide range of lies about gay and transgender people, the discrimination they face, and the impact ENDA would purportedly have on the business community.

A frequently used myth trumpeted by these groups is that ENDA would be a burden on small businesses. Ahead of the September 2009 House

hearing on ENDA, Focus on the Family sent a [letter](#) to all House members denouncing the proposed legislation partly based on the untrue claim that “ENDA will ... increase compliance costs for businesses—costs that small business can ill-afford, particularly during this economic downturn.”

Results from the CAP poll, however, reveal three crucial facts that dispel this myth.

First, a clear majority of small businesses already have sexual orientation and gender-identity-inclusive nondiscrimination policies. Seven out of 10 small businesses prohibit discrimination on the basis of sexual orientation, and 6 out of 10 small businesses already prohibit discrimination on the basis of gender identity. If these policies were costly, why would clear majorities of small businesses already have them on their books?

Second, ENDA only applies to businesses with 15 or more employees, which are significantly more likely to already have gay-and-transgender-inclusive nondiscrimination policies compared to businesses with fewer than 15 employees. Whereas 64 percent of small businesses with 3 to 14 employees prohibit discrimination based on sexual orientation, 77 percent of small businesses with 15 or more employees do so. ENDA would not impact the smallest of small businesses, and of those it would apply to, only a small minority fails to prohibit discrimination against gay and transgender workers.

Lastly, only a handful of small businesses cite costs as a reason for not prohibiting discrimination against gay and transgender employees. Of the few small businesses that do not have gender-identity-inclusive nondiscrimination policies, only 4 percent cited costs as a reason they did not prohibit discrimination against transgender employees. Further, of the few small businesses that do not have sexual-orientation-inclusive nondiscrimination policies, a mere 2 percent cited costs as a reason they did not prohibit discrimination against gay employees.

Costs were clearly not a factor for these businesses when deciding whether or not to incorporate sexual orientation and gender identity into existing nondiscrimination policies. Nor for that matter were moral or religious beliefs. Of the few small businesses that do not have inclusive nondiscrimination policies, only 4 percent cited moral or religious beliefs as a reason for not prohibiting discrimination against transgender employees. Instead, these businesses said that they never thought to adopt these policies or that they did not have gay or transgender employees currently in their workplace.

As the debate over ENDA continues, some right-wing conservatives are likely to continue to assert ENDA’s alleged burden on small businesses. But small businesses largely support fairness in the workplace for gay and transgender employees, and they report virtually no cost issues with incorporating sexual orientation and gender identity into their nondiscrimination policies. Claims such as “ENDA will impose costs on small businesses” are patently false.

ENDA’s premise is simple. It ensures nobody is forced out of a job because they are gay or transgender. It also makes our businesses more competitive by ensuring companies are hiring the best and the brightest rather than pushing away employees based on personal characteristics irrelevant to job performance such as sexual orientation and gender identity. What ENDA does not do, however, is place a financial burden on businesses, small or large.

Small-business owners support workplace fairness. Likely 2012 voters support workplace fairness. It is time for our policymakers to follow suit.

Crosby Burns is Special Assistant for LGBT Progress and Jeff Krehely is Director of the LGBT Research and Communications Project.

Notes

[1]. In this column, the term "gay" is used as an umbrella term for people who identify as lesbian, gay, or bisexual.

[2]. Small businesses were defined as businesses that employ 3 to 100 employees.

See also:

- [Interactive Quiz: Gay and Transgender \(In\)equality in the Workplace](#) by Crosby Burns
- [Gay and Transgender People Face High Rates of Workplace Discrimination and Harassment](#) by Crosby Burns and Jeff Krehely
- [Polls Show Huge Public Support for Gay and Transgender Workplace Protections](#) by Jeff Krehely

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We are a national LGBT organization dedicated to a simple idea
All Americans deserve the freedom to build a successful career without fear of harassment or discrimination because of their sexual orientation or gender identity.

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Polling Shows Strong Support for ENDA

During the summer of 2011, the Center for American Progress (CAP) released a new public opinion poll showing that the American public strongly supports workplace nondiscrimination protections for lesbian, gay, bisexual and transgender (LGBT) people.

Greenberg Quinlan Rosner Research fielded the CAP poll of likely 2012 voters in the first and second weeks of April 2011, and support for ENDA is striking: Nearly three-fourths of voters (73 percent) support protecting gay and transgender people from workplace discrimination. This support cuts across political party affiliation, with 81 percent of Democrats, 74 percent of independents, and 66 percent of Republicans supporting workplace nondiscrimination laws for LGBT people.

[Jeff Krehely of CAP writes](#) that the poll shows that Catholic (74 percent support) and senior citizen (61 percent support) voters are also clearly in favor of workplace protections for LGBT people. Even among voters who identify themselves as feeling generally unfavorable toward gay people, a full 50 percent support workplace nondiscrimination protections for the gay and transgender population.

A majority of Americans have supported equal rights and opportunities for gay people in the workplace since polls as early as the 1980's. Polling questions about transgender workers have only been asked recently. However, the 2011 CAP poll shows that voters support transgender protections at almost the same rate they support gay protections. Seventy-five percent of likely voters say they favor "protecting gay and lesbian people from discrimination in employment," while 73 percent say they favor these protections for "gay, lesbian, and transgender people." The responses in the CAP poll are essentially identical, and demonstrate strong support for a fully inclusive ENDA.

The survey also found that nine of out ten voters mistakenly believe that a federal law is already in place protecting LGBT people from workplace discrimination. These numbers show the huge disconnect between voter perceptions about workplace protections and the realities that LGBT people face on the job. That is why Freedom to Work is launching a Speakers Bureau to change hearts and minds and grow support for workplace equality and the ENDA. [You can read more about joining our Speakers Bureau.](#)

1

NEWS AND BLOG POSTS

['Rank & File' Union Endorses ENDA Executive Order, Washington Blade, October 6, 2011](#)

[Lambda Legal Sues College for Discrimination Against Lesbian Teacher, San Diego Gay and Lesbian News, September 7, 2011](#)

[Harkin Endorses Executive Order Barring LGBT Job Bias, Washington Blade, May 16, 2011](#)

[Gay Cuyahoga County Worker Wins Federal Ruling on Bias Lawsuit, The Plain Dealer, April 26, 2011](#)

[A Game Plan for ENDA: Transgender Inclusive Senate Hearings Would Build a Pathway to Future Success, MetroWeekly, March 31, 2011](#)

[Mississippi Gay Officer Reinstated, The Advocate, March 29, 2011](#)

[President Obama Strengthens ENDA by Rejecting DOMA, Bilerico, February 26, 2011](#)

[TowleRoad Interview: An Executive Order Banning Employment Discrimination](#)

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REPORTS

[New Study by the Williams Institute: "Documented Evidence of Employment Discrimination & Its Effects on LGBT People" \(July 2011\)](#)

[Center for Work-Life Policy Study: "The Power of Out" \(July 2011\)](#)

["Injustice at Every Turn: A Report of the National Transgender Discrimination Survey" \(2011\)](#)

"RT @EqualandProud: @FreedomtoWork Tico, keep the pressure on the @BarackObama campaign to do the right thing & sign an executive ord
...—freedomtowork



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GREENBERG QUINLAN ROSNER RESEARCH

April 19, 2011

Taking the Next Step

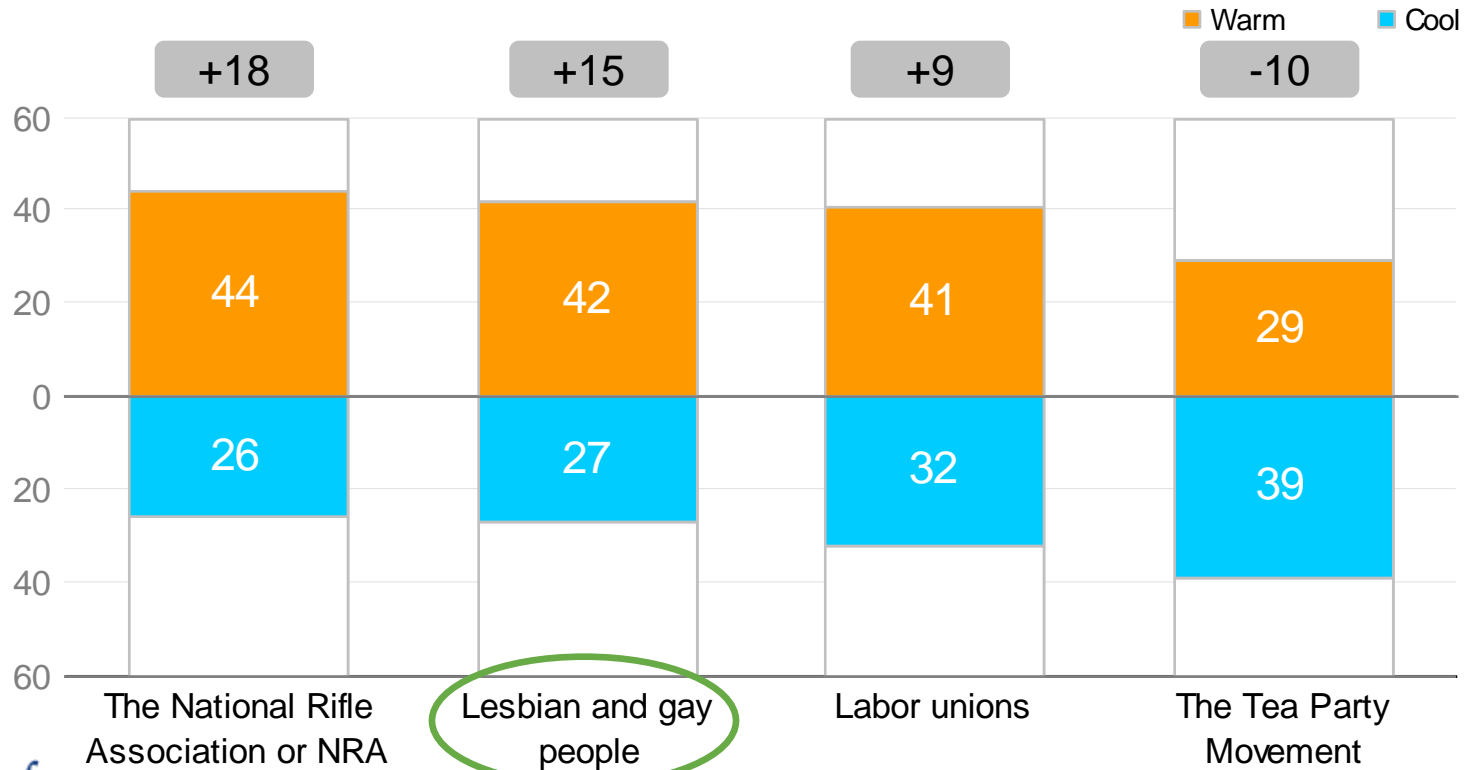
Survey of Voter Attitudes Toward Discrimination and Marriage

Survey Methodology

- National Survey of 811 Likely 2012 Voters
 - Conducted April 4-10, 2011
 - Carries a margin of error of +/- 3.44 at the 95% confidence level

Acceptance of LGBT People

Now, I'd like to rate your feelings toward some people and organizations, with one hundred meaning a VERY WARM, FAVORABLE feeling; zero meaning a VERY COLD, UNFAVORABLE feeling; and fifty meaning not particularly warm or cold. You can use any number from zero to one hundred, the higher the number the more favorable your feelings are toward that person or organization. If you have no opinion or never heard of that person or organization, please say so.



Acceptance in the Work Place

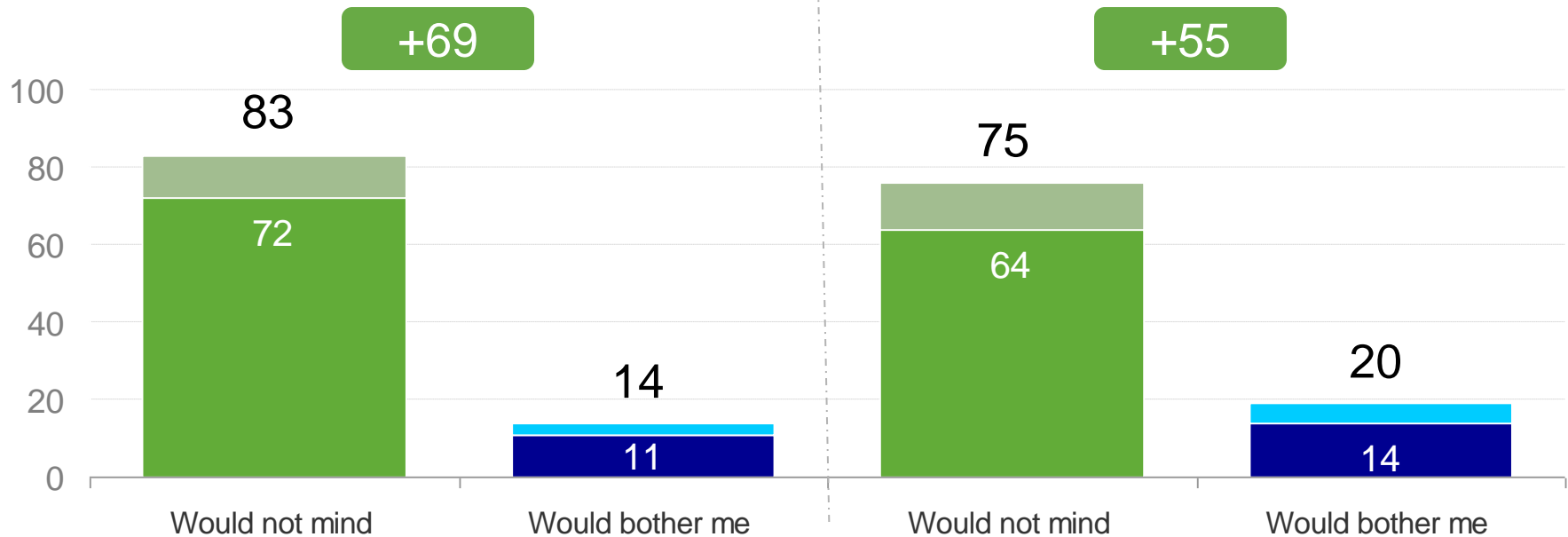
Now I'm going to read you some pairs of statements. As I read each pair, please tell me whether the *FIRST* statement or the *SECOND* statement comes closer to your own views, even if neither is exactly right.

Statement 1: *I would not mind working side-by-side with a gay or lesbian individual.*

Statement 2: *It would bother me working side-by-side with a gay or lesbian individual.*

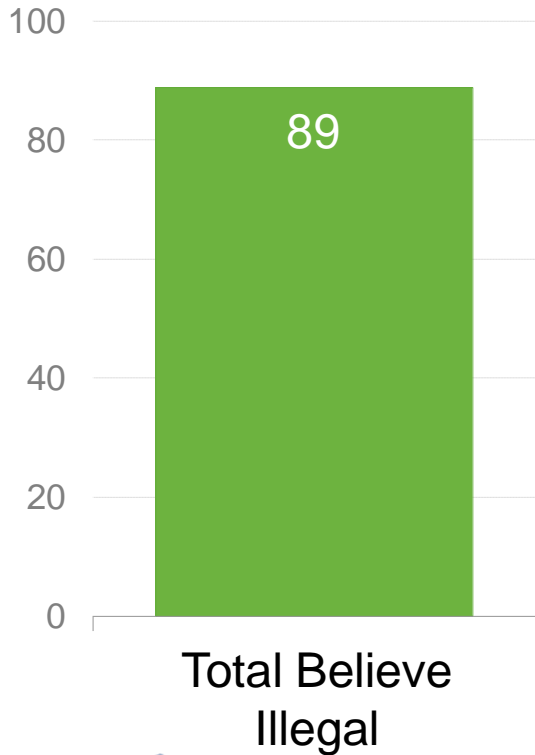
Statement 1: *I would not mind working side-by-side with a transgender individual.*

Statement 2: *It would bother me working side-by-side with a transgender individual.*

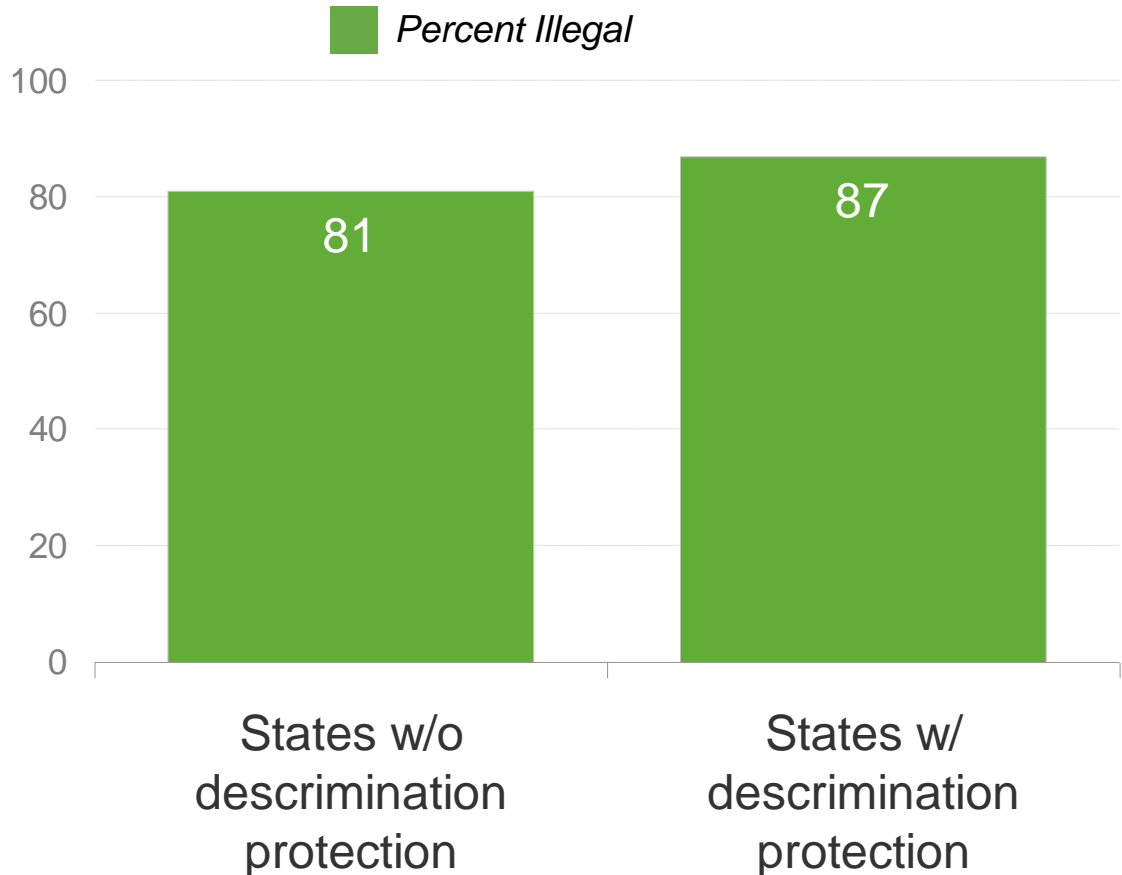


Ignorance of Current Law

To the best of your knowledge, is it legal or illegal under federal law to fire someone because they are gay or lesbian?

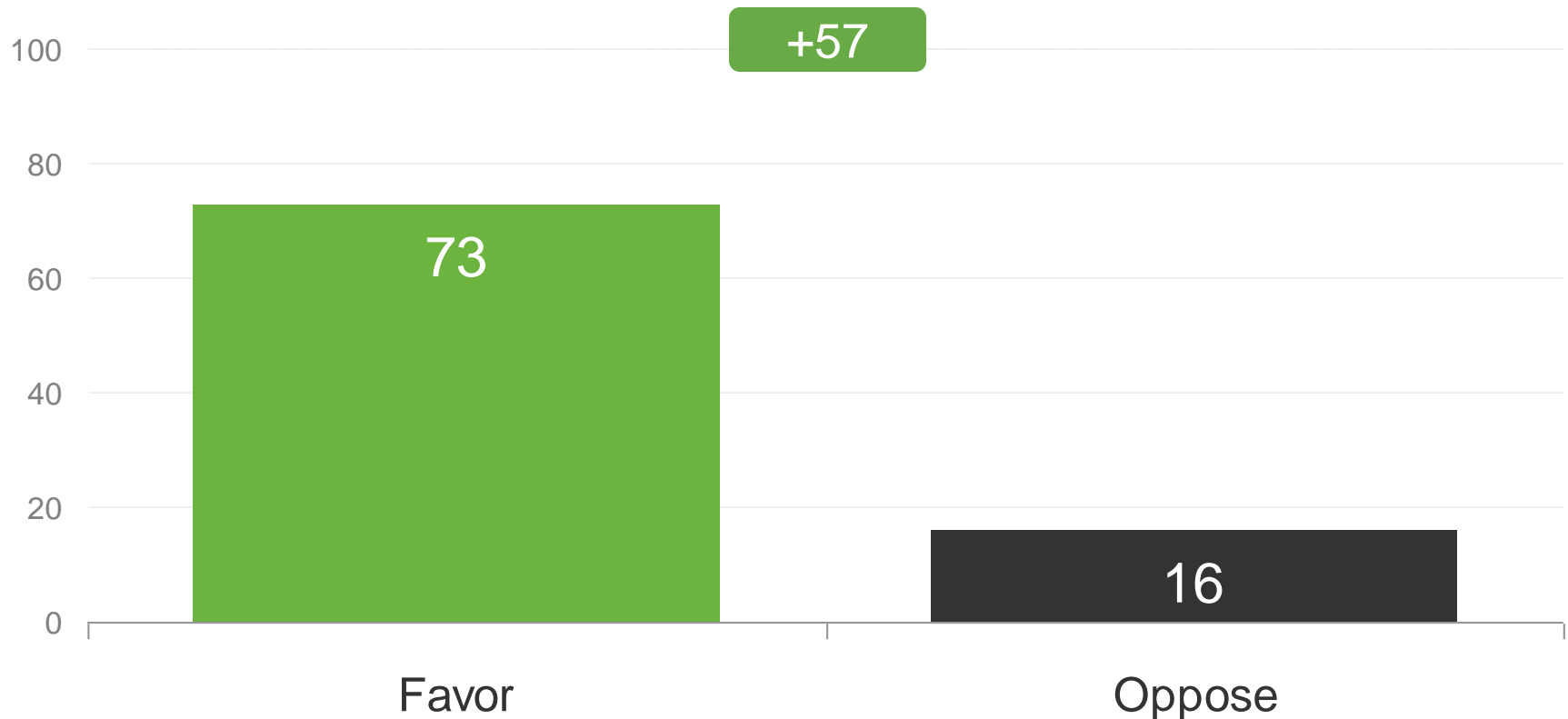


To the best of your knowledge, is it legal or illegal under STATE law in (RESPONDENT'S STATE) to fire someone because they are gay or lesbian?



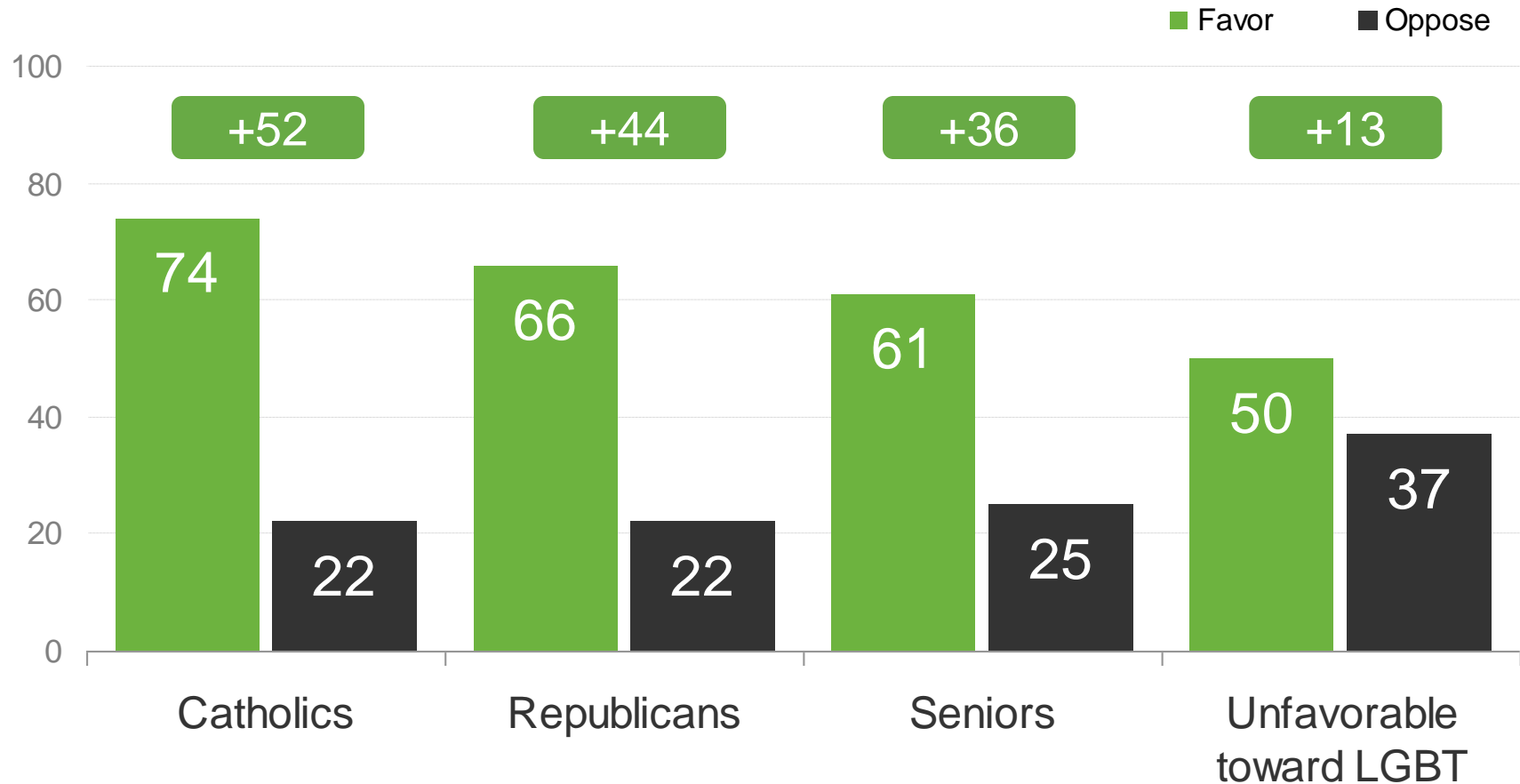
Near Unanimous Support for Discrimination Protection

Do you favor or oppose protecting gay, lesbian (and transgender) people from discrimination in employment?



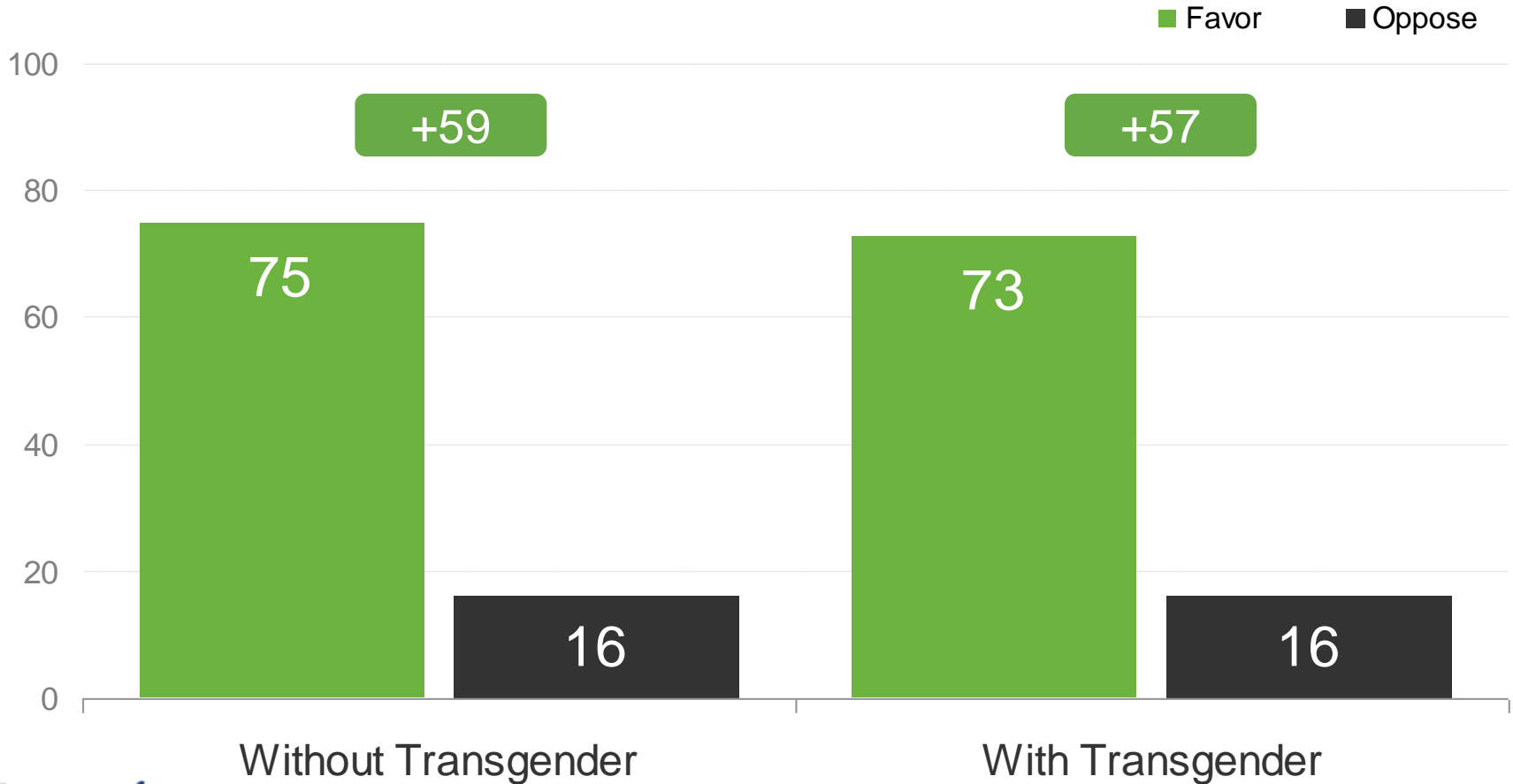
Support among Republicans, Seniors, Faithful, and even Voters Hostile toward Lesbian and Gay People

Do you favor or oppose protecting gay, lesbian (and transgender) people from discrimination in employment?



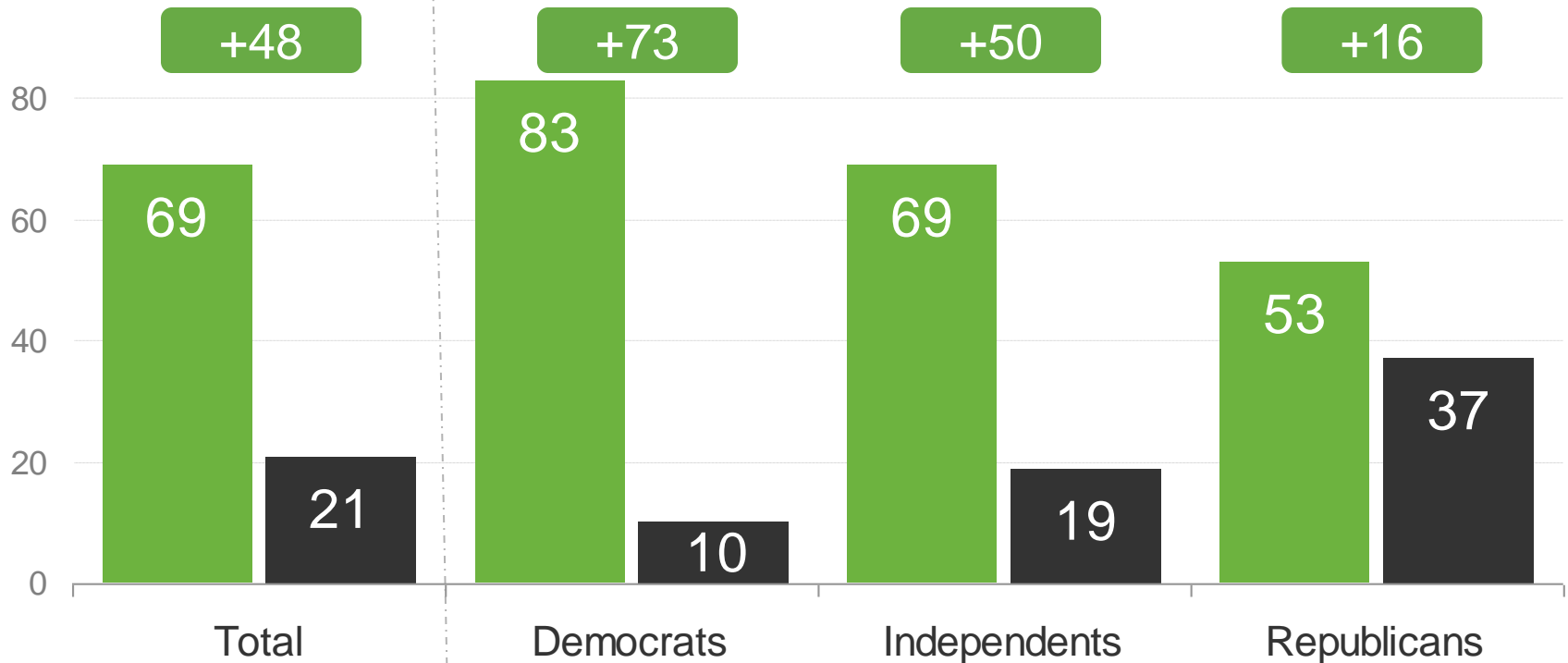
Transgender Issue is Irrelevant to Support for Anti-Discrimination Law

Do you favor or oppose protecting gay, lesbian (and transgender) people from discrimination in employment?



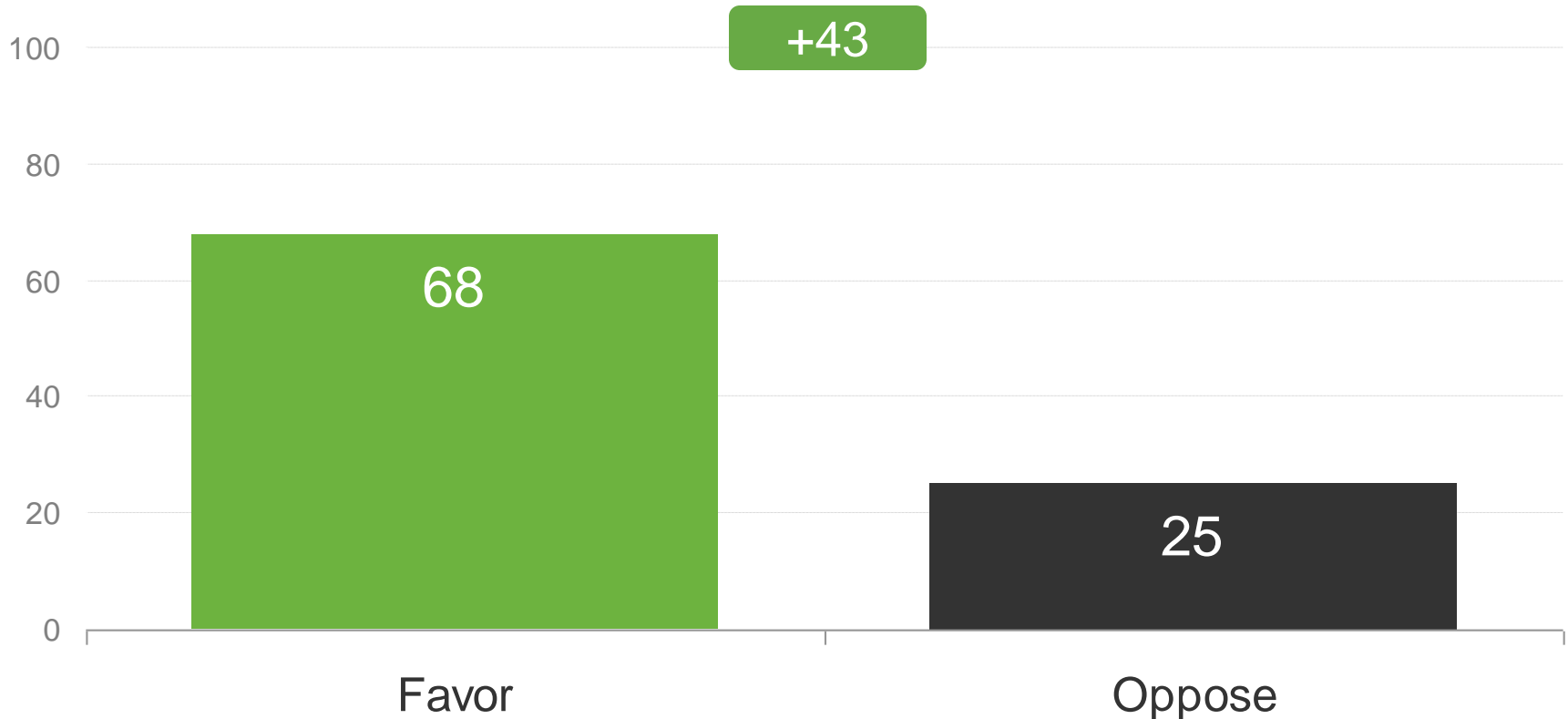
Strong Bi-Partisan Support for Executive Order

The President has the authority to require all companies doing business with the federal government to adopt work place policies that protect employees from discrimination. Current executive orders protect employees on the basis of race, gender and religion among other things. Would you favor or oppose the President requiring all companies doing business with the federal government to adopt policies protecting gay, lesbian and transgender people from discrimination in the workplace and employment?



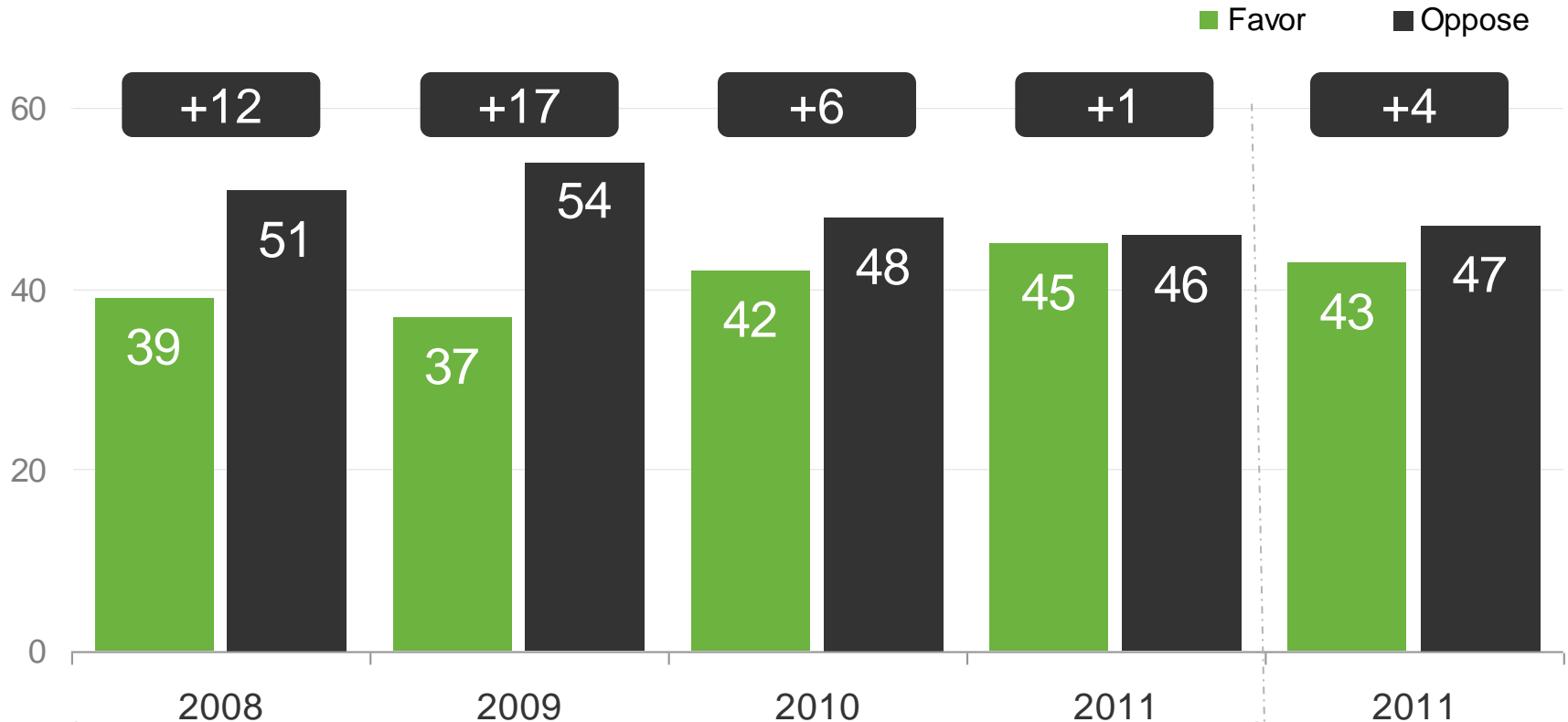
Voters Applaud End of “Don’t Ask, Don’t Tell”

Federal law will soon allow openly gay men and women to serve in the military. Do you favor or oppose this policy?



Growing Support for Marriage

Do you favor or oppose allowing gay and lesbian couples to marry legally?



Yearly PEW Averages

CAP/
GQRR



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Small Businesses Support Fairness

CAP Survey on LGBT Equality in Government Contracting

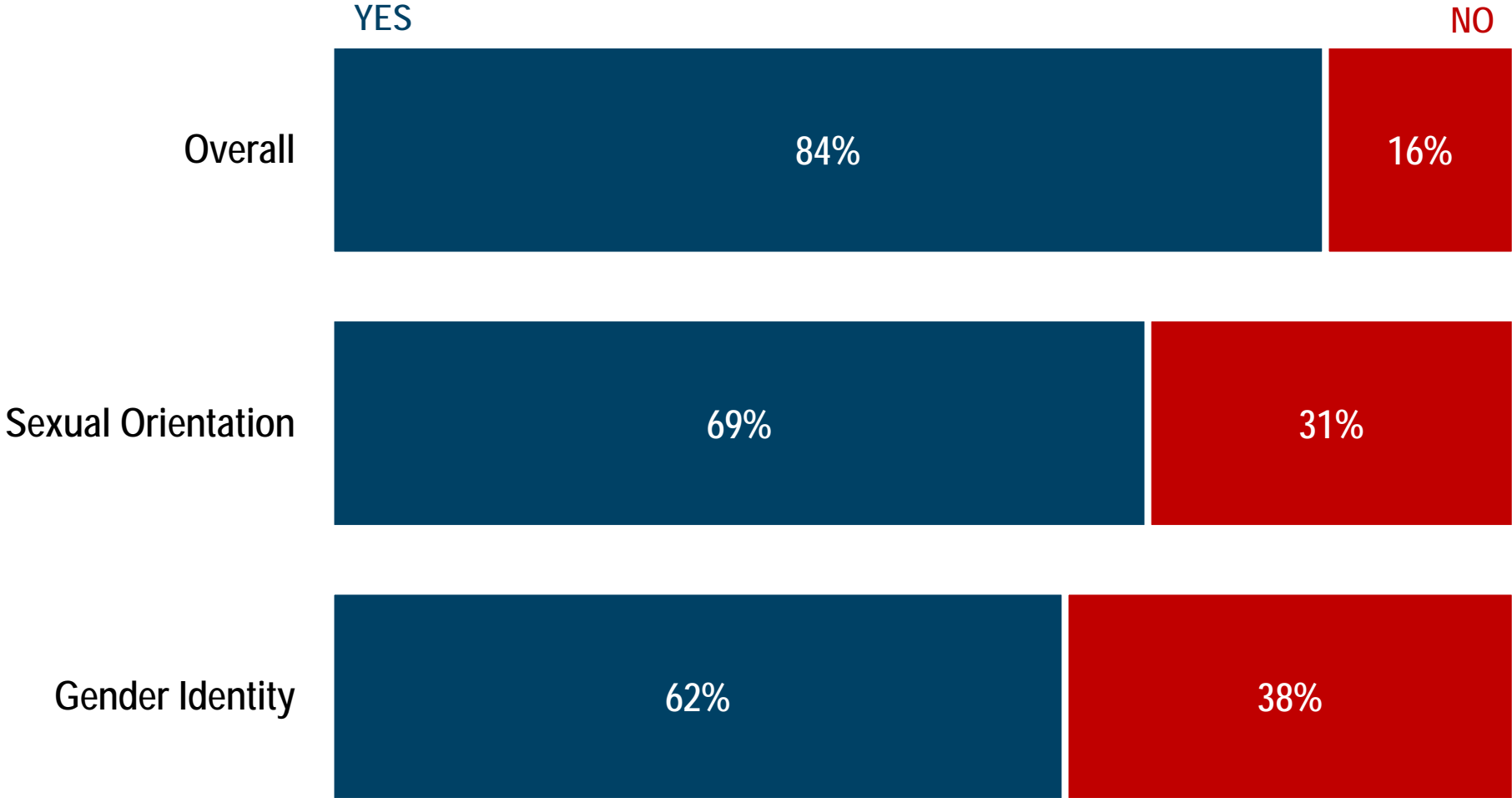
September 13, 2011

Methodology

- **Online survey of 302 small business owners nationwide with a margin of error of 5.6% on the full sample.**
 - **GROUP A:** States that have outlawed employment discrimination on the basis of sexual orientation and gender identity.
 - California, Colorado, District of Columbia Hawaii, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington
 - **GROUP B:** States with no employment protections for sexual orientation and gender identity.
 - Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia and Wyoming
 - **GROUP C:** States that only cover sexual orientation – and not gender identity – in their non-discrimination laws; or whose fully inclusive non-discrimination protections have not gone into effect.
 - Connecticut, Delaware, Maryland, Massachusetts, Nevada, New Hampshire New York and Wisconsin

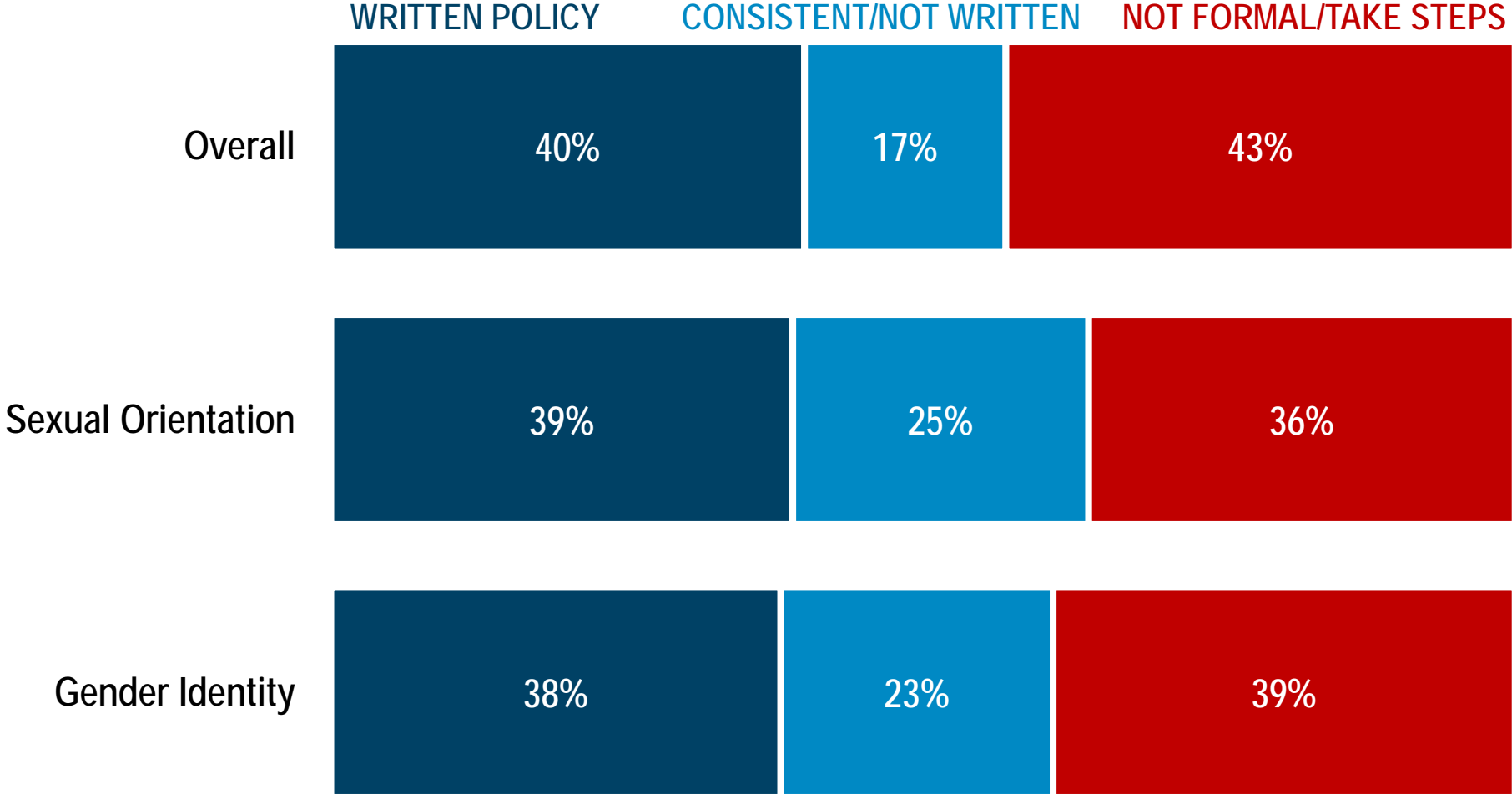
About twice as many small businesses fail to take steps to prohibit discrimination based on sexual orientation as fail to take steps to prohibit discrimination overall.

Does your business take steps to prohibit discrimination on the basis of _____?



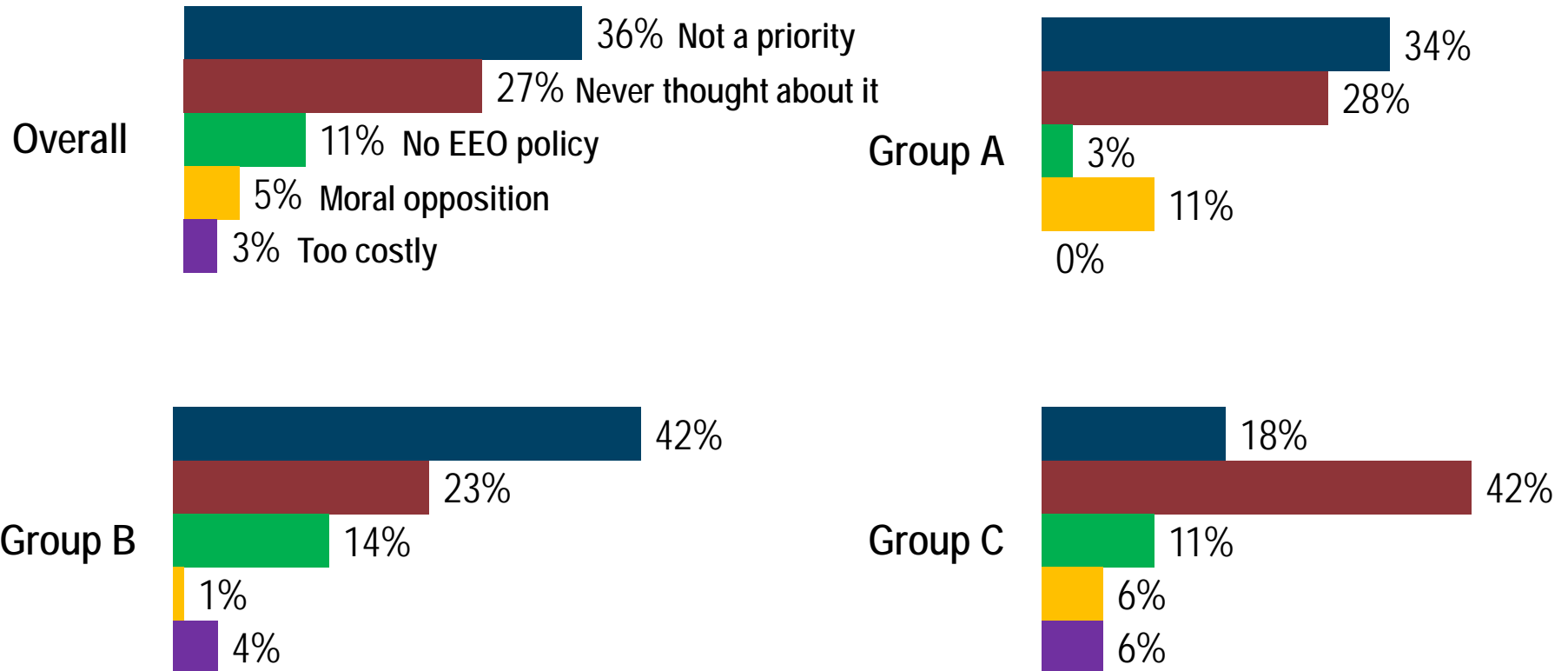
But there are just as many small businesses that have a written policy on sexual orientation discrimination as have a policy on discrimination overall.

Which of the following best describes your company's _____ nondiscrimination policy?



Regardless of which group of states a small business operates in, moral opposition and cost are not major reasons for not taking steps against discrimination.

Why does your company not take steps to ensure non-discrimination in your workplace?



“It is the right thing to do” is far and away the top reason small business owners cite for taking steps against discrimination on the basis of sexual orientation.

Why did your company begin to take steps to ensure that employees are not discriminated against on the basis of sexual orientation/gender identity?...Why does or would your company offer health benefits to same-sex domestic partners?

	“Sexual Orientation”	“Gender Identity”	Domestic Partner Benefits
It is the right thing to do	82%	79%	71%
It is good for business	26%	29%	22%
Helps recruit/retain qualified employees	24%	23%	33%
Helps avoid lawsuits	21%	22%	7%
State or local law or policy	17%	17%	10%
Reduces job turnover	10%	10%	13%
Employees asked for it	2%	2%	20%

Hardly any small business owners don't include sexual orientation or gender identity in their nondiscrimination policy or refuse to offer health benefits to same-sex couples because of costs.

Why does your company not include...in your company's nondiscrimination or Equal Employment Opportunity policy?/ Why would your company not offer health insurance benefits to same-sex domestic partners?

	“Sexual Orientation”	“Gender Identity”	Domestic Partner Benefits
Never thought to do so	22%	34%	11%
Don't have LGBT employees/ employees in same-sex partnership	30%	33%	58%
Not a priority	35%	30%	12%
Moral or religious beliefs	9%	7%	16%
Think it will be too costly	2%	4%	4%
Don't have a nondiscrimination or EEO policy	16%	10%	N/A

The vast majority of small business owners say there were no costs associated with either implementing or maintaining their nondiscrimination policies.

Were there costs associated with _____ of your company's _____ nondiscrimination policy?

NO

YES

Implement

67%

25%

SEXUAL ORIENTATION

Maintain

80%

12%

- 65% of these small business owners say the implementation cost was less than 1% of annual operating costs, and 36% say it was less than 0.1%

- 68% of these small business owners say the maintenance cost was less than 1% of annual operating costs, and 38% say it was less than 0.1%

Implement

68%

22%

GENDER IDENTITY

Maintain

76%

14%

- 76% of these small business owners say the implementation cost was less than 1% of annual operating costs, and 28% say it was less than 0.1%

- 86% of these small business owners say the implementation cost was less than 1% of annual operating costs, and 43% say it was less than 0.1%

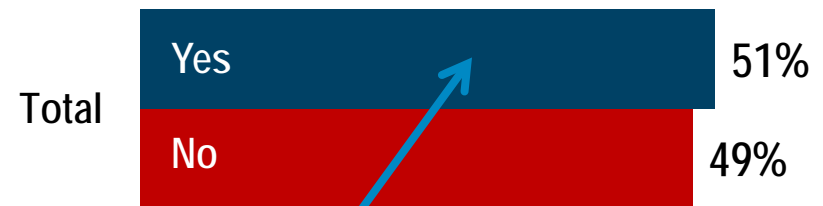
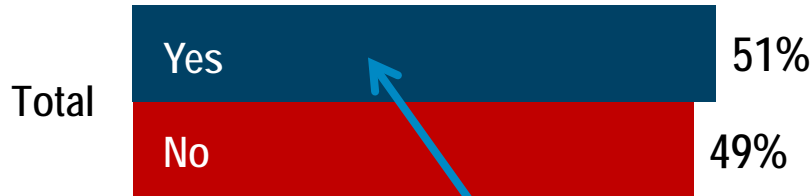
Half of small businesses that offer benefits to family members do so for same-sex couples as well as different-sex couples – and half of those that do not say that they would if they had reason.

[IF OFFER BENEFITS TO EMPLOYEE+FAMILY]

Does your company offer health insurance benefits to same-sex domestic partners?

[IF DOES NOT OFFER SAME-SEX BENEFITS]

If you had an employee with a same-sex partner, would you offer health insurance benefits to the same-sex partner?



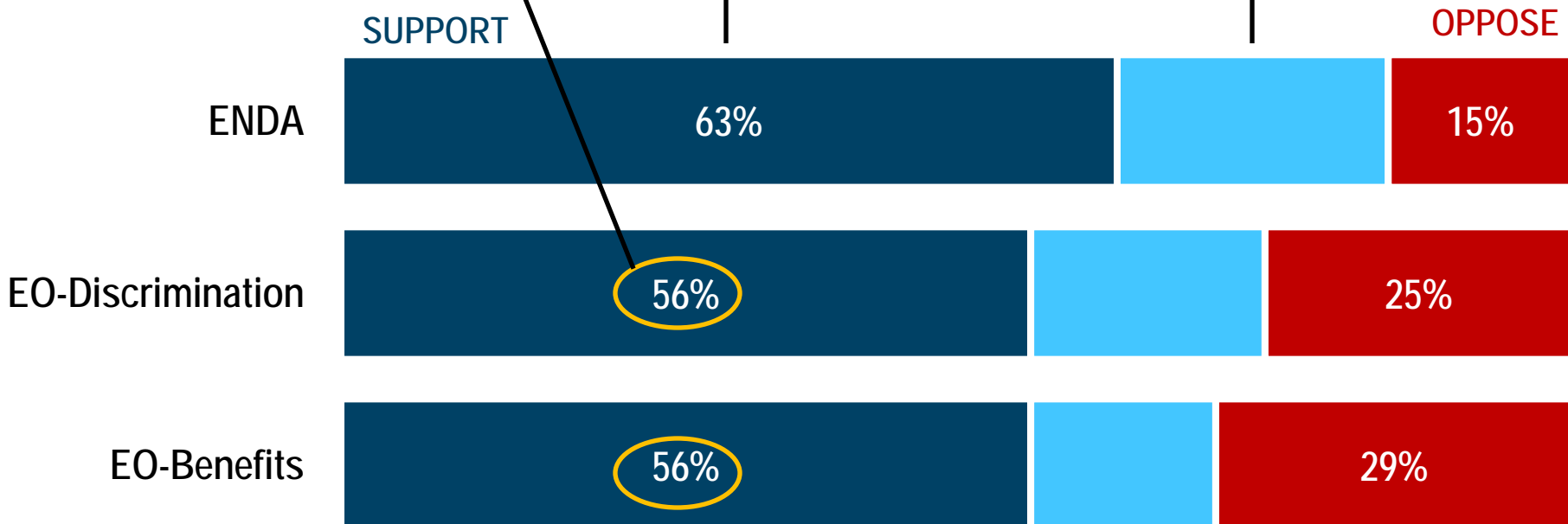
Fully 76% of small businesses that offer health insurance benefits to employees and their families either currently offer benefits to same sex partners or would offer them to same sex partners if they had an employee who had a same sex partner

Executive orders from President Obama for federal contractors on sexual orientation discrimination and benefits are supported by a majority of small business owners.

Do you support or oppose _____?

The same percentage of SBOs who support an EO for discrimination support an EO for benefits.

85% of small businesses support or are neutral toward ENDA, with 63% supporting it.



Fully 48% of the small business owners surveyed support marriage equality compared to 30% who oppose it.

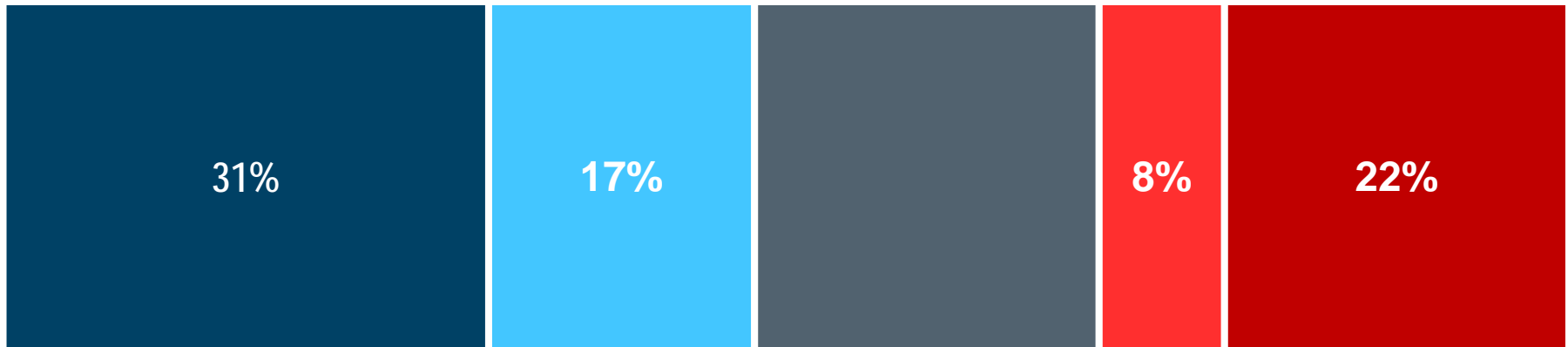
Do you support or oppose allowing gay and lesbian couples to marry legally?

Strongly Support

Somewhat Support

Somewhat Oppose

Strongly Oppose

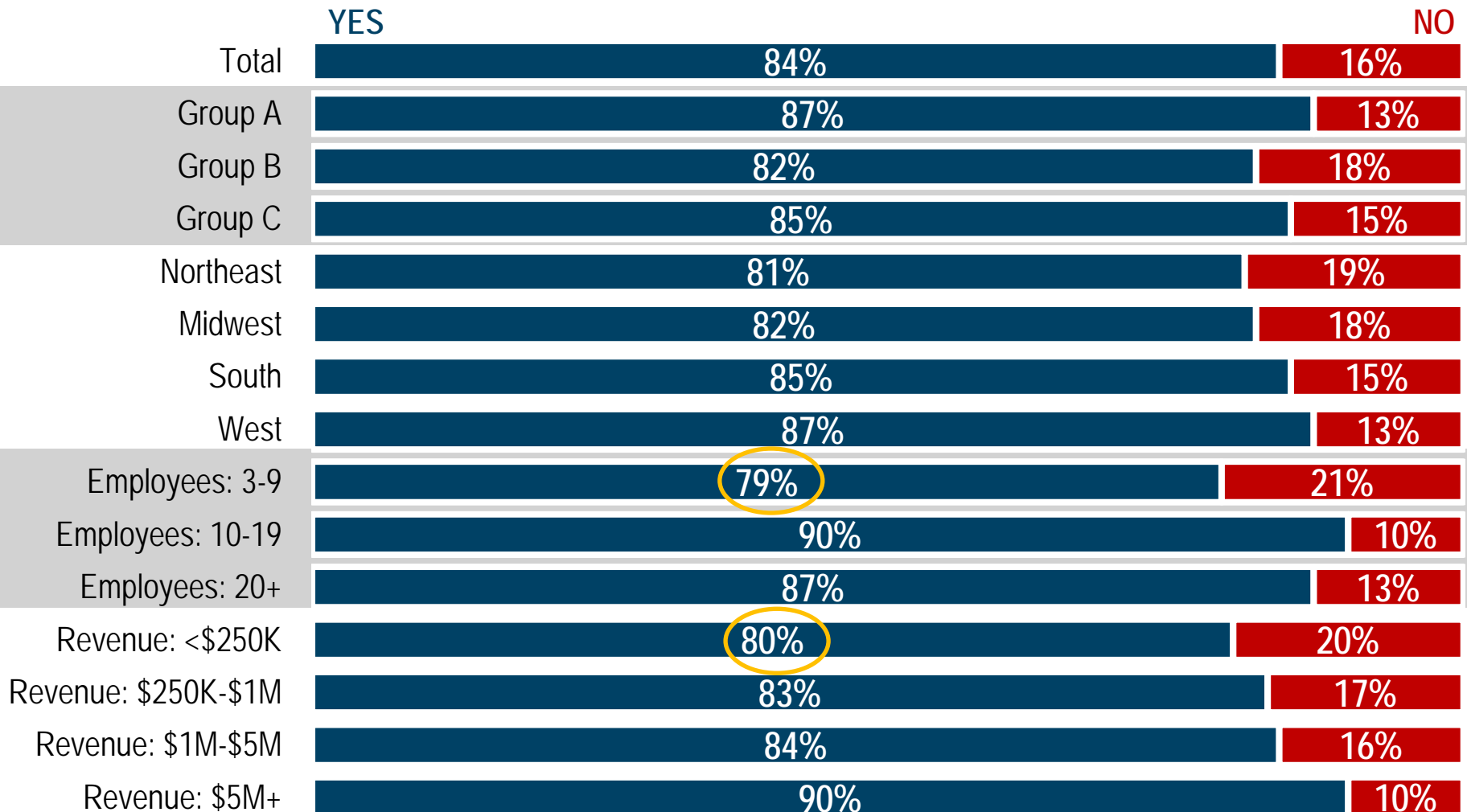


Appendix

The background features a series of overlapping, curved lines in various shades of blue, creating a sense of motion and depth. The lines are thick and smooth, with some appearing to cross over others, forming a complex, abstract pattern that resembles a stylized 'S' or a series of connected arcs.

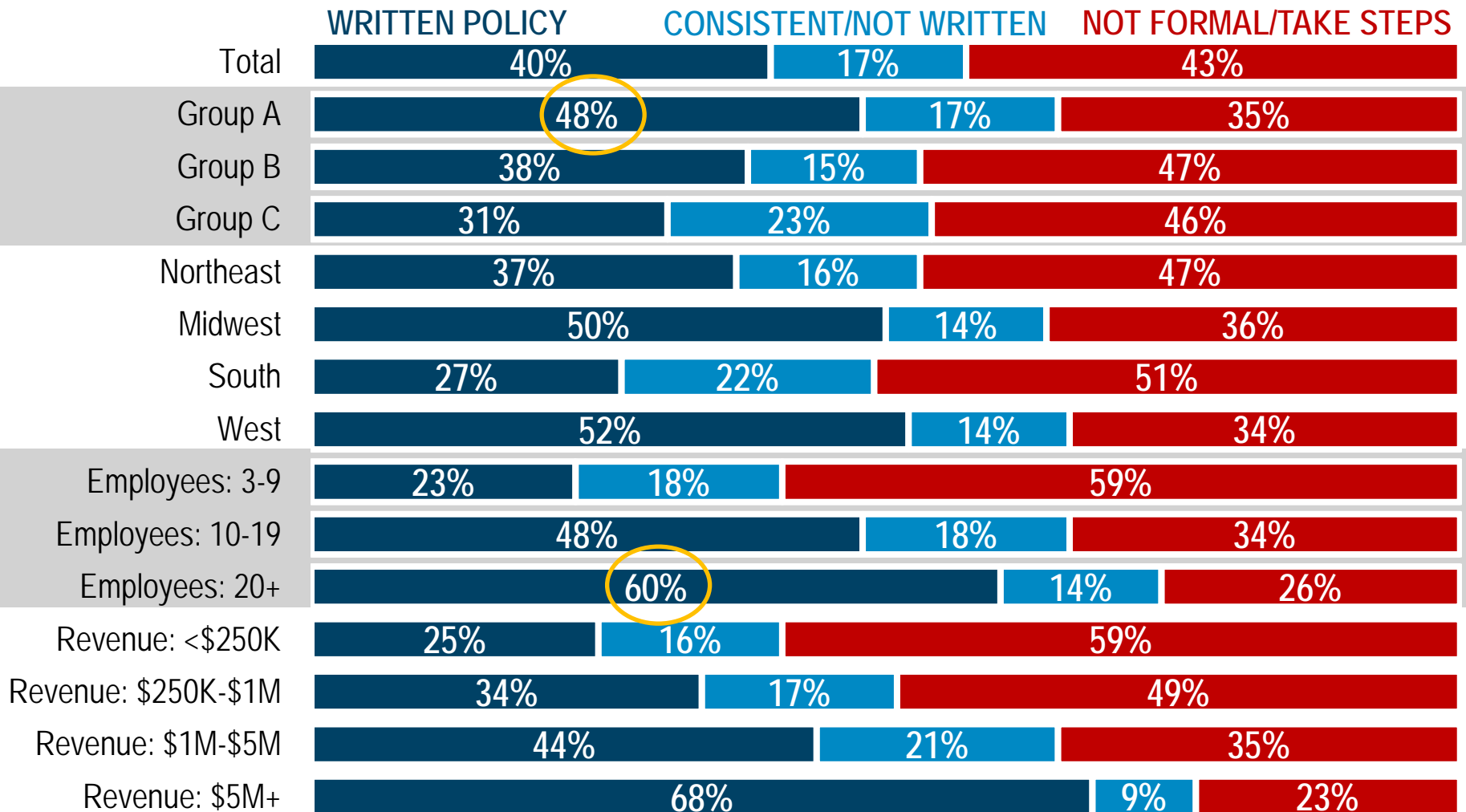
Smaller businesses (based on either size or revenue) are only slightly less likely to say they take steps to ensure employees are not discriminated against.

Do you take steps to ensure that your company's employees are not discriminated against?



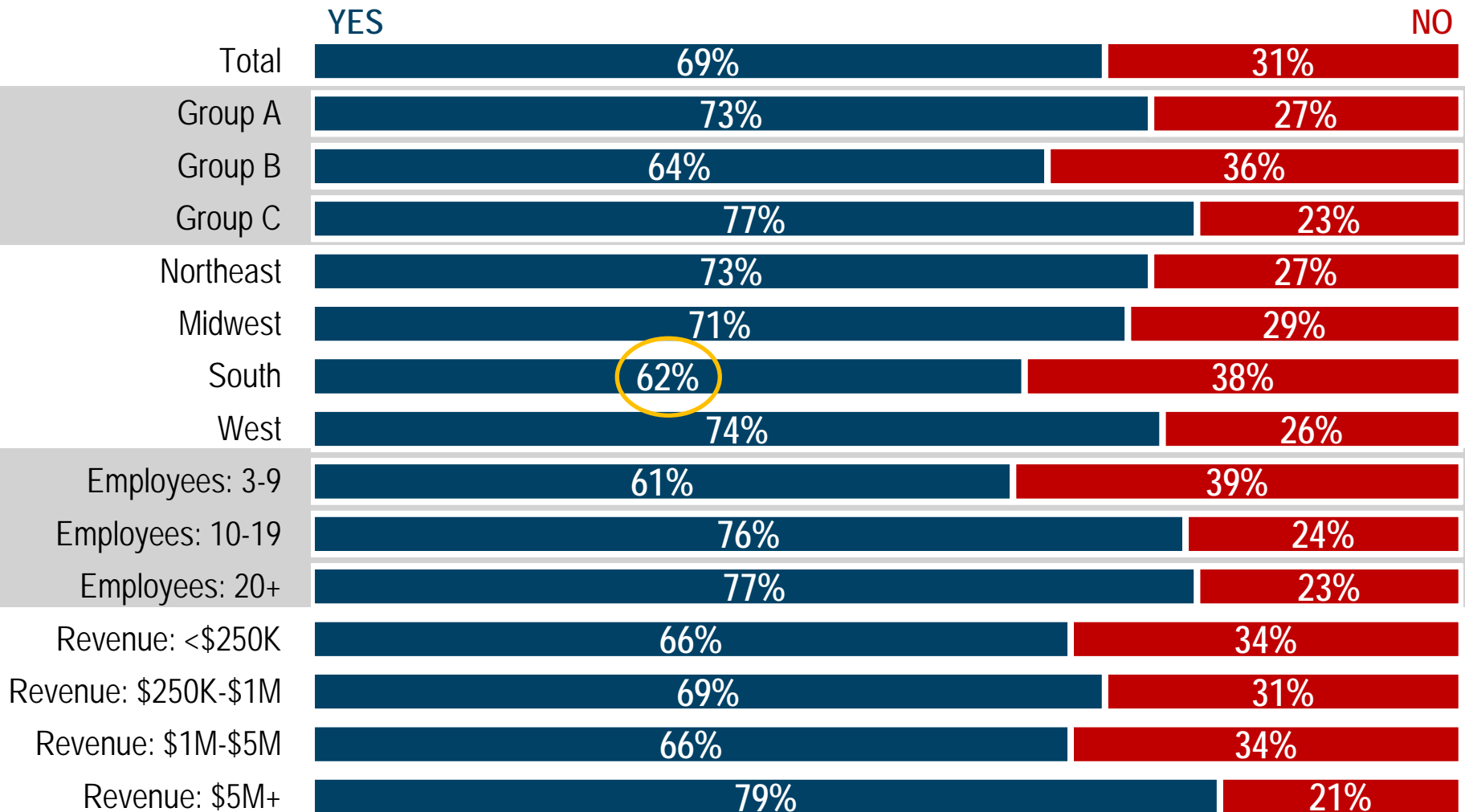
But larger-sized businesses are significantly more likely to have a written policy, as are businesses in Group A.

Which of the following best describes your company's approach to prohibiting discrimination?



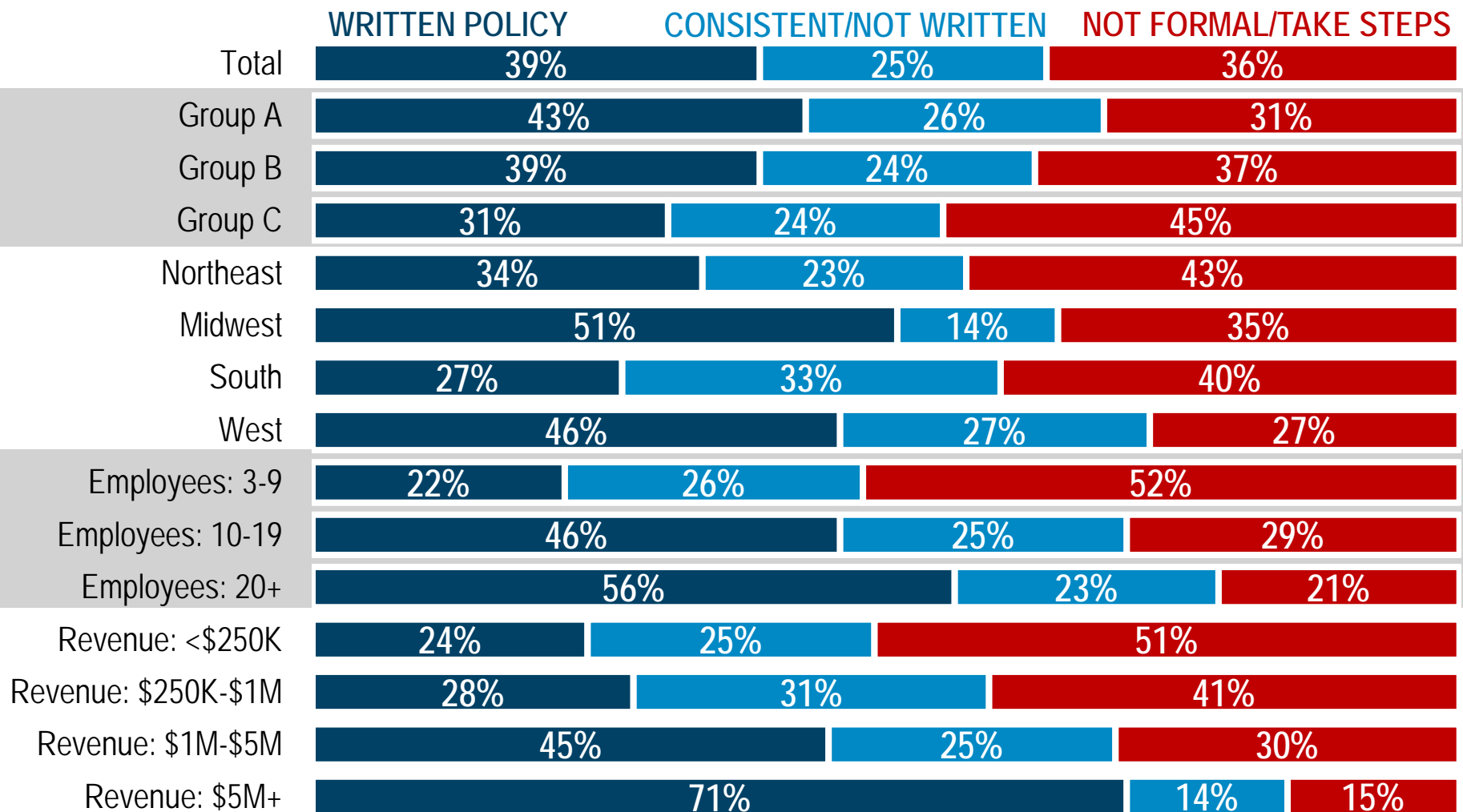
Small businesses in the South are the least likely to take steps to prohibit discrimination based on sexual orientation, but even there, better than six in 10 do so.

Does your business take steps to prohibit discrimination based on sexual orientation?



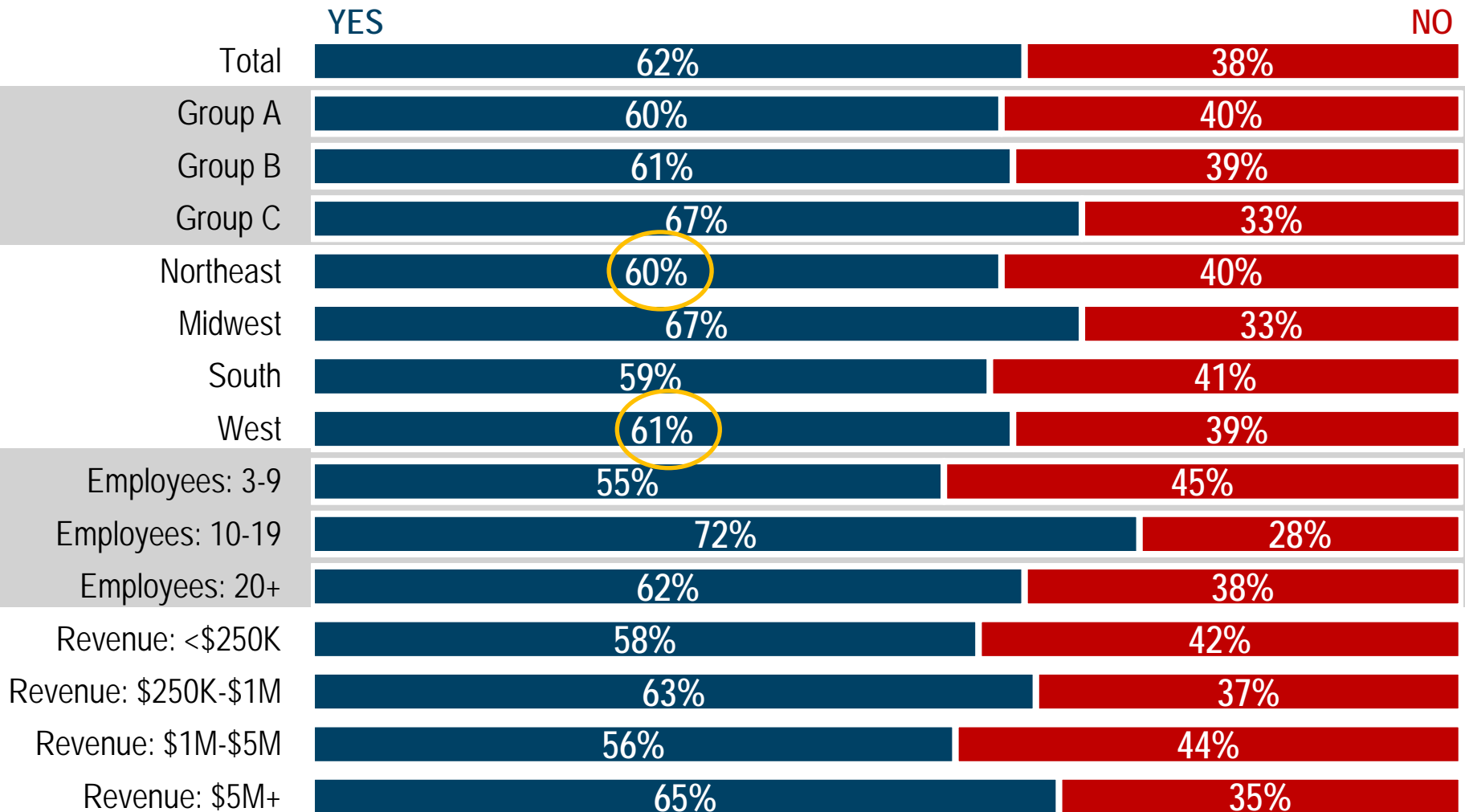
As with overall nondiscrimination policies, the size of a small business is the greatest driver of whether or not they have a formal, written policy on sexual orientation discrimination.

Which of the following best describes your company's sexual orientation nondiscrimination policy?



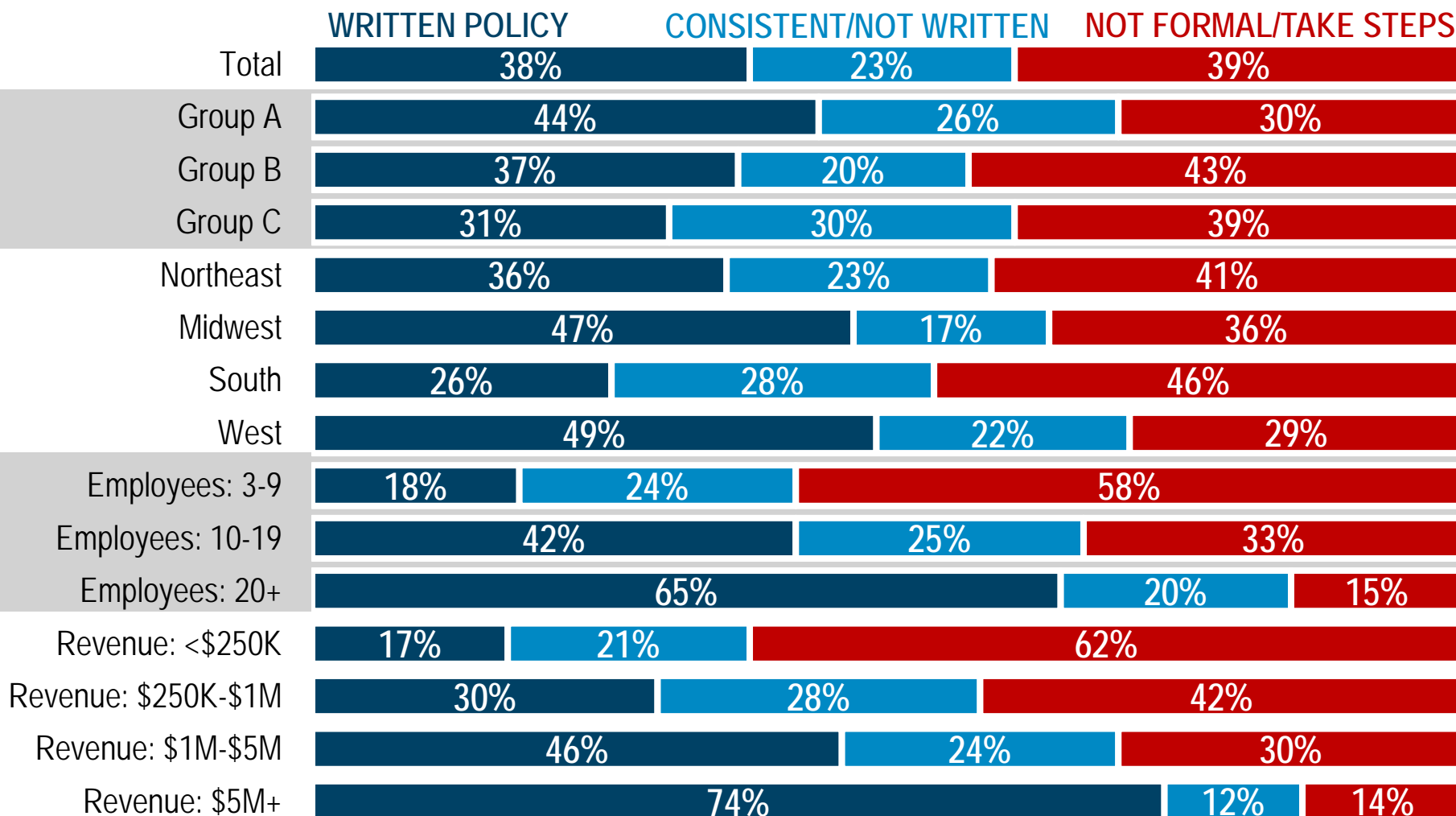
Small businesses in the Northeast and West are only slightly more likely than those in the South to take steps to prohibit discrimination on the basis of gender identity.

Does your business take steps to prohibit discrimination on the basis of gender identity?



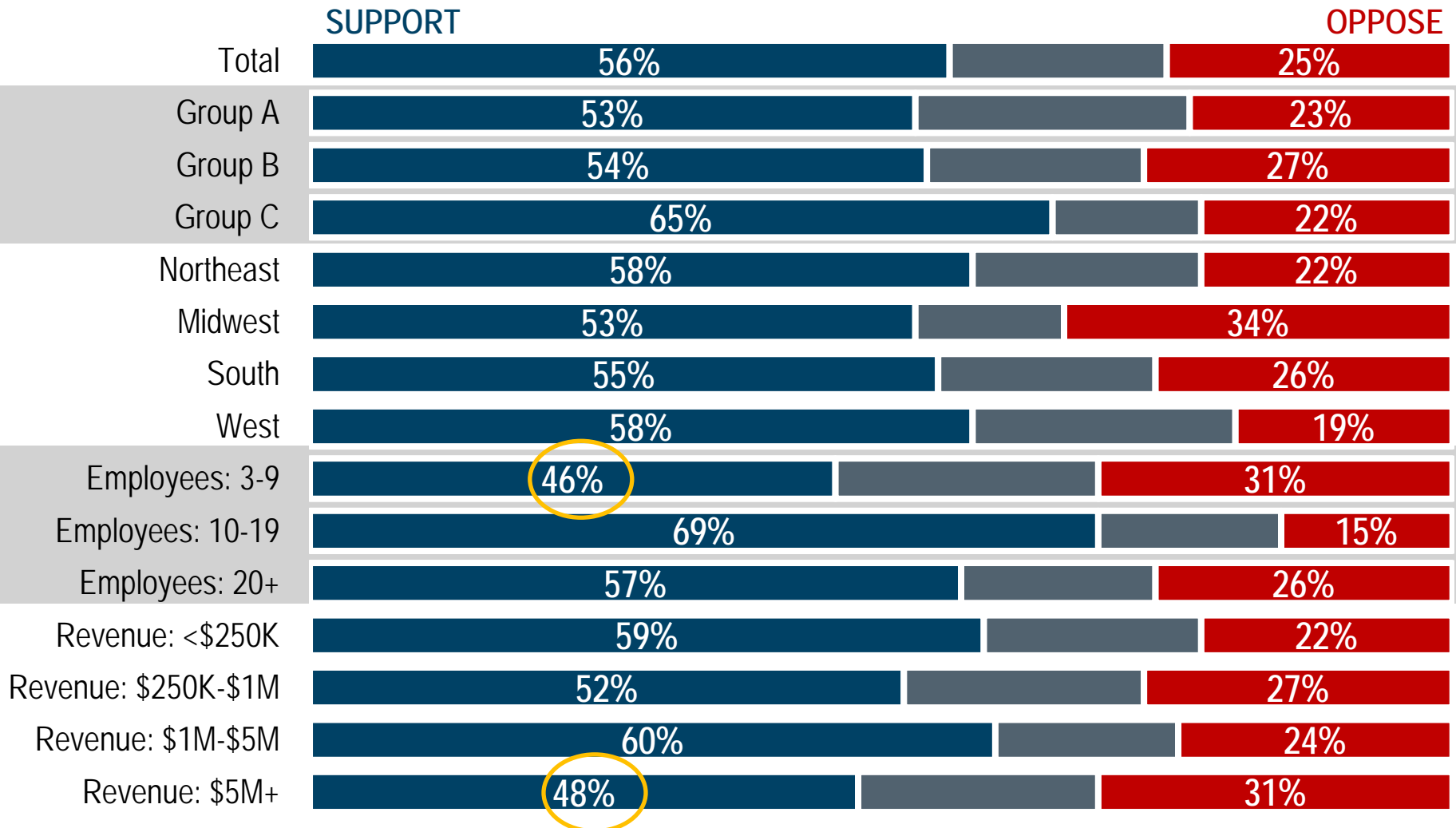
There is little difference between the percentage of small businesses that have written policies on gender identity and the percentage that have written policies on sexual orientation.

Which of the following best describes your company's gender identity nondiscrimination policy?



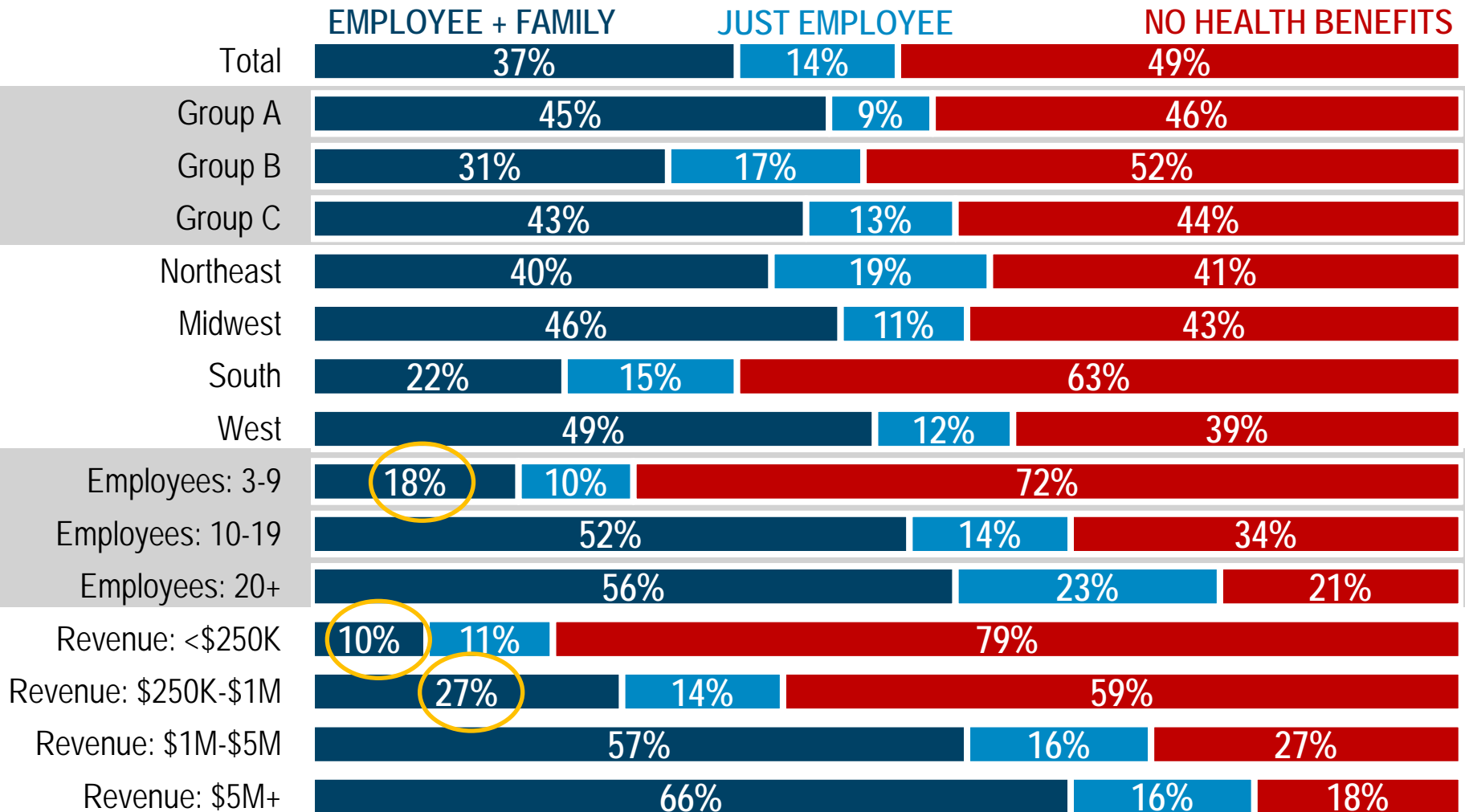
Support for an executive order on discrimination is lowest (and less than a majority) among small businesses with less than 10 employees or more than \$5 million in revenue.

Would you support President Obama issuing an executive order to add sexual orientation and gender identity to the list of characteristics that federal contractors must not discriminate on the basis of?



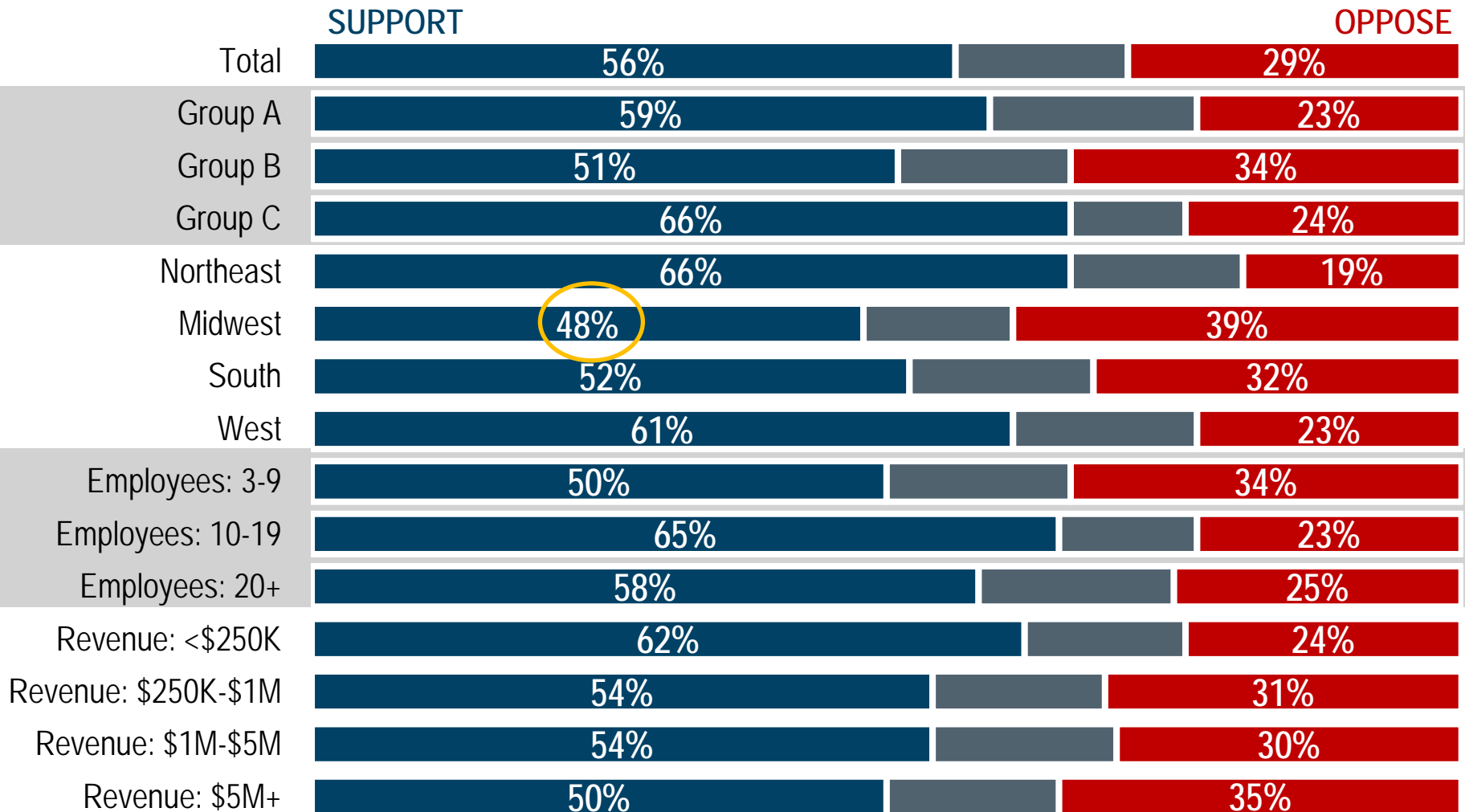
Small businesses with fewer than 10 employees or revenue of less than \$1 million are significantly less likely to offer health benefits for their employees' families.

Generally, does your company offer health insurance benefits to your employees and their families?



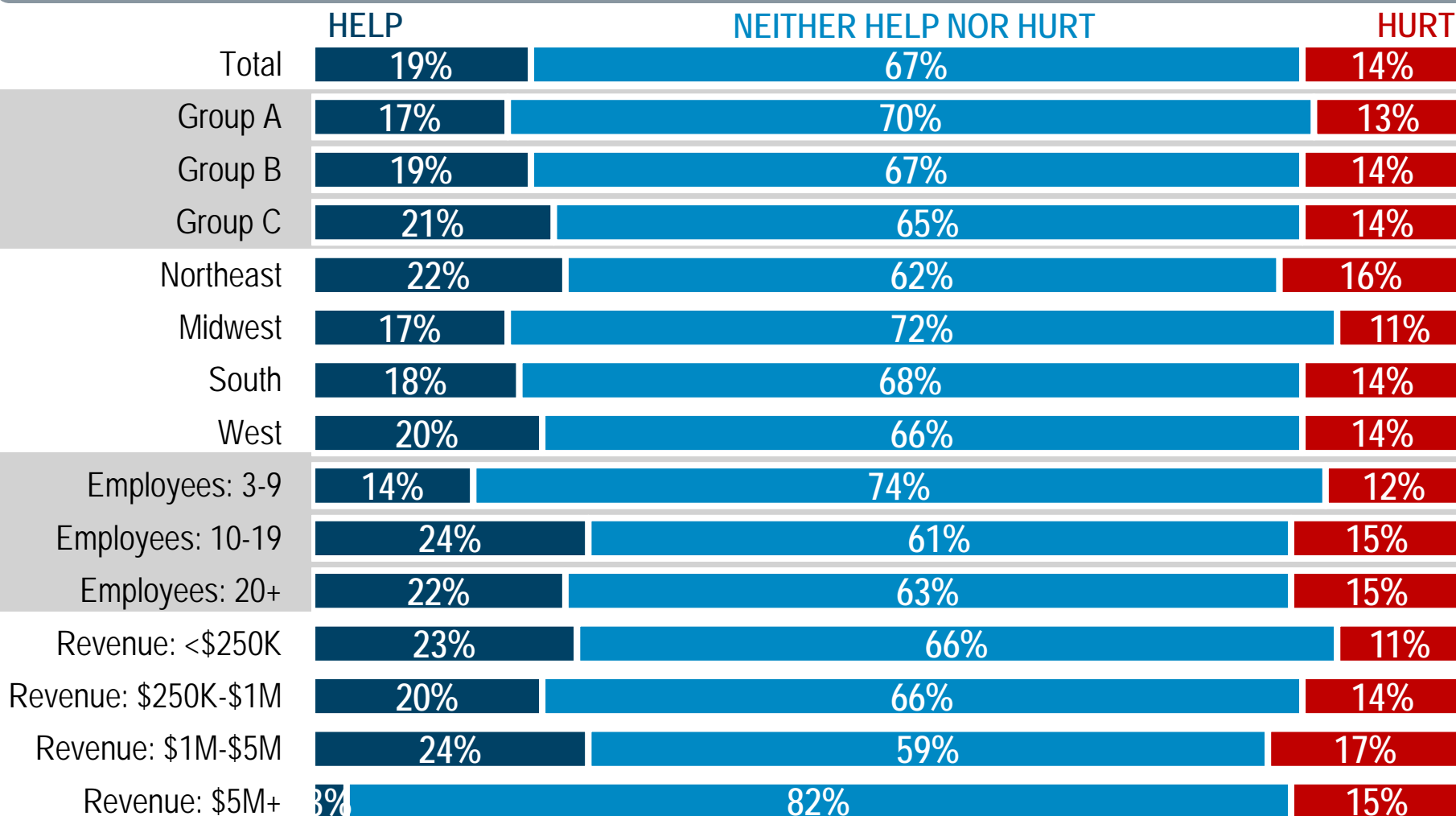
Support for an executive order on equal benefits is lowest (and less than a majority) among small businesses in the Midwest.

Would you support President Obama issuing an executive order to require federal contractors to provide equal benefits to same-sex spouses if they provide them to different-sex spouses?



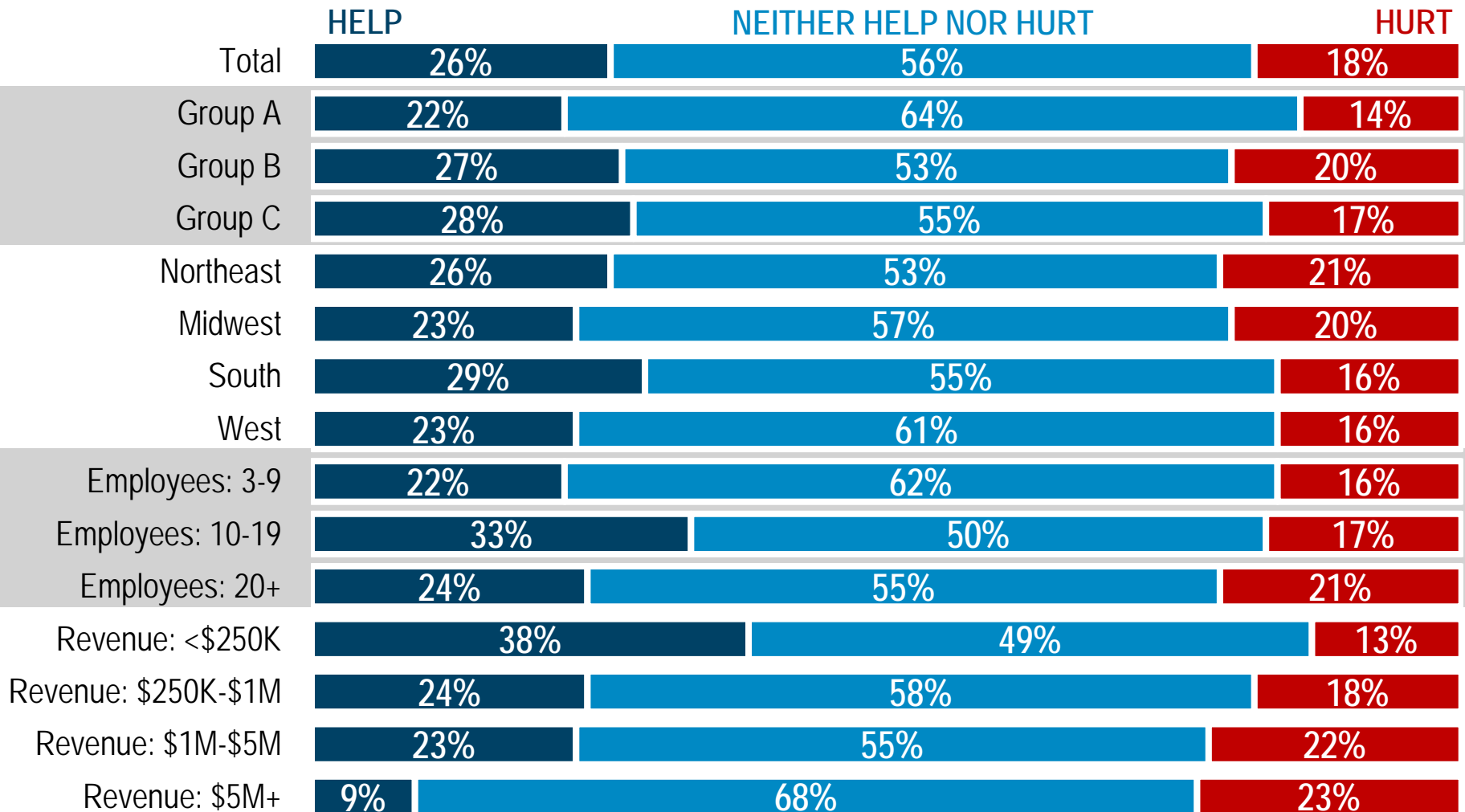
The vast majority of small business owners across all subgroups say prohibiting discrimination would either help or have no effect on their business.

Do you think government policies that prohibit discrimination against gay and transgender employees would help or hurt your business?



And the same is true when it comes to the economy as a whole.

Do you think government policies that prohibit discrimination against gay and transgender employees would help or hurt the economy?



Impact and legal issues regarding
an LGBT nondiscrimination
executive order

The Impact of Extending Sexual Orientation and Gender Identity Non-Discrimination Requirements to Federal Contractors



the
Williams
INSTITUTE

By M.V. Lee Badgett
February 2012

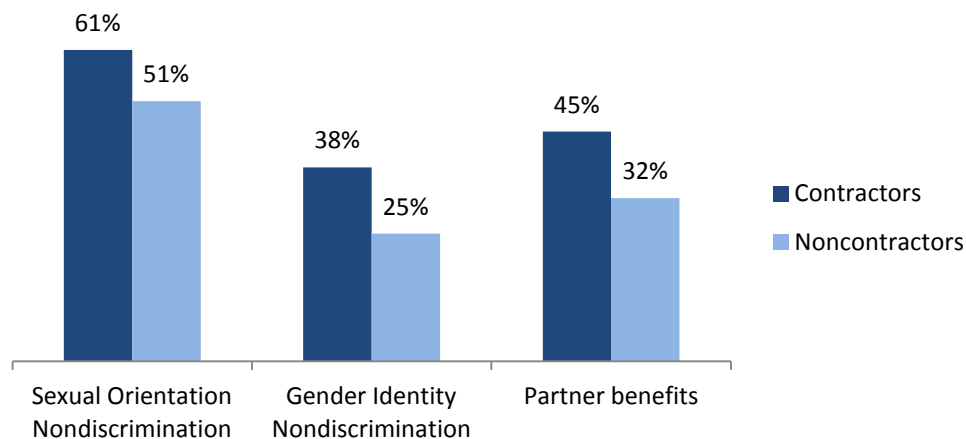
Executive Summary

This study estimates how many U.S. workers currently have protection against workplace discrimination based on sexual orientation and gender identity among private sector employers. We use these estimates to answer several questions about two sets of private sector employers: those that are federal contractors and those that are not federal contractors. In particular, we explore the potential impact of a public policy requiring federal contractors to have nondiscrimination policies that include sexual orientation and gender identity.

- What percentage of employees are currently covered by laws or company policies against discrimination based on sexual orientation? *Among federal contractors, 61% of employees are already covered; 51% of noncontractor employees are covered.*
- What percentage of employees are currently covered by laws or private policies against discrimination based on gender identity? *Among federal contractors, 41% of employees are already covered; 28% of noncontractor employees are covered.*
- What percentage of employees currently has access to health care coverage for a same-sex partner? *Among federal contractors, 45% of employees are already covered; 32% of noncontractor employees are covered.*
- If federal contractors were required to have policies against sexual orientation and gender identity discrimination, how many more employees would be covered? *For sexual orientation, 11 million more would be covered; for gender identity, up to 16.5 million more would be covered.*
- If federal contractors were required to provide health care benefits to same-sex domestic partners of employees, how many more employees would have such access? *An additional 14.3-15.3 million more employees would have access to coverage for a same-sex partner. However, only 40,000 to 136,000 of these employees would sign up a same-sex partner for coverage, and they would be spread out across tens of thousands of federal contractors.*
- Are large defense contractors very likely to have these policies? *Among the largest private defense contractors, 95% of employees are covered by a sexual orientation policy or state law, 69% are covered by a gender identity policy or state law, and 81% have access to benefits for a same-sex partner by state law or private policy.*

- Would a federal contractor requirement have a bigger effect on small businesses? *Employees are equally likely to be covered already in small, medium, or large federal contractors, with the exception of higher rates of coverage for Fortune 1000 employees.*

Percent of all employees now covered by private corporate policy (Fortune 1000) or state law prohibiting discrimination



Introduction

As of early 2012, employees in 21 states and the District of Columbia, covering 44% of the United States population, are covered by statewide laws that prohibit employment discrimination based on sexual orientation. In 16 states, 33% of the population is covered by a statewide law prohibiting discrimination based on gender identity. Furthermore, many employees work for firms that have voluntarily adopted such nondiscrimination policies. However, millions more Americans live and work in places that provide no protection against discrimination based on sexual orientation or gender identity.

In this study, we assess the impact of an alternative policy approach to either state nondiscrimination laws or voluntary policies: prohibiting federal contractors from discrimination based on sexual orientation and gender identity. We

estimate that 11 million additional employees would gain protection against sexual orientation discrimination and 16 million employees would be protected against gender identity discrimination. We also estimate that requiring federal contractors to offer domestic partner benefits to same-sex partners of employees would expand such coverage to companies that employ 14-15 million people.

In other words, a federal contractor requirement could significantly expand the right to equal employment opportunities for lesbian, gay, bisexual, and transgender (LGBT) workers. Since LGBT workers make up approximately 4% of the nation’s workforce, more than 400,000-600,000 LGBT people would gain nondiscrimination protections.¹ Approximately 40,000 to 136,000 LGBT employees might sign up a same-sex partner for coverage, a very small addition that would be barely noticeable to any single employer once spread out across tens of thousands of federal contractors.

In keeping with historical precedent, such a policy could be enacted by a presidential executive order. For more than 60 years, Presidents have used executive orders to advance workplace protections against discrimination. For example, Title VII of the Civil Rights Act was passed in 1964. But more than two decades earlier in 1940, President Roosevelt issued an executive order prohibiting discrimination in federal government employment on the basis of race, religion, or political affiliations.² Presidents Truman, Eisenhower, and Kennedy all expanded these protections before the Civil Rights Act was passed in 1964.³ Similarly, Presidents Carter and Clinton issued executive orders prohibiting discrimination in federal government employment on the basis of disability, age, sexual orientation and parenthood, before Congress passed any law prohibiting discrimination on those bases.⁴

Presidents have also issued executive orders mandating that federal contractors have non-discrimination policies well before the passage of corresponding federal legislation regulating private employers. In 1941, President Franklin Roosevelt issued an executive order that required companies receiving government defense contracts and vocational training programs “not to discriminate against any worker because of race, creed, color, or national origin.”⁵ This executive order was the first attempt by the federal government to prohibit discrimination by private employers – two decades before Congress passed the Civil Rights Act.

Below we outline the data, methods, and findings of this study of the impact of such an executive order on federal contractors with respect to sexual orientation and gender identity. In the final sections, we show that defense contractors and small- to medium-sized businesses are well-

represented among firms that already have these equality policies. We show that a requirement for federal contractors would, therefore, place no disproportionate burden on defense contractors or on small- or medium-sized businesses.

Data and Methods

To assess the impact of a federal contractor requirement, we count up the number of employees who work for a federal contractor but who are not already covered by a nondiscrimination or domestic partner policy. First, we matched data on employment by private sector firms, or companies, classified by federal contractor status, to data on nondiscrimination and partner benefit policies. We then use data on individual company policies, or “firms” as they are known in the EEOC data, and on state-level nondiscrimination laws to categorize a firm’s individual establishments, or locations, as being covered by a nondiscrimination or partner benefit policy. Note that the number and percentage of employees covered includes *all* employees of an establishment or firm, whether heterosexual, lesbian, gay, bisexual, or transgender, except where noted.

Employment data: Employment data from 2009 come from the Equal Employment Opportunities Commission (EEOC). The EEOC’s EEO-1 reports are required for private sector federal contractors with 50 or more employees and a contract of at least \$50,000, and for noncontractor employers with 100 or more employees. If any establishment within a firm reported that they were a federal contractor, we counted the firm and all of its establishments in the contractor category.⁶

All together, the more than 67,000 firms filing EEO-1 forms in 2009 reported a total of 59 million employees on their

consolidated reports.⁷ The usefulness of this dataset to estimate nondiscrimination policy coverage for employees is clear from its extensive coverage of relevant employment.

- *This dataset captures more than half of all private sector employees:* In 2009, the Current Population Survey reported 108 million private sector employees, so EEO-1 employment accounts for 54.5% of all private sector employment in the United States.
- *This dataset includes firms that receive the majority of federal contracting dollars:* More than half (51%) of all dollars awarded in federal contracts went to the top 100 private for-profit contractors in FY10, and 92 of the 100 are included in the EEO-1 data, along with more than 24,000 additional federal contractors.⁸

Policy data: The policy data come from two sources. For Fortune 1000 firms, we match the EEO-1 data to individual firm policies from the Human Rights Campaign database as of November 2010.⁹ That database covers more than 84% (848) of the 2009 Fortune 1000 (F1000) list of the largest companies in the U.S. and is based primarily on survey responses from those companies.

For companies not in the Fortune 1000, we look at the location of each reporting establishment to identify whether it was located in a state that outlawed employment discrimination based on sexual orientation or gender identity in 2010, or that allowed same-sex couples to enter into a legal status that might be recognized by most employers when providing employment benefits.¹⁰ To be clear, all establishments of non-F1000 firms are classified by state-level policy only. We also use state location to identify policy coverage for F1000 employers for which

policy data was missing in the HRC database and for those firms in the HRC database that do not have a nondiscrimination policy.

For purposes of our calculations below, any firm or establishment that has no known policy, either because they were not included in the HRC database or were not in a state with a nondiscrimination or partnership law, is counted as not having the policy of interest. However, some of those firms might either have voluntary policies that we do not know about or are bound by local-level nondiscrimination laws, so the estimates of coverage below are conservative estimates.

Nondiscrimination Policies

Fortune 1000: Among all Fortune 1000 (F1000) companies that are federal contractors, 75% of those firms report having EEO policies against discrimination based on sexual orientation. The companies with those policies are relatively large, so an even higher percentage of employees of F1000 companies work for a company forbidding sexual orientation discrimination. Overall, 92% of employees of F1000 federal contractors are already protected by a company-wide sexual orientation nondiscrimination policy.¹¹ The coverage rate for employees of noncontractors among the F1000 is lower, with 60% of firms having a sexual orientation nondiscrimination policy that covers 82% of employees.

Looking only at F1000 companies shows that 32% include gender identity in their EEO policies. Among employees of federal contractors that are in the Fortune 1000, 58% are already protected by a gender identity nondiscrimination policy. The rates for noncontractors are much lower, with 20% offering gender identity nondiscrimination policies that cover 30% of employees of F1000 noncontractors.

Figure 1 compares the percentage of Fortune 1000 firms that offer coverage by nondiscrimination policies (and domestic partner benefits—see discussion below) in 2009. Figure 2 compares the percentages of employees covered by those policies.¹²

Figure 1: Percentage of Fortune 1000 firms with policies

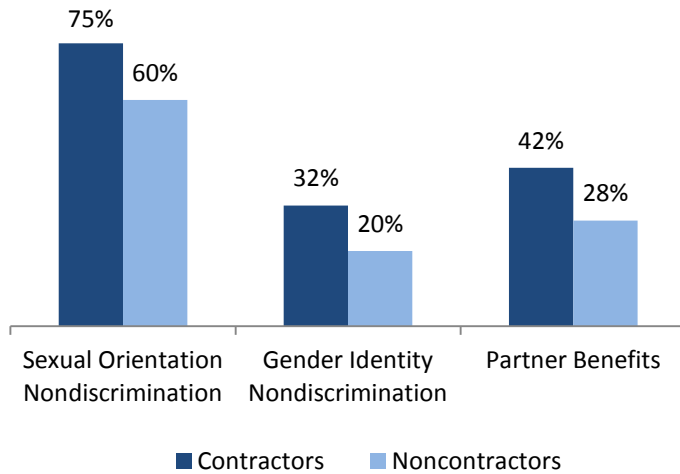
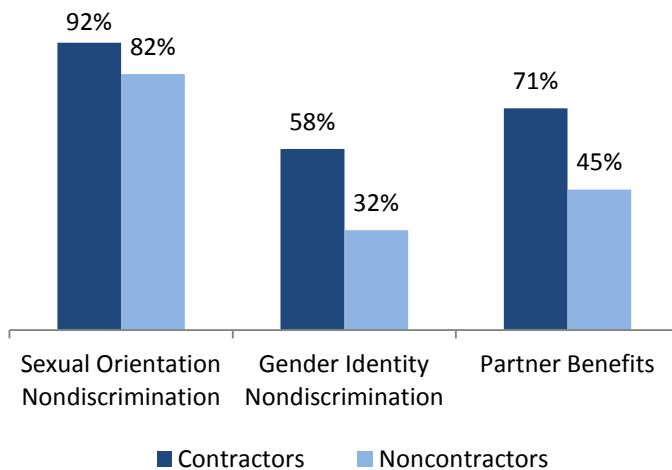


Figure 2: Percentage of employees working in Fortune 1000 firms with policies



Non-Fortune 1000: For other firms in the EEO-1 database that are not in the F1000, we have no data on their nondiscrimination

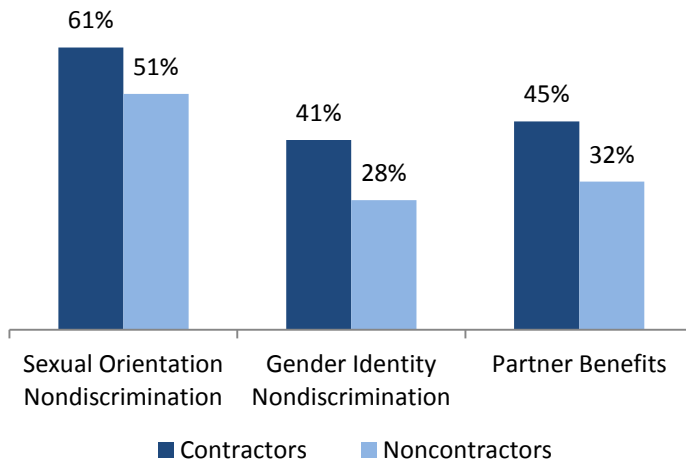
policies. However, we can observe which firms have establishments in states that prohibit discrimination based on sexual orientation or gender identity, and those figures are presented in Table 1.

All firms combined: Table 1 presents the number of employees covered by a nondiscrimination or partner policy. For example, the first line of figures shows that 16.9 million workers work for federal contractors that have policies against sexual orientation discrimination by law or company policy. Just over 10 million of those workers are in F1000 firms with their own explicit policy (line 2 of figures) and 7 million work in establishments in states that have outlawed sexual orientation discrimination (line 3).

In Table 2 and Figure 3, we express that number as a percentage of all employees of federal contractors or noncontractors.¹³ The first line of figures in Table 2 shows that among employees of federal contractors, at least 61% work in places that do not allow sexual orientation discrimination. F1000 firm-level policies contribute 37% of the federal contractor workforces, and establishments in states with nondiscrimination laws cover 24% of federal contractor employees, summing to the 61% overall. For noncontractors, 51% of employees are covered. (As noted earlier, these figures are a conservative estimate of the number of employees actually covered, since some

smaller firms will have voluntary policies, and some will be in cities or counties with nondiscrimination ordinances.) Fewer employees are protected against gender identity discrimination: 41% of employees of federal contractors and 28% of employees of noncontractors.

Figure 3: Percentage of all employees covered by policies



Finally, Table 1 provides an answer to the question about how many more employees might be covered by nondiscrimination policies if federal contractors were required to have such policies. With such a requirement, as many as 11 million more employees would gain protection against sexual orientation discrimination. These estimates are an upper bound, since some of those employees work for non-F1000 firms with sexual orientation nondiscrimination policies, and others are in locations covered by local ordinances.

Table 1 shows that 16.5 million workers would gain protection against gender identity discrimination. However, since these data were collected, four additional states have outlawed employment discrimination based on gender identity: Massachusetts, Nevada, Hawaii, and Connecticut. If all employees of federal

contractors in these states were covered by corporate policies that already prohibit gender identity discrimination, then the number of new employees covered by a contractor requirement would not change with the new laws. But it is more likely that these new state laws provide coverage for some additional employees of contractors, reducing the number affected by a federal contractor requirement.

Accordingly, we estimate a range of new employees covered by adjusting the 16.5 million downward. These four states account for 5.2% of the 108,252,000 private sector employees in the U.S in 2009.¹⁴ To adjust the estimate of 16.5 million employees for those who work in these four states, we assume that in these states the percentage of employees of federal contractors is the same

as for the private sector as whole. Thus, we deduct 5.2% of employees from our estimate of newly covered employees to create an estimate of 15.6 to 16.5 million additional workers who would be covered by a policy requiring federal contractors to not discriminate on the basis of gender identity.

Domestic Partner Benefits

Fortune 1000: Among all F1000 firms, 37% are known to provide domestic partner (DP) benefits to same-sex partners of employees. The rate is higher for federal contractors, 42% of whom offer DP benefits, which cover 71% of employees of federal contractors in the F1000. Only 28% of noncontractors offer DP benefits, covering 45% of employees of noncontractors. These percentages of firms

and of employees are compared by contractor status in Figures 1 and 2.

Non-Fortune 1000: Unfortunately, we do not know how many employees working for non-F1000 companies have access to DP benefits. We can, however, estimate coverage using state law, since many establishments operate in states that allow same-sex couples to marry or to register as domestic partners or civil unions. In some of those states (California, Massachusetts, Vermont, New Hampshire, Connecticut, Iowa, Hawaii, Illinois, Nevada, New Jersey, Oregon, Washington and District of Columbia), same-sex couples taking advantage of those legal statuses are likely to be treated the same way as married couples by employers. Therefore, in those states, if employees' spouses are covered by health care benefits, we assume that same-sex civil union partners or spouses would also be eligible for coverage. Among non-F1000 federal contractors and non-contractors alike, 24% of employees are employed in states that would likely give same-sex couples the ability to access spousal benefits.

However, this estimate based on state law comes with three offsetting caveats. (1) Some non-F1000 firms outside of the recognition states might voluntarily offer DP benefits, but here they are counted as not having a policy, which would increase coverage. The second and third factors would tend to reduce coverage, though: (2) Some firms reporting here might not offer health care benefits at all, leading to an over-count of covered employees. But in that case, employees with same-sex partners are treated in the same way as employees with married different-sex partners, so the number covered should give a reasonable estimate of employees getting equal treatment. (3) In states requiring equal treatment of same-sex spouses or partners, firms might not be

required to comply. Self-insured firms' health care plans, for instance, are governed by ERISA, a federal law. The federal Defense of Marriage Act likely precludes compelling self-insured employers to provide equal benefits to same-sex partners or spouses, although many might voluntarily comply. While current data sources do not allow us to confidently predict whether these factors cancel each other out, they are likely to do so to at least some extent, and Tables 1 and 2 do not make adjustments for these issues.

All firms combined: Table 1 estimates that 12.7 million workers in federal contractor firms and 9.9 million workers in noncontractor firms would have access to benefits for a same-sex partner through a company policy or state law. Adding together both sources of potential coverage in Table 2 (and shown in Figure 3) shows that 45% of employees of federal contractors have access to domestic partner coverage, while only 32% of noncontractors have access to domestic partner coverage.

The last line of Table 1 estimates that a requirement that federal contractors provide domestic partner benefits would provide access to equal benefits for a same-sex partner to an additional 15.3 million people. However, since these data were collected, two more states have allowed same-sex couples to enter into marriage (New York) or civil unions (Delaware). As before, we create a range that captures the possibility that federal contractors in those states already offered benefits to same-sex partners and the possibility that more employees are covered, pulling the estimate of those covered by a contractor requirement downward. Those two states account for 6.8% of the 108,252,000 private sector employees in the U.S in 2009.¹⁵ To create the low end of the range, we assume that the percentage of federal contractors

in those states is the same as the percentage of private employment. We deduct 6.8% of newly covered employment to estimate that 14.3 to 15.3 million additional workers would be covered by a federal contractor requirement related to domestic partner coverage.

Of course, not all of those employees are likely to have a same-sex partner, and even those with same-sex partner might not choose to sign the partner up for benefits.¹⁶ Research on take-up of domestic partner benefits for same-sex partners suggests that 0.3% to 1% of employees will sign up a partner at a typical firm.¹⁷ Given that pattern, we might expect only 40,000 (0.3% of 13.6 million) to 136,000 thousand (1% of 13.6 million) to enroll a partner. These newly covered partners would be spread across tens thousands of firms, so most firms would see few or no additional enrollees, demonstrating that the cost to businesses of this requirement would be minimal.

Defense Contractors

Since defense contractors make up a large percentage of all federal contractors, we also examined whether defense contractors are different from other types of contractors with respect to the policies considered in this memo. We identified 25 of the top private sector defense contractors from the usaspending.gov website. According to FY10 data from usaspending.gov, these 25 firms collectively accounted for more than \$160 billion in federal spending, or 44% of all Department of Defense contracting dollars.

Nineteen of these firms have a policy against sexual orientation discrimination (five firms have missing data on policies).¹⁸ Collectively, the EEO-1 employment data on these firms suggests that those policies and

state-level laws already cover 95% of these defense contractors' employees.

Ten firms have policies against gender identity discrimination. Those firms, plus establishments in states forbidding gender identity, provide coverage against gender identity discrimination for 69% of employees in these defense sector firms.

Thirteen firms also provide benefits to same-sex domestic partners of employees, covering 75% of the defense sector employees. Another 6% has access to coverage via a state marriage or partnership law, bringing the total to 81% with coverage.

As these figures suggest, coverage for all policies is even more common among the defense sector, as represented by these twenty-five defense firms that account for much of federal defense spending, than it is for federal contractors as a whole.

Policies by Firm Size

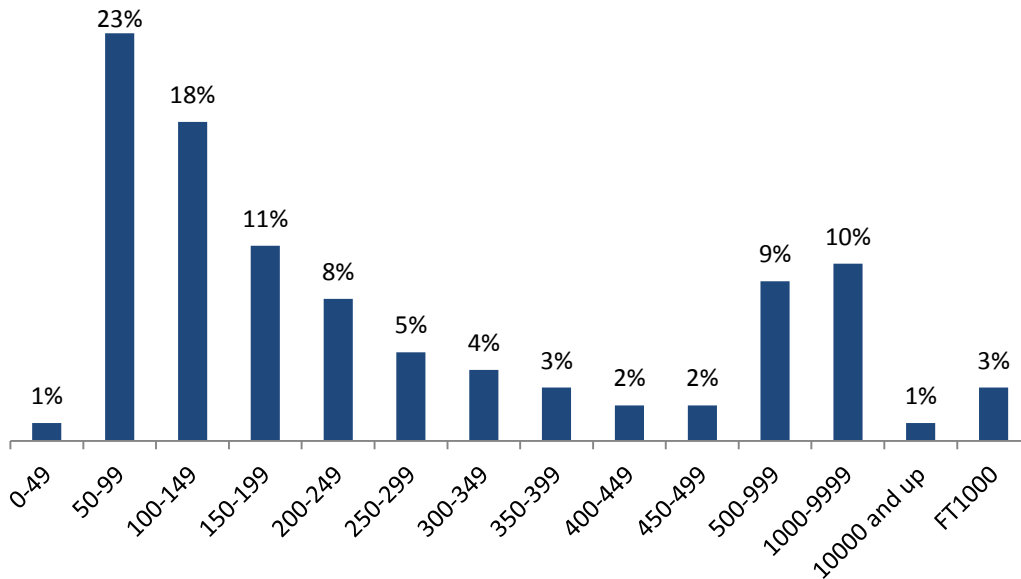
We also broke down the coverage of policies by firm size for federal contractors to see whether a federal contractor requirement would have a disproportionate impact on employees of small- or medium-sized firms. Because federal contracting firms are only required to file EEO-1 forms if they have at least 50 employees and a contract of \$50,000 or more, the EEO-1 data leaves out most such very small firms, regardless of contractor status. Not surprisingly, then, only about 150 federal contractors reported having fewer than 50 employees on their consolidated reports. The number of firms reporting jumps considerably for the categories capturing 50-9,999 employees, with thousands of firms reporting in each subcategory. There were 219 firms with more than 10,000 employees that were not Fortune 1000 firms, and there were 649 firms from the

Fortune 1000 that were contractors appearing in the EEO-1 data.

Figure 4 below presents the distribution of federal contractor firm sizes among the EEO-1 reporting firms. Most contractors that report on the EEO-1 form are relatively small, suggesting that this study is not just capturing effects on large firms. Firms with fewer than 200 employees make up half of all firms. Almost a quarter of EEO-1 reporting contractors, or 23%, has 50-99 employees, the largest category.

The fourth, fifth, and sixth columns of Table 3 report the percentage of employees in each size category covered by sexual orientation nondiscrimination, gender identity nondiscrimination, and partner benefits, respectively. For all three kinds of policies, the percentage of employees already covered by employer or state policies is very similar except for the very smallest firms and for the F1000 firms.

Figure 4: Percentage of federal contractor firms in EEO-1 in firm size category



However, looking at the second and third columns of Table 3 below shows that the employment in small firms accounts for a small proportion of employment among all federal contractors. Firms with fewer than 500 workers employ only 12% of the contractor workforce. In other words, the vast majority of employees of federal contractors work for large firms. After adding together F1000 firms and other firms with 1000 or more employees, firms in the three largest categories collectively employ 83% of the contractor workforce.

In Table 3, employees of the F1000 firms can be covered either because we know they have a company-wide policy, or because some establishments of those firms are in states with such policies. For the other firms, though, we can only measure coverage through state law, perhaps at least partially explaining the smaller percentages for non-F1000 firms.

The lower coverage rate for employees of the smallest firms (fewer than 50 employees) may be a result of the nature of

the EEO-1 data. As noted earlier, the EEO-1 database does not capture many firms smaller than 50 employees, so the estimate for that category in Table 3 is not very reliable.

With the exception of those two categories, there is little variation in coverage levels for small and large employers. Employees of small, medium, and large contractors are equally likely to be currently covered. Another way of putting this is that small- and medium-sized businesses would not be disproportionately affected by a federal contractor requirement.

Comparisons with Other Studies

Overall, the findings of this memo related to domestic partners benefits are generally consistent with new findings in several surveys. The National Compensation Survey, which is conducted by the U.S. Bureau of Labor Statistics, found that 29% of all workers in the private sector have access to domestic partner benefits for same-sex partners. We estimated that 38% of employees in EEO-1 reporting firms had access to domestic partner health care benefits. The higher rate derived from the EEO-1 data might result from the fact that the NCS included the smallest firms but the EEO-1 does not, as well as the fact that the NCS did not account for states laws that might give same-sex couples the same right to employer-provided coverage as different-sex couples.

The NCS data show a correlation between coverage and firm size that is less similar to our pattern, though: 17% of employees in firms with 1-49 employees have coverage, compared with 23% of those in firms with 50-99 employees, 34% of those in firms with 100-499 employees, and 54% of those in firms with 500 or more employees. Our

findings in this memo showed little correlation between firm size and coverage, other than much higher rates for Fortune 1000 firms, since the geographic distribution of EEO-1 employees is fairly even across states with and without partner recognition laws.

The high rates for the largest firms are also consistent with the Kaiser Family Foundation's 2009 surveys of Employer Health Benefits, but that survey does not separately report data for federal contractors (nor does the NCS). The Kaiser Family Foundation survey shows that 20% of firms with fewer than 200 employees offer partner benefits to same-sex partners, while 30%-33% of firms with 200-4,999 employees offer partner benefits. The big jump is to firms of 5,000 or more employees, 56% of which offer partner benefits. However, many small employers (with fewer than 200 employees) – but virtually no larger employers – report that they had “not encountered” the issue, implying that they had not been asked by employees to offer partner benefits. Given the small numbers of same-sex couples, about 600,000 nationally, and the large number of small firms, it is very unlikely that a small firm would employ someone with a same-sex partner.

Some recent data for domestic partner coverage by small firms comes from a survey of small businesses by the Center for American Progress. They find that 51% of small businesses that offer health insurance also provide that coverage to domestic partners, and more would offer it if asked by employees. Since most small businesses do not provide health insurance benefits, that figure is not directly comparable to the other studies, but it does demonstrate that many small businesses are moving in the direction of offering partner coverage.¹⁹

Conclusions

policies would provide additional coverage for 11 – 16 million additional workers.

Overall, many firms and states currently have public or private policies of equal treatment of people regardless of sexual orientation or gender identity. But many federal contractors do not currently have those policies, and they employ millions of workers. An executive order requiring companies doing business with the federal government to have nondiscrimination

Table 1: Numbers of employees covered by EEO and DP policies, by contractor status

	Federal Contractor	Non Contractor	Missing Contractor Status	Total
Sexual orientation	16,945,320	15,803,856	29,312	32,778,488
F1000 -- firm policy	10,345,535	7,189,856	-	17,535,391
State level law	6,599,785	8,614,000	29,312	15,243,097
NO KNOWN ACCESS	11,014,531	15,129,080	35,362	26,178,973
Gender identity	11,493,885	8,571,412	14,591	20,079,888
F1000 -- firm policy	6,601,622	2,627,391	-	9,229,013
State level law	4,892,263	5,944,021	14,591	10,850,875
NO KNOWN ACCESS	16,465,966	22,361,524	50,083	38,877,572
Access to DP benefits	12,667,006	9,919,957	17,769	22,604,732
F1000 -- firm policy	8,058,717	3,937,346	-	11,996,063
State level law	4,608,289	5,982,611	17,769	10,608,669
NO KNOWN ACCESS	15,292,845	21,012,979	46,905	36,352,729

Table 2: Percentage of employees covered by EEO and DP Policies, by contractor status

	Federal Contractor	Non Contractor	Missing Contractor Status	Total
Sexual orientation	60.6%	51.1%	45.3%	55.6%
F1000 -- firm policy	37.0%	23.2%	0.0%	29.7%
State level law	23.6%	27.8%	45.3%	25.9%
Gender identity	41.1%	27.7%	22.6%	34.1%
F1000 -- firm policy	23.6%	8.5%	0.0%	15.7%
State level law	17.5%	19.2%	22.6%	18.4%
Access to DP benefits	45.3%	32.1%	27.5%	38.3%
F1000 -- firm policy	28.8%	12.7%	0.0%	20.3%
State level law	16.5%	19.3%	27.5%	18.0%

Table 3: Percentage of federal contractor employees covered by EEO and DP policies, by firm size

Number of employees	Total Employment	% of Total Employment	DP coverage	Sexual orientation EEO coverage
0-49	5,163	0.0%	15.1%	27.4%
50-99	409,763	1.5%	23.6%	38.6%
100-199	991,572	3.5%	24.0%	38.5%
200-499	1,806,363	6.5%	23.4%	38.1%
500-999	1,573,875	5.6%	24.5%	38.9%
1,000-9,999	6,654,054	23.8%	23.6%	38.3%
10,000 and up	5,217,050	18.7%	24.9%	37.5%
Fortune 1000	11,302,011	40.4%	76.6%	93.8%
All firms	27,959,851	100.0%	45.3%	60.6%

Acknowledgements

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Endnotes

¹ Mosher, William D., Anjani Chandra, and Jo Jones, Division of Vital Statistics, CDC. 2005. "Sexual Behavior and Selected Health Measures: Men and Women 15–44 Years of Age, United States, 2002." *Advance Data from Vital and Health Statistics* 362. LGBT people likely constitute a somewhat higher proportion of the workforce than of the adult population, since studies show that labor force participation of lesbians is higher than that of heterosexual women. Leppel, Karen. 2008. "Labour Force Status and Sexual Orientation." *Economica*, Vol. 76, Issue 301 (February), pp. 197–207; Tebaldi, Edinaldo and Bruce Elmslie. 2006. "Sexual Orientation and Labour Supply." *Applied Economics*, Vol. 38, No. 5 (March), pp. 549-562.

² Exec. Order 8,587, 5 Fed. Reg. 4445 (Nov. 7, 1940).

³ Exec. Order 9,830, 3 C.F.R. 606 (1943-1948); Exec. Order 9,980, 3 C.F.R. 720 (1943-1948); Exec. Order 9,981, 3 C.F.R. 722 (1943-1948); Exec. Order 10,590, 3 C.F.R. 237 (1954-1958); Exec. Or. 10,925, 3 C.F.R. 448 (1959-1963).

⁴ Exec. Or. 12,106, 3 C.F.R. 263 (1978); Exec. Or. 13,087, 3 C.F.R. 191 (1998); Exec. Or. 13,152, 3 C.F.R. 264 (2000).

⁵ Exec. Order No. 8,802, 3 C.F.R. 957 (1938-1943).

⁶ A firm is a private company. An "establishment" is a location of a firm. In other words, a firm may have multiple establishments or locations. Firms also file "consolidated" reports that would capture employment in any smaller establishments of that firm.

⁷ These totals include establishments that filed separate EEO-1 forms and those establishments of the firm that were not required to file EEO-1 forms, as captured in the consolidated report. Published EEOC figures are based on establishment-level reports, so they are not directly comparable with figures presented in this study.

⁸ This dataset also accounts for a meaningful number of federal contractors subject to the requirements of Executive Order 11246, which requires contractors to take affirmative action to end discrimination. The list of FY10 federal contractors shows 160,901 separate firms contracting with the federal government for \$10,000 or more in FY10, the threshold for EO 11246 coverage. The EEO-1 data include 24,162 firms, or 15% of contractors with contracts of \$10,000 or more. One reason the EEO-1 data includes a small percentage of such firms is that only 88,043 of contractors in FY10 had contracts of \$50,000 or more, meeting one of the tests for the need to file an EEO-1 form. The remaining 64,000 contractors most likely had fewer than 50 employees, so they would not be required to file an EEO-1 form. Another possibility is that some federal contractor firms did not report their contractor status on the EEO-1 forms, pushing them into the noncontractor category. That form of measurement error would tend to reduce any differences between findings for contractors and noncontractors.

⁹ We thank the Human Rights Campaign Foundation, Inc., and the HRC Workplace Project for making this data available to us.

¹⁰ In 2010, California, Colorado, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia outlawed employment discrimination based on sexual orientation and gender identity. In 2010, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Nevada, New Hampshire, New York, and Wisconsin outlawed employment discrimination based on sexual orientation. In 2010, the District of Columbia, Connecticut, Iowa, Massachusetts, New

Hampshire, and Vermont allowed same-sex couples to marry. In addition, California, Hawaii, Illinois, Nevada, New Jersey, Oregon, and Washington gave same-sex couples substantial rights through civil unions or similar legal statuses.

¹¹ In this paragraph and the next, as well as Figures 1 and 2, the numerator is the number of F1000 employees with nondiscrimination coverage in each contractor category, and the denominator is the total number of F1000 employees in each contractor category.

¹² These percentages of employees will not be the same as percentages of the population presented in the introduction for several reasons, most obviously because the population is different from the number of people employed. Also, the EEOC data used here covers a (large) subset of private sector employers, not economy-wide employment.

¹³ In Table 2 the percentages are calculated as follows: the numerator is covered employment from consolidated reports for F1000 firms and establishment level reports for non-F1000 firms (and establishment reports for F1000 firms with missing data on policies); the denominator is total employment from consolidated reports for both F1000 and non-F1000 firms of each contractor status.

¹⁴ For total employment, see U.S. Bureau of Labor Statistics, "Establishment Data, Table B-1. Employees on nonfarm payrolls by major industry sector, 1962 to date," <ftp://ftp.bls.gov/pub/suppl/empstat.ceseeb1.txt>, last accessed 1/31/12. State level data from online data tool available at <http://www.bls.gov/sae/>. These states accounted for 6% of federal contracting dollars spent in FY10: USASpending.gov, "Prime Award Spending Data," <http://www.usaspending.gov/explore?carryfilters=on> (filter by "By Location," "FY2010," "Contracts"), accessed 2/3/12.

¹⁵ For total employment, see U.S. Bureau of Labor Statistics, "Establishment Data, Table B-1. Employees on nonfarm payrolls by major industry sector, 1962 to date," <ftp://ftp.bls.gov/pub/suppl/empstat.ceseeb1.txt>, last accessed 1/31/12. State level data from online data tool available at <http://www.bls.gov/sae/>. These two states accounted for 4.4% of federal contract dollars in FY10, however: USASpending.gov, "Prime Award Spending Data," <http://www.usaspending.gov/explore?carryfilters=on> (filter by "By Location," "FY2010," "Contracts"), accessed 2/3/12.

¹⁶ The literature suggests several possible reasons: many partners are employed and receive their own employer-provided coverage, employer spending on partner benefits is considered taxable income, and employees might fear discrimination if their partnership status was revealed.

¹⁷ Ash, Michael A. & M.V. Lee Badgett. 2006. "Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Same-Sex and Unmarried Different-Sex Couples." *Contemporary Economic Policy*, Vol. 24, No. 4 (October), pp. 582-599.

¹⁸ One firm did not cover sexual orientation, and five others had no data in the HRC policy database.

¹⁹ Crosby Burns & Jeff Krehely, "Equal Benefits for Gay Couples Are Inexpensive," Center for American Progress, http://www.americanprogress.org/issues/2011/10/enda_benefits.html, accessed 1/30/12.

An Evaluation of Local Laws Requiring Government Contractors to Offer Equal Benefits to Domestic Partners



By Christy Mallory and Brad Sears
February 2012

Executive Summary

In 1996, San Francisco enacted the first “equal benefits ordinance” which required local government contractors to provide benefits to unmarried partners of employees on the same terms that they are provided to spouses. Since then, 16 other localities and one state, California, have passed similar ordinances.

When passing EBOs, local governments have pointed to several positive effects they would have on the city’s workforce and the government’s operations. For example, the preamble to Minneapolis, Minnesota’s EBO states,

“Requiring contractors to provide to employees with domestic partners benefits equal to those provided to employees who are married will require contractors to maintain a competitive advantage in recruiting and retaining the highest quality work force, thereby improving the quality of goods and services that the city receives. The City of Minneapolis has a fiscal responsibility to ensure that it purchases the best quality goods and services possible within its budgetary constraints. To ensure that the City of Minneapolis receives improved quality of goods and services, the functions of the purchasing agent are expanded as provided in this section.”¹

Geographic Distribution of Equal Benefits Ordinances



Similarly, Los Angeles’s EBO states that its purpose is “to ensure that the City’s contractors will maintain a competitive edge in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City’s property.”² In addition, Dane County, Wisconsin states in the county code chapter that includes its EBO that the general purpose of the chapter is “to achieve greater efficiency and economy in the operation of Dane County government.”³ Oakland’s⁴ and Sacramento’s⁵ EBOs also cite furthering “convenience” as a benefit to the city governments.

However, these contractor requirements have also generated some criticism.

Arguments have been made that a jurisdiction may lose contractors or not have the best contractors if they are required to comply with these policies that reach beyond federal and many state laws.⁶ Others have argued that the policies will be costly to enforce and will be administratively burdensome for already strained local governments.⁷ Additionally, a few of the ordinances have been challenged in court, prompting concern that other localities will face litigation as a result of passing similar ordinances.⁸

This study evaluates the implementation and enforcement of EBOs in order to determine both the positive impact they have on LGBT-related workplace policies and the validity of the arguments made against them. Local agencies charged with administering EBOs were asked to provide information on their experiences with implementation and enforcement. The study is based on the responses from 16 of these localities, as well as the findings of eight studies and self-evaluations conducted by these jurisdictions.

The three principle findings of this study are:

Almost all of the localities surveyed reported almost uniform compliance with the contractor ordinances, with little to no resistance by contractors. The localities reported very little contractor resistance to EBOs. To the extent there were a handful of companies that resisted the EBOs, their main focus was on the requirement that domestic partner benefits be extended to different-sex couples.

Of all the localities that responded to the survey, only two reported individual enforcement investigations or actions for violations of these contractor requirements, and these localities just reported one such instance each. Of the 12

localities with EBOs that provided detailed responses to the survey, only one, the City of Los Angeles, reported that a single complaint had been filed. None of these localities reported that contractors had been barred from bidding on future contracts because of non-compliance. However, a large contract in one city, Oakland, was terminated for non-compliance.

The contractor requirements have been adopted, implemented, and enforced with little disruption to government operations or work, administrative burden, cost or litigation. No locality reported that any of these ordinances made it difficult to find qualified contractors to carry out government work or operations. Ten of the 12 localities that gave detailed responses to questions about their EBOs reported that their EBOs were not administratively burdensome while the remaining one, San Francisco, declined to answer the question because it had not measured the burden of its ordinance. Further, studies by three of these localities showed that EBOs resulted in minimal additional administrative or contractor costs. Finally, only seven cases challenging EBOs were identified, four of these cases were against San Francisco, the first jurisdiction to adopt an EBO, and no cases have been brought against an EBO since 2004.

Local Contractor Equal Benefits Ordinances

We identified 17 localities⁹ and one state, California,¹⁰ that have EBOs. These laws require contractors to provide benefits to unmarried partners on the same terms that they are provided to spouses. The first EBO was enacted by San Francisco in 1996.¹¹ Since then, EBOs have been passed by localities in six different states, with the highest concentration (9) in California.

EBOs' requirement that benefits be offered "on the same terms" means that contractors may comply in three ways: 1) by offering the same benefits to spouses and domestic partners (or by paying employees with domestic partners a cash equivalent)¹²; 2) by offering no benefits to either spouses or domestic partners,¹³ or 3) by offering no employee benefits because

The benefits required by 14 of these EBOs include health insurance benefits and a range of other fringe benefits which make up an employee's total compensation package.¹⁷ For example, San Diego, California's EBO defines "employee benefits" as, "All remuneration other than wages, salary, bonuses, commissions, and stock options offered to an employee as part of the employee's total compensation

Geographic Distribution of Equal Benefits Ordinances



King County, WA
Seattle, WA
Olympia, WA
Tumwater, WA
Portland, OR

San Mateo County, CA
San Francisco, CA
Berkeley, CA
Oakland, CA

Sacramento, CA
Santa Monica, CA
Los Angeles, CA
Long Beach, CA

San Diego, CA
Minneapolis, MN
Dane County, WI
Miami Beach, CA

the contractor has no employees.¹⁴ In some localities, contractors may also comply by allowing employees to choose any member of the household to receive spousal equivalent benefits.¹⁵ None of the EBOs are explicitly limited to same-sex partners, and therefore require that any couple who meets the definition of "domestic partner" in the ordinance, whether same-sex or different-sex, be provided benefits on the same terms as spouses.¹⁶

package, including bereavement leave, family leave, no-additional-cost services, health and medical benefits, employee discounts, memberships or membership discounts, moving expenses, pension and retirement benefits, transportation and travel benefits, and any other employment or fringe benefits".¹⁸ Olympia, Washington's EBO is limited to equal health insurance benefits (medical, dental, and vision benefits), and San Mateo, California's EBO explicitly exempts pension and retirement benefits.¹⁹ Santa Monica,

California's EBO does not specify which benefits are covered.²⁰

Fourteen EBOs state the geographic reach of the ordinance. All of these EBOs state that they apply to the contractor's operations which occur within the locality and elsewhere in the United States where work related to the contract is being performed.²¹ Thirteen EBOs also apply to work performed on real property outside of the locality if the property is owned or occupied by the locality and the contractor's presence on the property is related to the contract.²² In addition to these requirements, San Francisco, California's EBO states that it applies to any of a contractor's operations in the United States²³, but a district court in California has held that the dormant commerce clause prohibits this application.²⁴

All localities exempt some contracts from the EBO requirements, or allow waivers in certain circumstances. Thirteen localities exempt contracts that are below a certain dollar amount.²⁵ The dollar thresholds in these ordinances range from \$5,000 to \$100,000. Miami Beach, Florida's EBO also exempts employers with 50 or fewer full-time employees.²⁶

Localities also offer waivers or exempt contracts in a number of different circumstances, including when the contract is necessary to respond to an emergency;²⁷ when no compliant contractor can provide the goods or services;²⁸ for joint purchasing agreements with another government;²⁹ for contracts with a sole source provider;³⁰ for contracts with a public entity;³¹ for contracts with a non-profit entity;³² for contracts with corporations providing banking services;³³ when the contractor is subject to a collective bargaining agreement that was in effect before the ordinance passed;³⁴ when requiring the benefits would be inconsistent with the terms of a

grant from, or other agreement, with a public entity;³⁵ for contracts that would require specialized litigation;³⁶ for bulk purchasing contracts;³⁷ when only one contractor has bid;³⁸ for contracts with religious organizations;³⁹ for agreements involving trusts, bonds or securities;⁴⁰ for property rent or purchase contracts;⁴¹ contracts only for the purchase of goods;⁴² and when compliance would result in significant financial loss to the contractor.⁴³

One locality, San Francisco, requires that contractors undergo an EBO compliance certification process before bidding on city contracts, and Dane County, Wisconsin, requires that contractors submit certification affirming that they have complied with the EBO before they receive final payment.⁴⁴ Ten EBOs allow the city and/or an aggrieved employee to seek civil remedies for a violation of the ordinance;⁴⁵ four EBOs explicitly provide for individual remedies for an aggrieved employee.⁴⁶ Rules implementing San Diego, California's EBO also provide for individual remedies for an aggrieved employee.⁴⁷ Fourteen provide contract remedies, including termination of contract and debarment from future bidding, if an employer fails to provide equal benefits.⁴⁸

Methodology

This study evaluates equal benefits ordinances in order to determine both the positive impact they have on LGBT-related workplace policies and the validity of the arguments made against them. The study is based on a survey of those localities that have adopted EBOs, as well as the findings of eight studies and self-evaluations conducted by these jurisdictions.

All of the 17 localities with EBOs were contacted for purposes of this study.⁴⁹ When the localities were contacted, they were asked to answer a set of questions

about their experiences with adopting, implementing, and enforcing their and EBOs.⁵⁰ The positive impact of these ordinances was studied by looking at what the ordinances have accomplished. For example, have more contractors adopted LGBT-inclusive policies as a result of the ordinances? Have they provided redress for specific violations? The arguments against the ordinances were evaluated by asking those enforcing them if the concerns around their enactment have been born out. Have the work and operations of local governments been disrupted because they could not find compliant contractors? Have they been costly to administer or burdened local administrative agencies?

Sixteen cities and counties provided responses to our questions. These localities include: Berkeley (California), Dane County (Wisconsin), King County (Washington), the City of Los Angeles (California), Miami Beach (Florida), Minneapolis (Minnesota), Oakland (California), Olympia (Washington), Portland (Oregon), Sacramento (California), San Diego (California), San Francisco (California), San Mateo County (California), Santa Monica (California), Seattle (Washington), and Tumwater (Washington)⁵¹ Their responses are presented in the next section.

Most (12) of these cities and counties provided detailed responses, but a few localities provided limited information. Three cities provided very limited information on enforcement of their EBOs: Berkeley,⁵² King County, and Olympia.⁵³ Additionally, Santa Monica was only able to provide limited information about its EBO because the ordinance had so recently passed. However, the limited responses from these localities support that they have not invested any significant resources or hired new staff to implement or enforce their EBOs.

The agencies that provided detailed data and information for this study largely reported similar experiences with these ordinances. However, these agencies may be qualitatively different from agencies that provided limited responses to our requests. The more limited responses may indicate a lack of staff and resources at these agencies, which, in turn, may mean that these agencies are not able to dedicate the time and effort needed to implement and enforce their ordinances. They may not be equipped or available to answer contractors' questions, which alleviated resistance in almost every case for the agencies that provided information. Nevertheless, almost all of the localities provided information which can inform future debates in localities seeking to pass EBOs.

During the survey, we also identified nine studies that these jurisdictions had conducted in order to design and evaluate their ordinances. These include a report by Oakland evaluating other EBOs before it adopted its own;⁵⁴ five evaluations by San Francisco of its EBO conducted in 1999,⁵⁵ 2000,⁵⁶ 2001,⁵⁷ 2002,⁵⁸ and 2004;⁵⁹ a five year cost estimate by Miami Beach in 2005 of its EBO;⁶⁰ a survey by Miami Beach of its contractors before it passed its EBO to measure any potential resistance;⁶¹ and an evaluation by San Diego of its EBO six months after the ordinance went into effect.⁶² Information from these reports is also summarized below.

Compliance with LGBT-Inclusive Contractor Requirements

Compliance

Many private companies have publicly supported ordinances that require contractors to offer domestic partner

benefits.⁶³ Local agencies' experiences with implementing EBOs reflect that support, finding that, almost without exception, private businesses interested in contracting with the locality are willing to adopt and comply with these policies. In almost all localities that responded, any resistance to these policies was minimal and short-lived. In the few localities that reported some initial resistance, contractors quickly agreed to comply with the policies.

The localities reported that contractors were generally willing to offer benefits to domestic partners. These localities reported that most contractors were willing to comply when they received more information on how to implement the benefits from local enforcement agencies.

Six of the 12 localities that provided detailed responses reported some resistance to their EBOs: Dane County, Miami Beach, San Francisco, San Mateo County, Seattle, and Tumwater. All of these localities reported that when resistant contractors were given information clarifying the requirements of the ordinance, contractors were willing to comply in most cases.

Three localities, Miami Beach, San Francisco, and Seattle, reported that most resistance was from contractors who did not want to offer benefits to different-sex partners (as required by all three ordinances), even though they already did, or were willing to, offer the benefits to same-sex partners. These contractors were mainly concerned that covering different-sex partners would greatly increase costs, or that they would be forced to move to another insurance carrier because their current carrier would not cover different-sex partners. Miami Beach and San Francisco both said that they explained to these contractors that they could comply by paying a cash equivalent to employees with

different-sex domestic partners, rather than switching carriers. San Francisco also explained that under its ordinance, if any employee of the contractor has a preexisting medical condition or if other insurers do not have the same pool of doctors, the contractor is not required to switch carriers, and may use their current insurer's definition of "domestic partners."

Seattle also reported that several contractors based outside of Washington state resisted complying, claiming that offering same-sex domestic partner benefits "was barred by the state [where they were based]." San Mateo reported that no contractors resisted because of costs, but a few resisted because they found it "politically unacceptable" to offer the benefits.

Before Miami Beach passed its EBO, the city's Procurement Division surveyed contractors that were doing business with the city at that time.⁶⁴ The purpose of the survey, in part, was to gauge contractors' reactions to the requirements. More than 2,800 surveys were distributed, and 604 responses were received (22%). When asked if they already provided domestic partner benefits, 64.7% of contractors reported that they did. When asked whether they would continue to do business with the city if they were required to offer domestic partner benefits, 76.3% reported that they would, 19.2% reported that they would not, and 4.5% did not answer. Since the ordinance went into effect, Miami Beach reported that only two non-compliant contractors submitted bids, but in neither case were the companies the lowest bidders, so there was no need for the city to pursue enforcement of the EBO.

In an evaluation of its EBO, San Diego found that all of its 302 contractors were in compliance with the EBO during the first six months of enforcement.⁶⁵ The vast

majority of contractors (72%) complied by offering benefits to domestic partners.⁶⁶ Twenty percent of contractors were in compliance because they offered no spousal or domestic partner benefits, and 3% had no employees.⁶⁷ The remaining 1% did not offer the benefits, but were deemed in compliance with San Diego's EBO under a provision that exempts firms subject to a collective bargaining agreement that existed before the EBO went into effect.⁶⁸

In an evaluation of its EBO, San Francisco also found that the vast majority of contractors that have undergone their certification procedure have been found in compliance with the EBO, and that compliance increased over time. During the first seven years of the EBO, it found that compliance increased from 91% in the first six months of implementation to 94.6% after seven years.⁶⁹ In 2011, in response to the present survey, San Francisco reported that the compliance rate was 93.6%.

There are three ways to comply with the San Francisco EBO, and the evaluation found that the majority of contractors complied by offering equal benefits to spouses and domestic partners (45%), 28% complied by not offering any benefits based on marital or domestic partnership status, and 27% complied because they had no employees (sole proprietorships).⁷⁰ All three categories are considered compliant because domestic partners are not treated differently than spouses.⁷¹

Over the first seven years of implementation, San Francisco also found that there was an 8% decrease in those contractors complying by offering no employee benefits to spouses or domestic partners.⁷² It concluded, "[t]his decline refutes the assertion that Equal Benefits legislation encourages employers to take away benefits they might otherwise

offer."⁷³ It also found that most of the contractors who complied by not offering benefits to spouses or domestic partners had fewer than twenty employees and offered no employee benefits to any employee, single, married, or partnered.⁷⁴

At the end of seven years, San Francisco estimated that 66,492 employees of its contractors were taking advantage of domestic partner benefits provided by the EBO.⁷⁵ It also found that contractors that complied by offering equal benefits could be found in 40 states and D.C. and in over 600 cities nationwide⁷⁶, and reported compliance by large (5,000 or more employees), medium (500 to 4,999 employees) and small companies (under 500 employees), "in proportions reflective of the U.S. business community in general."⁷⁷ San Francisco's data is consistent with several media reports of companies changing their policies in order to bid on local government contracts.⁷⁸

The results of this survey indicate that EBOs have increased workplace protections for LGBT people. The fact that even resistant contractors were willing to comply when the ordinances were explained suggests that the ordinances have resulted in more companies offering domestic partner benefits. The minimal resistance to these ordinances reported by the localities also indicates that they have caused little, if any, disruption to the contracting process, for both the agencies and the contractors.

Because agencies do not track whether contractors had the policies in place before they decided to bid on contracts, it is difficult to say how many more contractors offer domestic partner benefits because of the EBOs. However, even if many of the businesses that were awarded contracts already had internal equal benefits policies, the local ordinances provide an external enforcement mechanism for the pre-

existing internal corporate policies. The ordinances establish an administrative complaint procedure, and provide remedies for violations, which go beyond internal remedies available for breach of corporate policies. In this way, the ordinances provide greater protection for LGBT people, whether or not contractors already have an internal policy in place.

Localities interested in passing EBOs may find more contractor-support for the ordinances if they only require benefits for same-sex partners. The majority of contractor resistance reported by the localities in this study was to the requirement that benefits be provided to different-sex partners. However, limiting benefits to same-sex partners may be politically less popular and may open up the ordinances to equal protection challenges.⁷⁹

The Impact of Waivers on Compliance

In evaluating compliance with these ordinances, it is important to consider that all localities with EBOs allow contractors to request waivers from the EBO requirements under certain circumstances.

Although these contractors are offering spousal benefits, but not domestic partner benefits, the locality does not consider them out of compliance with the EBO. Data collected from four of the 11 localities with EBOs indicates that contractors primarily comply with EBOs through non-discriminatory

benefits policies as opposed to obtaining waivers.

Waiver provisions in EBOs are fairly consistent across localities. All or most of the EBOs provide exemptions in the following circumstances: when the locality is responding to an emergency; when no compliant contractor can provide goods or services; when the contractor is a sole-source provider; when the requirements would be inconsistent with a grant or agreement with a public agency, and when the contract is with a public entity. A few ordinances include other exemptions, for example, when there is only one bidder or when the contract is with a non-profit entity.

Four localities, San Francisco, Miami Beach, Minneapolis, and Sacramento, provided specific details about their waiver programs.

During the years that San Francisco evaluated its EBO, between 1,232 and 1,604 waivers were requested each year.⁸⁰ In these years, it granted most of these

Waivers Granted to San Francisco Contractors, 1998-2002 & 2004

Type of Waiver	Percentage ⁱ of Waivers Granted, by Year					
	1998	1999	2000	2001	2002	2004
Sole Source or Blanket Sole Source ⁱⁱ	93.1%	93.1%	90.2%	93.2%	91.4%	92.5%
Public Entity	3%	2.4%	2.9%	2.1%	2.5%	3.3%
Company was a Shell Company for a Non-Compliant Company	0	0	0	0	0	0
No Compliant Company Bid	3.1%	4.8%	6.6%	<.1%	0	.3%
Bulk Purchasing	.5%	0	<.1%	4.4%	5.7%	4%
Emergency	0	.4%	.1%	.2%	.5%	0
Total requested	1,474	1,393	1,389	1,232	1,287	1,604
Total granted	1,398 (94.8%)	1,383 (99.3%)	1,371 (98.7%)	1,216 (98.7%)	1,263 (98.1%)	1,527 (95.2%)

ⁱ Percentages may not add up to 100% due to rounding.
ⁱⁱ Blanket sole source is a designation for those contractors who would be approved as a sole source for every contract they were to enter into with the city, and as such do not have to be approved as a sole source on each individual contract submitted.

waivers, between 94.8% and 99.3% of all requests for waivers. The vast majority of these waivers were granted because the non-compliant contractor was a sole source for the goods or services needed. During the third year of the EBO, San Francisco entered into 187,575 transactions covered by the ordinance, 0.7% of which were entered into pursuant to a waiver. Data on the total number of covered transactions are unavailable for the other years.

San Francisco's self-evaluation studies point out that just because contractors obtain a waiver does not mean that they are not providing at least some form of domestic partner benefits to their employees. For example, companies that only extended domestic partner benefits to same-sex domestic partners have to obtain a waiver because the EBO requires that same-sex and different-sex domestic partners be covered.⁸¹ In addition, if companies just extended medical benefits to domestic partners, but not retirement or leave benefits, they also must seek a waiver because the EBO requires equal medical, retirement and leave benefits.⁸² For example, San Francisco found that out of the ten largest contractors (in terms of dollars awarded) who received waivers in the first five years of implementation, one had since become compliant by offering domestic partner benefits, and five offered domestic partner benefits but did not fully comply with the EBO.⁸³ Three of the remaining four that did not offer benefits were public entities that San Francisco was required to work with to satisfy a federal or state mandate.⁸⁴

In 2005, Miami Beach determined that waivers would have been granted to 28 contractors if the EBO had been in effect for the previous five years.⁸⁵ This represented 16% of the 174 contracts awarded in those five years.

Minneapolis reported that of the 143 contracts entered into in 2010, totaling approximately \$65 million, 102 contracts (\$28 million contracting dollars) were covered by the EBO. The city reported that 41 contracts were not covered either because the contractor received a waiver or because the contracts did not fall within the ordinance. Under the Minneapolis ordinance any contract for less than \$100,000 and all construction contracts are not required to comply with the EBO.

Sacramento reported that it most commonly grants waivers for companies that have "world-wide operations" where the relationship between the city and the company is such that there is a possibility that the city will interact with an employee of another country at any time. These companies requested waivers on account of the difficulty in offering domestic partner benefits to employees all over the world, where cultures and laws differ.⁸⁶ However, Sacramento was unable to provide data on the number of contracts covered by the EBO, and the number of contractors who received a waiver.

The data indicates that most contractors comply with EBOs as opposed to receiving waivers. The only two localities that provided enough data to determine the impact of the waiver programs on compliance were San Francisco, with 0.7% of EBO-covered contracts entered into pursuant to a waiver, and Miami Beach, reporting 16% of EBO-covered contracts entered into pursuant to waiver. And as noted above, the San Francisco data indicates that some of the contractors who received waivers provided some form of domestic partnership benefits, just not enough to fully comply with San Francisco's EBO.

Investigation and Enforcement of Individual Violations

All of the local agencies reported having established complaint procedures as required by the EBOs. However, very few individual complaints have been made under the ordinances.

Ten localities⁸⁷ that provided detailed information about their EBOs all reported that they monitored compliance with the EBO by requiring contractors to submit an affidavit of compliance when they bid on contracts. Miami Beach said that in addition to requiring an affidavit, the city requires contractors to verify that they offer the benefits with company-produced documentation (an employee handbook, for example).

San Francisco has a more intensive procedure to evaluate contractor compliance.⁸⁸ First, vendors are required to submit documentation verifying that they have an equal benefits policy to the agency.⁸⁹ The agency then reviews the materials and determines whether the vendor is in compliance, or if additional materials are needed to demonstrate compliance.⁹⁰ The determination is then logged in a database so that government departments may access the information when they are evaluating vendors that have bid on contracts.⁹¹ In all of these localities, once a contractor has signed an affidavit and submitted any other required documentation, it is no longer monitored and enforcement becomes a complaint-driven process.

Eleven localities⁹² reported that no complaints had been filed under their EBOs since they went into effect. Nine localities⁹³ reported that although no complaints had been filed under their EBOs, if the locality

were to receive complaints, the handling procedures set out in the ordinances would be strictly followed. Additionally, King County noted that if a complaint were filed against a King County contractor for a violation of another locality's EBO or a state or local non-discrimination law and a finding of reasonable cause was made, King County would consider debarment based on that evidence.

Los Angeles reported that one complaint had been filed under its EBO. The complaint alleged that the employer's health benefits were not made available to the employee's domestic partner. The city conducted a compliance investigation, and determined that the benefits were governed by ERISA, and as such, the employer did not have to provide them.

All of the 12 localities⁹⁴ that provided information about their EBOs reported that no contractor had been debarred from contracting under the EBO. One locality, Oakland, had terminated an office supply contract because the contractor was found out of compliance, however.⁹⁵

In this survey, localities were not asked to explain why they had so few individual complaints. However, at least two different reasons seem likely to contribute to the scarcity of enforcement actions. First, the lack of individual complaints may reflect a lack of investment in the enforcement agencies. Second, the lack of individual complaints may be the result of widespread compliance.

Lack of Investment in Enforcement

First, local agency limitations may account for the lack of complaints filed under EBOs. Studies of complaints filed on the basis of sexual orientation and gender identity under local non-discrimination ordinances have concluded that local enforcement

agencies often lack the staff and resources needed to fully enforce the ordinances.⁹⁶ Similar limitations were documented in academic literature describing the role of agencies enforcing state and local civil rights laws prior to the enactment of the Civil Rights Act of 1964.⁹⁷

Nine of the 12 localities with EBOs that responded did not indicate that they hired additional staff to implement or enforce them.⁹⁸ Of the other three, only one, San Francisco, hired additional, permanent, full-time staff. San Francisco hired six full-time staff to start up its EBO program, and now retains the equivalent of 4.5 full-time staff to enforce the EBO.⁹⁹ San Mateo hired one temporary staff person to start up its EBO program; then existing Procurement Department staff became responsible for enforcing the program after it was developed. Miami Beach hired one additional staff member to implement and enforce both its EBO and its living wage ordinance.

The fact that few staff were hired as the result of these ordinances can be looked at in two ways. First, the lack of staff may indicate a lack investment in enforcement of the ordinances – contributing to the low number of individual complaints. Alternatively, these localities could have been making reasonable resource allocations by not investing further in enforcement. They may have determined that given the small size of the LGBT population and the existing capacity of their enforcement staff, no additional staff was necessary to enforce the LGBT-specific contractor provisions. Research by the Williams Institute has shown that only 3.8% of the population identifies as LGBT;¹⁰⁰ and that the take up rate for same-sex and different-sex domestic partner benefits would be 0.3% to 2.3% of a contractor's employees.¹⁰¹

Widespread Compliance

Second, the lack of individual enforcement action may indicate widespread compliance. All of the EBOs at least require contractors to submit an affidavit of compliance when they bid on contracts, if not more extensive pre-clearance. Thus, for there to be a violation by these contractors, the contractor would have to lie about a policy that is easy to verify, or change its entire benefits plan after receiving a contract.

In addition, the education efforts by localities may have contributed to widespread compliance and the lack of complaints. All of the localities¹⁰² that responded, except Tumwater and Minneapolis,¹⁰³ provided materials on their EBOs that they created for staff, contractors, and employees of contractors, or make these documents available online. Additionally, one city that did not respond, Long Beach, makes these documents available online. These materials included:

- Detailed web pages directed to contractors with information on compliance and access to the necessary forms.¹⁰⁴
- Detailed rulebooks, handouts, and compliance guides.¹⁰⁵
- Short fact sheets, FAQs, and brochures on the ordinances.¹⁰⁶
- Compliance posters for employers.¹⁰⁷

Broader Corporate and Government Policy Reform

The present study was designed to measure the most direct effects of EBOs on the businesses and employees covered by them the adoption equal benefits policies by covered contractors, and the individual investigations and enforcement actions initiated by or on behalf of their employees.

However, in evaluating its EBO, San Francisco also focused on another effect of its pioneering EBO— encouraging broader changes in corporate and public policy.

In its five year evaluation, San Francisco noted that its EBO “has been credited with playing a major role in [the] explosion of domestic partner benefits” offered by companies in the United States.¹⁰⁸ The report states that at the time the EBO was adopted only 500 employers in the U.S. offered such benefits, while 4,500 did so in 2002 – 75% of which did so in compliance with the City’s contracting requirements.¹⁰⁹

In addition, it noted that its EBO has had “a noticeable impact on the insurance industry,” including increasing the number of insurance companies willing to offer domestic partnership benefits, especially for employers with few employees, and all but eliminating the practice of levying surcharges for domestic partnership benefits as a result of “clear actuarial statistics indicating that the claims for domestic partners are no more expensive than those for spouses.”¹¹⁰

In terms of public policy, its 2004 evaluation noted that 12 other government bodies had adopted EBOs and that several more governments were considering them, all using San Francisco’s EBO as a model.¹¹¹ Its five year evaluation noted that its EBO played a role in encouraging California’s and other domestic partner registries that provide for a number of rights and obligations beyond workplace benefits.¹¹² Only 33 jurisdictions offered these broader domestic partner registries when San Francisco’s EBO was adopted, while 63 had such registries after five years of implementation.¹¹³

No doubt there were many factors contributing to the growing recognition of same-sex couples by private companies,

insurers, and governments during the first seven years of San Francisco’s EBO. However, its evaluations include endorsements by many community and government leaders crediting its EBO, at least in part, with sparking and encouraging these broader policy changes. While it is likely that San Francisco’s EBO, as the first in the country, had a larger impact on encouraging policy reform than those that followed, further study is warranted on whether and how local and state EBOs encourage broader corporate and government policy reform.

Arguments against EBOs

The survey also asked localities to respond to the concerns raised prior to the passage of the EBOs, including that the localities would be unable to secure contractors to effectively carry out their work, that the ordinances would be administratively burdensome, that they would be costly to implement, and that they would result in litigation.

Disruption of Work and Operations of Government

As indicated by the discussion of widespread compliance with EBOs above, none of the localities who responded to the survey reported that the EBOs in any way hampered their ability to carry out their work. None of the localities reported that because of the EBOs they were unable to hire the contractors that they needed.

Administrative Burden

Almost every locality in this study said that their EBOs did not create an administrative burden. When specifically asked whether EBOs were burdensome administratively, 11 localities¹¹⁴ said that they were not. These 11 localities reported that the

ordinances were fairly easy and quick to implement, and enforcement duties were assumed by the local governments without any major problems. Portland added that the program has been particularly easy to implement since the city switched to an online system for compliance verification that allows contractors to submit affidavits electronically. King County said that the EBO does present an administrative burden on the Procurement Department, but did not respond to a request for more details. San Francisco reported that the administrative burden of the EBO has not been measured.

Costs

The survey asked localities about two types of costs: costs associated with implementing and enforcing the ordinances, and whether the ordinances resulted in an increase in contract prices for the localities.

Administrative Costs

Consistent with the discussion above on the localities reporting little administrative burden resulting from EBOs, and that only one, San Francisco's, resulted in the hiring of new, full-time, permanent staff, the localities report very little administrative costs associated with these ordinances.

However, San Diego assessed the costs associated with its EBO in its evaluation, and one study quantified administrative costs for three of the larger localities with EBOs: Berkeley, Seattle, and San Francisco. In the first six months of enforcement, San Diego found that "there is no additional cost for the City of San Diego associated with the EBO."¹¹⁵ According to a 2001 report by the Oakland Contract Compliance & Employment Services Division, yearly EBO administration costs for Berkeley, Seattle, and San Francisco were \$95,000, \$100,000,

and \$450,000, respectively, as reported by these localities.¹¹⁶ There was no dollar estimate provided for the administration of the Los Angeles EBO, but the Oakland report states that it costs more than that of San Francisco. In response to this survey, San Francisco reported that it has not recently ascertained the administrative cost associated with its EBO. The Oakland report is contradicted by the response of Los Angeles to the present survey. It reports that it has not hired any additional staff to implement and enforce its EBO.

The costs associated with EBOs are likely due to administration of the waiver provisions and, in some cases, compliance checks that go beyond getting an affidavit from the contractor. However, as noted above, despite the additional work these ordinances may create, only San Francisco reported hiring any new, permanent, full-time staff to implement its EBO.

Contracting Costs

Data was collected on increased contract costs for three localities with EBOs. In a 2005 recommendation for its EBO, the Miami Beach City Commission estimated that it would cost the city approximately \$73,224 per year.¹¹⁷ This estimate did not consider any economic benefits from the EBO resulting from contractors attracting and retaining a more highly skilled and productive workforce.

The 2001 Oakland report, discussed above, estimated that the financial impact of an EBO on Oakland contractors to be an increase of 0.5% to 2% over the normal cost of doing business.¹¹⁸ It also states that San Francisco reported that there was an average increase in costs of approximately 2% (ranging from 1.5 % to 3%) for its contractors to comply with its EBO. It should be noted that the Oakland and San Francisco EBOs under consideration

extended benefits to same-sex and different-sex partners.

Only San Francisco's EBO, which has a more robust pre-clearance procedure, and applies to same-sex and different-sex domestic partners, had administrative costs estimated at over \$100,000 per year. Estimates for Miami Beach City, San Francisco and Oakland indicate that contractor costs increased from 0.5 to 3% per year. However, none of these studies consider the economic benefits from the EBO, such as contractors attracting and retaining a more highly skilled and productive workforce.

Litigation

EBOs in three jurisdictions, San Francisco, New York, and Minneapolis have been challenged in court six times. Four of these challenges were to San Francisco's EBO, the first EBO enacted. The last of these cases, a challenge to Minneapolis's EBO, was brought in 2004. We have found no litigation involving EBOs since 2004.

In two of these six cases, courts found that the EBOs were partially preempted by the Employee Retirement Income Security Act (ERISA) -- in particular to the extent that they require self-insured employers to offer health care coverage to domestic partners.¹¹⁹ In the challenge to New York City's EBO, the court found not only that the health care component was preempted by ERISA, but that the entire EBO was preempted by a New York state procurement statute.¹²⁰ The three other cases either upheld the EBO or were dismissed for lack of standing before substantive issues were reached.¹²¹

ERISA Preemption

Both times ERISA preemption was litigated, EBOs have been limited, in part, as a

result.¹²² The biggest difference between these challenges was how the courts applied the availability of a "market place participant" exception to ERISA preemption.¹²³ The "marketplace participant" exception has been borrowed by courts from preemption cases involving the National Labor Relations Act (NLRA).¹²⁴ In effect, this exception allows a locality to regulate in ways that would otherwise be preempted by federal laws that seek to standardize an industry (like the NLRA and ERISA) so long as the city "wields no more power than an ordinary consumer" would in the transaction.

New York's highest court held that the city could not rely on the exemption any time it required ERISA-regulated benefits under the EBO because the city was "setting policy," rather than engaging in the buying process like a normal consumer.¹²⁵ However, a district court in California left open the possibility of a "marketplace participant" exception to ERISA preemption of EBOs when the city "wields no more power than an ordinary consumer."¹²⁶ In that case, *Air Transport v. San Francisco*, the court determined that the city had more "economic power" over an airport than a normal consumer would, so it could not require the airport to provide the benefits.¹²⁷

As a result of the *Air Transport* ruling, San Francisco has only allowed companies to limit their compliance with its EBO in "rare instances" where the city determines that it "wields more power than an ordinary consumer."¹²⁸ In 2005, only 33 companies chose to limit their benefits on this basis.¹²⁹ To put that number in perspective, San Francisco entered into 187,575 transactions in 2003.¹³⁰ The city still relies on the "marketplace participant" exception in all other situations ("most often," according to the city), requiring contractors to offer ERISA-regulated benefits. King County,

Washington and Los Angeles, California have also issued rules implementing their EBOs which apply the *Air Transport* holding.¹³¹ The rules, issued in 2011, state that employers are required to offer ERISA-regulated benefits in a non-discriminatory manner, unless the contractor demonstrates that the county cannot meet the “marketplace participant” exception with respect to a particular contract.¹³² San Francisco’s ordinance, and Los Angeles’s and King County’s practices adopted in light of *Air Transport*, have not generated any further ERISA-related litigation.

Any time a locality requires contractors to provide health care benefits in its EBO, there is a possibility that the ordinance will be challenged on ERISA preemption grounds.

However, even in cases that find that ERISA preemption applies, the scope of preemption is limited. ERISA only regulates some benefits, most significantly health care benefits, and only regulates self-insured employers.¹³³ Therefore, even if ERISA preemption is found to apply, localities may still require all contractors to offer benefits that ERISA does not regulate, and may require contractors that are not self-insured to offer all benefits on equal terms. Further, San Francisco’s experience following the *Air Transport* ruling strongly suggests that in some jurisdictions the “marketplace participant” exception will shield the EBO from ERISA preemption in the vast majority of cases. Moreover, we have not been able to find a challenge brought against an EBO since 2004, and, according to agencies, contractors are complying with all EBO requirements. Finally, despite ERISA litigation, health benefits are included in all EBOs passed since 2004 that specify which benefits must be offered.¹³⁴

Other Arguments

The *Air Transport* case also held that the EBO was not an invalid exercise of power under the state constitution or the City Charter, but limited its geographic scope, finding that the dormant commerce clause prohibits application of the EBO to “out-of-state conduct that is not related to the purposes of the City contract.”¹³⁵ The result of this ruling is that EBOs may reach contractors’ operations in the locality; contractors’ operations which occur elsewhere in the United States where work related to the contract is being performed; and work performed on real property outside of the locality if the property is owned or occupied by the locality and the contractor’s presence is related to the contract.¹³⁶ All of the other EBOs that specifically state their geographic reach are structured to apply to only this conduct.¹³⁷

The *Air Transport* case also upheld the ordinance to preemption challenges based on the Railroad Labor Act and the Airline Deregulation Act, except “when it is applied in a manner that creates coercive economic incentives for air carriers to alter their routes.”¹³⁸ The court explained that coercion would only occur “if the burden of compliance is so great that carriers will reject City contracts that are essential to operating out of the Airport.”¹³⁹ It is not clear from the information provided by San Francisco whether any air carriers are exempt from the EBO as a result of this decision.

The Ninth Circuit upheld San Francisco’s EBO in a second case that advanced different arguments under the Commerce Clause, the Due Process Clause, and the California Constitution.¹⁴⁰ These arguments primarily focused on the plaintiff’s objection to the city applying its EBO to the contractor’s employees who worked outside of the local jurisdiction or the state

of California. In response to these arguments, the court affirmed the extraterritorial applications of the EBO that were upheld by the *Air Transport* case.¹⁴¹

In addition, the court noted that while the California Constitution forbids a municipal corporation from “exercis[ing] its governmental functions beyond its corporate boundaries,” it “may exercise its proprietary powers,” including the power to control commercial relationships, outside of the city’s corporate boundaries.¹⁴² Further, the court found that the EBO constituted a “mode in which a city chooses to contract,” which is a municipal affair and therefore not controlled by the state constitution.¹⁴³

Shortly after this case was decided, the same contractor filed suit again, arguing that the EBO was preempted by California’s broad domestic partnership law. This case also reached the Ninth Circuit, and the court again upheld the EBO finding that the domestic partnership law did not explicitly preclude San Francisco from enacting the EBO, or “occupy the field” of domestic partnership regulation in the state.¹⁴⁴

The New York case that resulted in an ERISA preemption decision also held that the EBO was preempted by a state procurement statute that required that a contract be awarded to the “lowest responsible bidder.”¹⁴⁵

Conclusion

Local agency experiences with implementing and enforcing EBOs, indicate that these ordinances have value in providing workplace protections for LGBT people. In most cases, contractors are willing to comply with the ordinances in order to contract with the local government. There is evidence that more contractors are providing equal benefits as

a direct result of the contracting ordinances. And high compliance rates show that contractors are willing accept the possibility of external enforcement in order to contract.

There have been almost no investigation or enforcement actions under EBOs. Only one complaint has been filed under an EBO, and only one contract has been terminated because of non-compliance. This probably reflects widespread compliance with the EBOs resulting from the affirmative requirement that contractors acknowledge and adopt the required policy; the significant threat of losing government contracts; the small size of the LGBT population; and the minimal resources that almost all jurisdictions have invested in enforcing their ordinances.

Another result of these ordinances identified by San Francisco, the first locality in the United States that adopted an EBO, was that it was policy a leader. In self-evaluations, it credits its EBO for the growing number of companies that offer domestic partnership benefits, even those who are not its contractors; changes in California law that recognized same-sex domestic partners broadly, eventually providing them with almost all of the rights and obligations of marriage; and the growing number of governments who similarly recognized domestic partners either for public employee benefits or more broadly under state law.

The actual experience of local agencies in enforcing and implementing EBOs contradicts several of the arguments that have been made in opposition to the ordinances. No locality reported that the EBO inhibited its ability to carry out the operations and work of its government. Almost every locality that provided information reported that these ordinances were not administratively burdensome to

enforce. For almost all localities, any demands created by these ordinances were handled by existing staff, and trainings were developed to ensure smooth integration of the new responsibilities.

Several of the larger jurisdictions with EBOs estimated the administrative or contractor costs with their EBOs. These estimates showed a minimal increase in contractor costs, but did not consider any of the economic benefits resulting from the EBOs, such as having contractors with more highly skilled and productive employees.¹⁴⁶

Finally, in terms of legal changes, we only identified three localities that had their ordinances challenged, and the last challenge to an EBO was brought and decided in 2004.

In sum, the findings of this survey indicate that EBOs result in widespread compliance, with little resistance by contractors or disruption to government operations or activities. Only larger jurisdictions with EBOs reported minimal administrative and contractor costs.

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Endnotes

¹ MINNEAPOLIS, MINN., CODE § 18.200 (2010).

² LOS ANGELES, CAL. ADMIN. CODE § 10.8.2.1(a) (2009).

³ DANE COUNTY, WIS., CODE § 25.01 (2010).

⁴ OAKLAND, CAL., CODE § 2.32.010 (2010).

⁵ SACRAMENTO, CAL., CODE § 3.54.010 (2009).

⁶ *E.g.*, Memorandum from Joseph F. Beach, Director, Montgomery County Office of Management and Budget, to Nancy Floreen, President, Montgomery County City Council (Jan. 19, 2010), *available at* http://www.montgomerycountymd.gov/content/council/pdf/agenda/col/2010/100202/20100202_8.pdf; Chris Roberts, *More LGBT Woes for Target: Chain Could Lose SF City Contract over Same-Sex Benefits*, SFAPPEAL, Sept. 8, 2010, <http://sfappeal.com/news/2010/09/more-lgbt-woes-for-target-chain-could-lose-city-contract-over-same-sex-benefits.php>.

⁷ *E.g.*, Matthew Leising, *Council Passes Benefits for Domestic Partners*, CONTRA COSTA TIMES, Nov. 30, 2001.

⁸ *E.g.*, Perkins Coie, *Contractors Must Provide Equal Benefits to Employees with Domestic Partners*, WASH. EMPLOYMENT LAW LETTER, Jan. 2000.

⁹ Berkeley, CA (BERKELEY, CAL., CODE § 13.29.010-13.29.100 (2009)); Dane County, WI (DANE COUNTY, WIS., CODE § 25.016 (2010)); King County, WA (KING COUNTY, WASH., CODE § 12.19.002-12.19.100 (2009)); Long Beach, CA (LONG BEACH, CAL., CODE § 2.73.010-2.73.090 (2009)); City of Los Angeles, CA (LOS ANGELES, CAL. ADMIN. CODE § 10.8.2.1 (2009)); Miami Beach, FL (MIAMI BEACH, FLA., CODE § 2-373 (2009)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE § 18.200 (2009)); Oakland, CA (OAKLAND, CAL., CODE § 2.32.010-2.32.110 (2010)); Olympia, WA (OLYMPIA, WASH., CODE § 3.18.020 (2009)); Portland, OR (PORTLAND, OR., CHARTER § 3.100.053-3.100.056 (2009)); Sacramento, CA (SACRAMENTO, CAL., CODE § 3.54.010-3.54.120 (2009)); San Diego, CA (SAN DIEGO, CAL., CODE § 22.4301-22.4308 (2011)); San Francisco, CA (SAN FRANCISCO, CAL., ADMIN. CODE § 12B.1(b) (2009)); Santa Monica, CA (Santa Monica, Cal., Code § 4.65.025 (2011)); San Mateo County, CA (SAN MATEO COUNTY, CAL., CODE § 2.84.010-2.84.050 (2009)); Seattle, WA (SEATTLE, WASH., CODE § 20.45.010-.050 (2009)); Tumwater, WA (TUMWATER, WASH., CODE § 3.46.010-3.46.060 (2009)).

¹¹ San Francisco, CA (SAN FRANCISCO, CAL., ADMIN. CODE § 12B.1(b) (2009)).

¹² *See, e.g.*, BERKELEY, CAL., CODE § 13.29.040(A)(2) (2009).

¹³ *See, e.g.*, TUMWATER, WASH., CODE § 3.46.020(B)(3) (2009).

¹⁴ *See, e.g.*, ADMINISTRATION DEP'T, CITY OF SAN DIEGO, CAL., REPORT TO THE CITY COUNCIL NO. 11-130: EQUAL BENEFITS ORDINANCE FISCAL YEAR 2011 ANNUAL (6-MONTH) REPORT 5 (2011), *available at* <http://www.sandiego.gov/administration/pdf/eborules101213.pdf>.

¹⁵ *See, e.g.*, OLYMPIA, WASH., CODE § 3.18.020 (2009).

¹⁶ All EBOs cover couples who are registered as domestic partners with a state or local government registry. Many also cover couples who are registered as domestic partners with an employer's internal registry and/or meet the criteria for domestic partnership included in the EBO.

¹⁷ Berkeley, CA (BERKELEY, CAL., CODE § 13.29.030 (2009)); Dane County, WI (DANE COUNTY, WIS., CODE § 25.016(3) (2010)); KING COUNTY, WASH., CODE § 12.19.020(E)); Long Beach, CA (LONG BEACH, CAL., CODE § 2.73.040 (2009)); City of Los Angeles, CA (LOS ANGELES, CAL. ADMIN. CODE § 10.8.2.1(b)(2) (2009)); Miami Beach, FL (MIAMI BEACH, FLA., CODE § 2-373(a)(1) (2009)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE § 18.200(c) (2009)); Oakland, CA (OAKLAND, CAL., CODE § 2.32.040 (2010)); PORTLAND, OR., CHARTER § 3.100.052(E) (2009)); Sacramento, CA (SACRAMENTO, CAL., CODE § 3.54.030(D) (2009)); San Diego, CA (SAN DIEGO, CAL., CODE § 22.4302 (2011)); San Francisco, CA (SAN FRANCISCO, CAL., ADMIN. CODE § 12B.1(b) (2009)); Seattle, WA (SEATTLE, WASH., CODE § 20.45.010(F) (2009)); Tumwater, WA (TUMWATER, WASH., CODE § 3.46.010(D) (2009)).

¹⁸ SAN DIEGO, CAL., CODE § 22.4302 (2011).

¹⁹ SAN MATEO COUNTY, CAL., CODE § 2.84.010(e) (2009).

²⁰ OLYMPIA, WASH., CODE § 3.18.010 (2009); SANTA MONICA, CAL., CODE § 4.65.025 (2011).

²¹ Berkeley, CA (BERKELEY, CAL., CODE § 13.29.030 (2009)); Dane County, WI (DANE COUNTY, WIS., CODE § 25.016(3) (2010)); Long Beach, CA (LONG BEACH, CAL., CODE § 2.73.030(B) (2009)); City of Los Angeles, CA (LOS ANGELES, CAL. ADMIN. CODE § 10.8.2.1(e)(2) (2009)); Miami Beach, CA (MIAMI BEACH, FLA., CODE § 2-373(d)(2) (2009)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE § 18.200(i) (2009)); Olympia, WA (OLYMPIA, WASH., CODE § 3.18.030 (2009)); Portland, OR (PORTLAND, OR., CHARTER § 3.100.054 (2009)); Sacramento, CA (SACRAMENTO, CAL., CODE § 3.54.040(B) (2009) (extends to work performed on property outside of the city, but owed or occupied by the city, regardless of whether the contractor's presence on the property is related to the contract)); San Diego, CA (SAN DIEGO, CAL., CODE § 22.4303 (2011)); San Francisco, CA (SAN FRANCISCO, CAL., ADMIN. CODE § 12B.1(d) (2009)); San Mateo County, CA (SAN MATEO COUNTY, CAL., CODE § 2.84.030 (2009)); Seattle, WA (SEATTLE, WASH., CODE § 20.45.030 (2009)); Tumwater, WA (TUMWATER, WASH., CODE § 3.46.030 (2009)).

²² All of the above except Miami Beach.

²³ SAN FRANCISCO, CAL., ADMIN. CODE § 12B.1(d) (2009).

²⁴ Air Transport Ass'n v. City and County of San Francisco, 992 F. Supp. 1149 (N.D. Cal. 1998).

²⁵ Berkeley, CA (BERKELEY, CAL., CODE § 13.29.030 (2009) (applies to contracts with for-profit entities of \$25,000 or more, contracts with non-profit entities of \$100,000 or more; contracts with entities that generate \$350,000 or more in annual gross receipts and which occupy City property pursuant to a written agreement for the exclusive use or occupancy of said property for a term exceeding 29 days in any calendar year)); King County, WA (KING COUNTY, WASH., CODE § 12.19.020(A) (2009) (applies to contracts of \$25,000 or more)); Long Beach, CA (LONG BEACH, CAL., CODE § 2.73.030(A) (2009) (applies to contracts with for-profit entities with contracts of \$100,000 or more and contracts with for-profit entities which generate \$350,000.00 or more in annual gross receipts and which occupy city property pursuant to a written agreement for the exclusive use or occupancy of said property for a term exceeding 29 days in any calendar year)); City of Los Angeles, CA (LOS ANGELES, CAL. ADMIN. CODE § 10.8.2.1(b)(5) (2009) (applies to contracts for more than \$5,000)); Miami Beach, CA (MIAMI BEACH, FLA., CODE § 2-373(a)(6) (2009) (applies to contracts for more than \$100,000)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE § 18.200(c) (2009) (applies to contracts for more than \$100,000)); Oakland, CA (OAKLAND, CAL., CODE § 2.32.020 (2010) (applies to contracts of \$25,000 or more)); Olympia, WA (OLYMPIA, WASH., CODE § 3.18.010 (2009) (applies to contracts of \$50,000 or more)); Sacramento, CA (SACRAMENTO, CAL., CODE § 3.54.040(A) (2009) (applies to contracts of more than \$25,000)); San Francisco, CA (SAN FRANCISCO, CAL., ADMIN. CODE § 12B.1(c) (2009)

(applies to contracts for more than \$5,000)); San Mateo County, CA (SAN MATEO COUNTY, CAL., CODE § 2.84.010(a) (2009) (applies to contracts for more than \$5,000)); Seattle, WA (SEATTLE, WASH., CODE § 20.45.010(A) (2009) (applies to contracts for \$44,000 in 2010 and adjusted for inflation thereafter)); Tumwater, WA (TUMWATER, WASH., CODE § 3.46.010(A) (2009) (applies to contracts for \$50,000 or more)).

²⁶ MIAMI BEACH, FLA., CODE § 2-373(a)(5) (2009).

²⁷ *See, e.g.*, MIAMI BEACH, FLA., CODE § 2-373(g)(3)(a) (2009).

²⁸ *See, e.g.*, OAKLAND, CAL., CODE § 2.32.090(C) (2010).

²⁹ *See, e.g.*, OLYMPIA, WASH., CODE § 3.18.020(C)(6) (2009).

³⁰ *See, e.g.*, SACRAMENTO, CAL., CODE § 3.54.070(A)(1) (2009).

³¹ *See, e.g.*, PORTLAND, OR., CHARTER § 3.100.053(C)(3) (2009).

³² *See, e.g.*, LONG BEACH, CAL., CODE § 2.73.060(A)(3) (2009).

³³ *See, e.g.*, SANTA MONICA, CAL., CODE § 4.65.030 (2011).

³⁴ *See, e.g.*, SAN DIEGO, CAL., CODE § 22.4308(c) (2011).

³⁵ *See, e.g.*, LOS ANGELES, CAL. ADMIN. CODE § 10.8.2.1 (i)(1)(f) (2009).

³⁶ *See, e.g.*, BERKELEY, CAL., CODE § 13.29.060(A)(7) (2009).

³⁷ *See, e.g.*, SAN FRANCISCO, CAL., ADMIN. CODE § 12B.5-1(d)(2) (2009).

³⁸ *See, e.g.*, DANE COUNTY, WIS., CODE § 25.016(3)(b) (2010).

³⁹ *See, e.g.*, MINNEAPOLIS, MINN., CODE § 18.200(f)(6), (7) (2009).

⁴⁰ *See, e.g.*, LONG BEACH, CAL., CODE § 2.73.060(A)(9) (2009).

⁴¹ *See, e.g.*, KING COUNTY, WASH., CODE § 12.19.020(A) (2009).

⁴² *See, e.g.*, DANE COUNTY, WIS., CODE § 25.016(2)(d) (2010) .

⁴³ *See, e.g.*, LONG BEACH, CAL., CODE § 2.73.060(A)(9) (2009).

⁴⁴ SAN FRANCISCO, CAL., ADMIN. CODE § 12B.4 (2009); DANE COUNTY, WIS., CODE § 25.016(8) (2010). For details on San Francisco's compliance procedure, see San Francisco Human Rights Commission, How to Comply with the Equal Benefits Ordinance, *available at* <http://sf-hrc.org/index.aspx?page=96#How%20do%20I%20Comply> (last visited Sept. 14, 2011).

⁴⁵ Berkeley, CA (BERKELEY, CAL., CODE § 13.29.090 (2009)); Dane County, WI (DANE COUNTY, WIS., CODE § 25.016(12) (2010)); King County, WA (KING COUNTY, WASH., CODE § 12.19.070-.080 (2009)); Long Beach, CA (LONG BEACH, CAL., CODE § 2.73.090 (2009)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE §§ 18.200(m); 141.60 (2009)); Oakland, CA (OAKLAND, CAL., CODE § 2.32.090(2010)); Portland, OR (PORTLAND, OR., CHARTER § 3.100.055 (2009)); Sacramento, CA (SACRAMENTO, CAL., CODE § 3.54.100 (2009)); San Mateo County, CA (SAN

MATEO COUNTY, CAL., CODE § 2.84.040 (2009)); Seattle, WA (SEATTLE, WASH., CODE § 20.45.040 (2009)); Tumwater, WA (TUMWATER, WASH., CODE § 3.46.040 (2009)).

⁴⁶ Berkeley, CA (BERKELEY, CAL., CODE § 13.29.090(B) (2009)); Dane County, WI (DANE COUNTY, WIS., CODE § 25.016(12)(e) (2010)); Oakland, CA (OAKLAND, CAL., CODE § 2.32.060(D)(1) (2010)); and Sacramento, CA (SACRAMENTO, CAL., CODE § 3.54.100(D) (2009)).

⁴⁷ Administration Dep't, San Diego, Cal., Rules Implementing the Equal Benefits Ordinance, Feb. 15, 2011, *available at* <http://www.sandiego.gov/administration/pdf/eborules101213.pdf>.

⁴⁸ Berkeley, CA (BERKELEY, CAL., CODE § 13.29.090 (2009)); Dane County, WI (DANE COUNTY, WIS., CODE § 25.016(8) (2010)); King County, WA (KING COUNTY, WASH., CODE § 12.19.070-.080 (2009)); Long Beach, CA (LONG BEACH, CAL., CODE § 2.73.090 (2009)); City of Los Angeles, CA (LOS ANGELES, CAL., ADMIN. CODE § 10.8.2.1(h) (2009)); Miami Beach, FL (MIAMI BEACH, FLA., CODE § 2-373(f) (2009)); Oakland, CA (OAKLAND, CAL., CODE § 2.32.090 (2010)); Olympia, WA (OLYMPIA, WASH., CODE § 3.18.020(D), (E) (2009)); Portland, OR (PORTLAND, OR., CHARTER § 3.100.055 (2009)); Sacramento, CA (SACRAMENTO, CAL., CODE § 3.54.100 (2009)); San Diego, CA (SAN DIEGO, CAL., CODE § 22.4301-.4307 (2011)); San Francisco, CA (SAN FRANCISCO, CAL., ADMIN. CODE § 12B.1(h) (2009)); San Mateo County, CA (SAN MATEO COUNTY, CAL., CODE § 2.84.040 (2009)); Seattle, WA (SEATTLE, WASH., CODE § 20.45.040 (2009)); Tumwater, WA (TUMWATER, WASH., CODE § 3.46.040 (2009)).

⁴⁹ Sixteen localities with EBOs (all except Santa Monica) were contacted first by email on April 4, 2011. If the locality did not respond to the email, a follow-up email was sent on April 11, 2011. If no response to the second email was received, the localities were contacted by phone on April 21, 2011. If no one was available to answer the questions by phone, a voicemail was left explaining what information was sought. The localities that did not respond were contacted again on May 13, 2011. Santa Monica passed its EBO on April 28, 2011. The city was contacted by phone on May 5, 2011 with a request for information about any trainings that have been conducted or materials that have already been developed. The city provided the limited information it had available. On December 7, 2011, just those jurisdictions who had already responded to earlier requests were sent a set of further questions to clarify statements about compliance with their ordinances. Follow-up emails with these questions were sent on December 21, 2011.

⁵⁰ These questions included: Have contractors been willing to comply with the EBO? Do you think more contractors offer benefits to domestic partners as a result of the EBO? If so, do you have any anecdotal evidence of this? Have contractors ever told the city/county that they adopted an equal benefits policy in order to bid on contracts? What was the implementation procedure like? Were additional staff hired to implement or to enforce the EBO? Were documents produced to explain the EBO to staff/contractors/employees of contractors? Were there special trainings provided to staff on the EBO? Were any other specific actions taken to implement the EBO? What is the general enforcement scheme for the EBO? How many staff members are responsible for enforcing the EBO? Have administrative complaints been filed under the EBO? If so, how were they handled and what were the dispositions? Have any contractors been investigated for an alleged violation of the EBO? Have any contractors been debarred for violating the EBO? Has the city/county experienced any administrative burden as a result of the EBO? How many contracts does the city/county enter into each year? How much does the city/county spend on contracting each year?

⁵¹ All information gathered from the local government agencies is on file with the authors.

⁵² Berkeley routed the researcher calling to gather information to six different departments before routing her to the contracts department, where she left a voicemail. Two of these departments told her that no such ordinance existed. During this process, the researcher spoke to the Human Resources Department and the City Attorney's Office, which told her, respectively, that any complaints filed under the ordinance

would be referred to the state enforcement agency rather than handled by the city, and that all the Office knew of enforcement was that contractors were required to sign an affidavit saying they offered equal benefits before they were permitted to submit bids. Telephone interview with the City of Berkeley, in Berkeley, Cal. (Apr. 22, 2011).

⁵³ The Olympia Administrative Services Department told the researcher that employees could file complaints of EBO ordinance violations online, and the city would handle the complaint from there. The department was unable to provide any other information about their ordinance. Telephone interview with the City of Olympia, in Olympia, Wash. (Apr. 22, 2011). At the researcher's request, the department forwarded her to the legal department, where she left a voicemail that was not returned.

⁵⁴ CITY OF OAKLAND, CAL., COUNCIL AGENDA REPORT, RE: EQUAL BENEFITS FOR DOMESTIC PARTNERS (Nov. 13, 2001) (on file with the Williams Institute).

⁵⁵ SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., TWO YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE (Aug. 12, 1999), *available at* <http://www.sfhrc.org/Modules/ShowDocument.aspx?documentid=145>.

⁵⁶ SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., THREE YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE (Aug. 10, 2000), *available at* <http://www.sfhrc.org/Modules/ShowDocument.aspx?documentid=143>.

⁵⁷ SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., FOUR YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE (Oct. 25, 2001), *available at* <http://www.sfhrc.org/Modules/ShowDocument.aspx?documentid=144>.

⁵⁸ SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., FIVE YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE (Nov. 14, 2002), *available at* <http://www.sfhrc.org/Modules/ShowDocument.aspx?documentid=142>.

⁵⁹ SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., SEVEN YEAR UPDATE ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE (June 30, 2004), *available at* <http://www.sfhrc.org/Modules/ShowDocument.aspx?documentid=140>.

⁶⁰ City of Miami Beach Commission Memorandum from Jorge M. Gonzalez, City Manager, to David Demer, Mayor, and Members of the Commission (Oct. 19, 2005) (on file with the Williams Institute).

⁶¹ *Id.*

⁶² ADMINISTRATION DEP'T, CITY OF SAN DIEGO, CAL., REPORT TO THE CITY COUNCIL NO. 11-130: EQUAL BENEFITS ORDINANCE FISCAL YEAR 2011 ANNUAL (6-MONTH) REPORT (2011).

⁶³ For example, more than 70 businesses endorsed a Nashville, Tennessee ordinance prohibiting contractors from discriminating on the basis of sexual orientation and gender identity. Tennessee Equality Project, Supporters of the Metro Contract Accountability Non-Discrimination Ordinance, <https://docs.google.com/document/d/1QPU20PiCzz7tFljnumBw13aMhSvn2bgqwygrpjf18Q/edit?hl=en&pli=1#>. *See also, San Francisco to Expand its Domestic Partners Law; Pressure from Hill Doesn't Affect Board*, WASHINGTON POST, Aug. 10, 1998, at A11.

⁶⁴ City of Miami Beach Commission Memorandum from Jorge M. Gonzalez, City Manager, to David Demer, Mayor, and Members of the Commission, *supra* note 59.

⁶⁵ ADMINISTRATION DEP'T, CITY OF SAN DIEGO, CAL., *supra* note 61 at 3.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ The compliance rate rose steadily between 1999 and 2004, from 92.73% compliance in 1999, 93.1% in 2000, 93.5% in 2001, 94% in 2002, to 94.6% compliance in 2004. SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., TWO YEAR UPDATE ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 54 at 1; SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., THREE YEAR UPDATE ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 55 at 5; SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., FOUR YEAR UPDATE ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 56 at 2; SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., FIVE YEAR UPDATE ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 57 at 3; SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., SEVEN YEAR UPDATE ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 58 at 2.

⁷⁰ *Id.* at 3.

⁷¹ *Id.*

⁷² SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., SEVEN YEAR UPDATE ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 58 at 3.

⁷³ *Id.*

⁷⁴ *Id.* at n.4.

⁷⁵ *Id.* at 4.

⁷⁶ *Id.*

⁷⁷ *Id.* at 3.

⁷⁸ *E.g.*, Rachel Gordon, *Bechtel Agrees to Extend its Benefits Policy*, SFGATE, May 4, 2000; Eve Mitchell, *Benefits for Both*, ALAMEDA TIMES-STAR, Aug. 3, 2003; Julie Forster, *Domestic Partner Benefits Solid*, SAINT PAUL PIONEER, Mar. 14, 2004.

⁷⁹ *Irizarry v. Chicago B'd of Educ.*, 251 F.3d 604 (7th Cir. 2001).

⁸⁰ SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., TWO YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 54; SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., THREE YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 55 at 5; SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., FOUR YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 56 at 2; SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., FIVE YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 57 at 3; SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., SEVEN YEAR UPDATE ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 58 at 2.

⁸¹ SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., FIVE YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 57 at 9.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ City of Miami Beach Commission Memorandum from Jorge M. Gonzalez, City Manager, to David Demer, Mayor, and Members of the Commission, *supra* note 59.

⁸⁶ The specific example the city gave was a company that contracts to provide IT support to the city. The city said that in this case, when Sacramento employees call for IT support, they are often routed to technicians outside of the US. The IT provider was concerned that all of these employees were working on the contract, and therefore they would have to be offered domestic partner benefits under the EBO.

⁸⁷ Dane County, City of Los Angeles, Miami Beach, Minneapolis, Oakland, Portland, Sacramento, San Diego, San Mateo County, and Seattle.

⁸⁸ San Francisco Human Rights Commission, City of San Francisco, Cal., Chapter 12B Equal Benefits Ordinance File Review Flow Chart (on file with the Williams Institute); San Francisco Human Rights Commission, City of San Francisco, Cal., Equal Benefits Documentation Guide (on file with the Williams Institute).

⁸⁹ San Francisco Human Rights Commission, City of San Francisco, Cal., Chapter 12B Equal Benefits Ordinance File Review Flow Chart (on file with the Williams Institute). Documentation may be letters from insurance carriers, employee handbooks, and portions of insurance plans purchased by the employer. San Francisco Human Rights Commission, City of San Francisco, Cal., Equal Benefits Documentation Guide (on file with the Williams Institute).

⁹⁰ San Francisco Human Rights Commission, City of San Francisco, Cal., Chapter 12B Equal Benefits Ordinance File Review Flow Chart (on file with the Williams Institute).

⁹¹ *Id.*

⁹² Dane County, King County, Miami Beach, Minneapolis, Oakland, Portland, Sacramento, San Diego, San Mateo County, Seattle, and Tumwater.

⁹³ Dane County, Miami Beach, Oakland, Portland, Sacramento, San Diego, San Francisco, San Mateo County, and Seattle. Tumwater did not respond to this question.

⁹⁴ Dane County, City of Los Angeles, Miami Beach, Minneapolis, Oakland, Portland, Sacramento, San Diego, San Francisco, San Mateo County, Seattle, and Tumwater.

⁹⁵ Memorandum from David E. Dise, Director, Montgomery County Dep't of General Svcs., to Jack Gibala, Program Manager, Office of Business Relations and Compliance, Montgomery County Dep't of General Svcs (Dec. 21, 2009), *available at* http://www.montgomerycountymd.gov/content/council/pdf/agenda/col/2010/100202/20100202_8.pdf.

⁹⁶ Roddrick A. Colvin, *Improving State Policies Prohibiting Public Employment Discrimination Based on Sexual Orientation*, 20 REVIEW OF PUBLIC PERSONNEL ADMINISTRATION 5 (2000); Norma M. Riccucci & Charles W.

Gossett, *Employment Discrimination in State and Local Government: The Lesbian and Gay Male Experience*, 26 AMERICAN REVIEW OF PUBLIC ADMINISTRATION 175 (1996); BRAD SEARS, NAN D. HUNTER & CHRISTY MALLORY, *Administrative Complaints on the Basis of Sexual Orientation and Gender Identity*, in DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT (2009), available at http://wiwp.law.ucla.edu/wp-content/uploads/11_AdministrativeComplaints.pdf.

⁹⁷ Alfred W. Blumrosen, BLACK EMPLOYMENT AND THE LAW 14 (1971).

⁹⁸ Dane County, City of Los Angeles, Minneapolis, Oakland, Portland, Sacramento, San Diego, Seattle, and Tumwater.

⁹⁹ According to a 2001 report by the Oakland Contract Compliance & Employment Services Division before it adopted its EBO, staffing for the EBO in San Francisco was equivalent to five full-time employees; 13 existing full-time staff members responsible for contract enforcement handled EBO implementation and enforcement in Los Angeles; and Seattle and Berkeley each dedicated one full-time position to EBO enforcement. As noted above, the Oakland report contradicts what Seattle and Berkeley indicated in the current survey and Los Angeles confirmed it hired no new employees. CITY OF OAKLAND, CAL., COUNCIL AGENDA REPORT, *supra* note 53.

¹⁰⁰ GARY J. GATES, HOW MANY PEOPLE ARE LESBIAN, GAY, BISEXUAL AND TRANSGENDER? 1 (2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

¹⁰¹ Michael A. Ash & M.V. Lee Badgett, *Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Same-Sex and Unmarried Different-Sex Couples*, 24 J. CONTEMPORARY EC. POLICY 582, 582 (2006).

¹⁰² Berkeley, King County, City of Los Angeles, Dane County, Long Beach, Miami Beach, Oakland, Olympia, Portland, Sacramento, San Diego, San Mateo County, San Francisco, and Seattle.

¹⁰³ Minneapolis provides a link to its EBO on the city website, but no more detailed information regarding implementation or enforcement. Procurement Division, Minneapolis, Minn., Purchasing Division, <http://www.ci.minneapolis.mn.us/procurement/>.

¹⁰⁴ Purchasing Division, Dane County, Wis., Summary of Domestic Partner Equal Benefit Requirement, http://www.danepurchasing.com/partner_benefit.aspx; Procurement, King County, Wash., Equal Benefits to Employees with Domestic Partners, http://www.kingcounty.gov/operations/procurement/Services/Equal_Benefits.aspx; Long Beach, Cal., Equal Benefits Ordinance, <http://www.longbeach.gov/news/displaynews.asp?NewsID=4413&targetid=41>; Administrative Services, City of Olympia, Wash., Equal Benefits, <http://olympiawa.gov/city-government/departments/administrative-services/equal-benefits.aspx>; Management & Finance, City of Portland, Or., Equal Benefits, <http://www.portlandonline.com/omf/index.cfm?c=43774>; San Francisco Human Rights Commission, City of San Francisco, Cal., How to Comply with the Equal Benefits Ordinance, <http://sf-hrc.org/index.aspx?page=96>. The City of Los Angeles's EBO webpage includes compliance information directed to contractors and to city departments. Bureau of Contract Administration, City of Los Angeles, Cal., Equal Benefits Ordinance, http://bca.lacity.org/index.cfm?nxt=ee&nxt_body=content_ebo.cfm.

¹⁰⁵ City of San Diego, Cal., Rules Implementing the Equal Benefits Ordinance, Feb. 15, 2011, available at <http://www.sandiego.gov/administration/pdf/eborules101213.pdf>; City of San Diego, Cal., Equal Benefits Ordinance Certification of Compliance, Feb. 15, 2011 (on file with the Williams Institute); City of Oakland, Cal., EBO How-To Guide, Nov. 2004 (on file with the Williams Institute); City of Miami Beach, Fla., Quick

Reference Guide to Equal Benefits Compliance (on file with the Williams Institute); City of Sacramento, Cal., Requirements of the Non-Discrimination in Employee Benefits Code, *available at* <http://www.cityofsacramento.org/generalservices/procurement/ordinances/documents/EBO-Packet.pdf>.

¹⁰⁶ City of Berkeley, Cal., Equal Benefits Ordinance Fact Sheet, available at http://www.ci.berkeley.ca.us/uploadedFiles/Online_Service_Center/Level_3_-_General/EBOFactsheet%5B1%5D.pdf; City of San Diego, Cal., EBO [brochure], Feb. 15, 2011 (on file with the Williams Institute); City of San Diego, Cal., Overview of Equal Benefits Ordinance, Feb. 15, 2011 (on file with the Williams Institute); City of San Diego, Cal., Equal Benefits Ordinance Frequently Asked Questions, Feb. 15, 2011 (on file with the Williams Institute); City of Oakland, Cal., Equal Benefits, Non-Discrimination, Equal Access: FYI, July 2002 (on file with the Williams Institute); San Mateo County, Cal., Frequently Asked Questions: Equal Benefits Ordinance, *available at* <http://www.cityofsacramento.org/generalservices/procurement/ordinances/documents/EBO-Packet.pdf>; Department of Executive Administration, City of Seattle, Wash., Equal Benefits Ordinance: Frequently Asked Questions, Feb. 13, 2009, *available at* <http://www2.ci.seattle.wa.us/EqualBenefits/Faq.pdf>.

¹⁰⁷ Purchasing Division, Dane County, Wis., Notification of Domestic Partner Equal Benefits Requirement, *available at* http://danedocs.countyofdane.com/webdocs/pdf/purch/partner_poster.pdf (last visited Sept. 20, 2011).

¹⁰⁸ SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., FIVE YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 57 at 1.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 9-10.

¹¹¹ *Id.* at 1.

¹¹² *Id.*

¹¹³ *Id.* at 11.

¹¹⁴ Dane County, City of Los Angeles, Miami Beach, Minneapolis, Oakland, Portland, Sacramento, San Diego, San Mateo County, Seattle, and Tumwater.

¹¹⁵ ADMINISTRATION DEP'T, CITY OF SAN DIEGO, CAL., *supra* note 61 at 5.

¹¹⁶ CITY OF OAKLAND, CAL., COUNCIL AGENDA REPORT, *supra* note 53.

¹¹⁷ City of Miami Beach Commission Memorandum from Jorge M. Gonzalez, City Manager, to David Demer, Mayor, and Members of the Commission, *supra* note 59. This figure was calculated by comparing the lowest and best bids that did not meet the requirement of the EBO, versus the next lowest and best bids that did meet the requirements of the EBO for all contracts in the five years before the report was produced. If the lowest and best bidder did not meet the requirements of the EBO, but would qualify for a waiver (16% of contractors), that bid was used in the calculation rather than the lowest and best bidder that offered equal benefits.

¹¹⁸ *Id.*

¹¹⁹ Air Transport Ass'n, 992 F. Supp. 1149; Council of New York v. Bloomberg, 846 N.E.2d 433 (N.Y. 2006).

¹²⁰ Council of New York, 846 N.E.2d 433.

¹²¹ S.D. Meyers v. San Francisco, 253 F.3d 461 (9th Cir. 2001) (S.D. Meyers I); S.D. Meyers v. San Francisco, 336 F.3d 1174 (9th Cir. 2003) (S.D. Myers II); Titus Construction v. City of Minneapolis, No. 04-1487 (D. Minn. Sept. 21, 2004). The fourth case was a challenge to San Francisco's EBO brought by an electrical contracting company that had religious objections to the EBO. SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., FIVE YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 57 at 13.

¹²² A third case also limited a Portland, Maine ordinance that was similar to an EBO based on ERISA preemption. The ordinance required that equal benefits be provided to the domestic partners of employees of the city, the Portland School Committee, and any organization accepting Housing and Community Development funds from the city. An organization that accepted housing funds argued that the ordinance was preempted by ERISA. The court agreed, limiting the ordinance to non-ERISA fringe benefits, such as bereavement leave and leaves of absence. Catholic Charities of Maine, Inc. v. City of Portland, 304 F. Supp. 2d 77 (D. Me. 2004).

¹²³ Air Transport Ass'n, 992 F. Supp. 1149; Council of New York, 846 N.E.2d 433.

¹²⁴ Air Transport Ass'n, 992 F. Supp. at 1178- 1180.

¹²⁵ Council of New York, 846 N.E.2d at 442.

¹²⁶ Air transport Ass'n, 992 F. Supp. at 1179-1180.

¹²⁷ *Id.* at 1180.

¹²⁸ SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., FIVE YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 57 at 13.

¹²⁹ *Id.*

¹³⁰ SAN FRANCISCO HUMAN RIGHTS COMMISSION, CITY OF SAN FRANCISCO, CAL., THREE YEAR REPORT ON THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE, *supra* note 55 at 8.

¹³¹ OFFICE OF CONTRACT COMPLIANCE, DEP'T OF PUBLIC WORKS, LOS ANGELES, CAL., RULES AND REGULATIONS IMPLEMENTING THE EQUAL BENEFITS ORDINANCE 10-11 (Aug. 15, 2011), *available at* <http://bca.lacity.org/site/pdf/ebo%5CRules%20&%20regulations%20for%20the%20implementation%20of%20EBO.pdf>; EXEC. SVCS, KING COUNTY, WASH., RULES IMPLEMENTING EQUAL BENEFITS ORDINANCE 14823 AND ORDINANCE 16856 5 (Jan. 30, 2011), *available at* <http://www.kingcounty.gov/operations/policies/rules/contracting/con7151pr.aspx>.

¹³² *Id.*

¹³³ Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. No. 93-406, 88 Stat. 829 (codified as amended in scattered sections of 5 U.S.C., 18 U.S.C., 26 U.S.C., 29 U.S.C., and 42 U.S.C.); HINDA RIPPS CHAIKIND, CRS REPORT FOR CONGRESS, ERISA REGULATION OF HEALTH PLANS: FACT SHEET (2003), <http://www.allhealth.org/briefingmaterials/erisaregulationofhealthplans-114.pdf>.

¹³⁴ Three localities that define “employee benefits” to include health benefits have passed EBOs since 2004: Dane County, WI (2008), Long Beach, CA (2009); San Diego, CA (2010); and Portland, OR (2006). DANE COUNTY, WIS., CODE § 25.016(b) (2010); LONG BEACH, CAL., CODE § 2.73.040(A) (2009); SAN DIEGO, CAL., CODE § 22.4302 (2011); PORTLAND, OR., CHARTER § 3.100.052(E) (2009). However Portland’s ordinance does state that “employee benefits” do not include benefits that are preempted by state and federal law. PORTLAND, OR., CHARTER § 3.100.053-3.100.052(E) (2009).

¹³⁵ Air Transport Ass’n, 992 F. Supp. at 1166.

¹³⁶ *Id.* at 1161-1165.

¹³⁷ *See supra* notes 20, 21 and accompanying text.

¹³⁸ *Id.* at 1188, 1191.

¹³⁹ *Id.* at 1187.

¹⁴⁰ S.D. Meyers I, 253 F.3d 461.

¹⁴¹ *Id.* at 469.

¹⁴² *Id.* at 473 (citing *City of Oakland v. Brock*, 67 P.2d 344, 345 (Cal. 1937)).

¹⁴³ *Id.* at 474 (citing *Associated Builders Contractors, Inc. v. San Francisco Airports Comm.*, 981 P.2d 499 (Cal. 1999)).

¹⁴⁴ S.D. Meyers II, 336 F.3d 1174.

¹⁴⁵ Council of New York, 846 N.E.2d at 438-440.

¹⁴⁶ *See* BRAD SEARS & CHRISTY MALLORY, ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES (2011), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corporate-Statements-Oct-20111.pdf> .

An Evaluation of Local Laws Requiring Government Contractors to Adopt Non-Discrimination and Affirmative Action Policies to Protect LGBT Employees



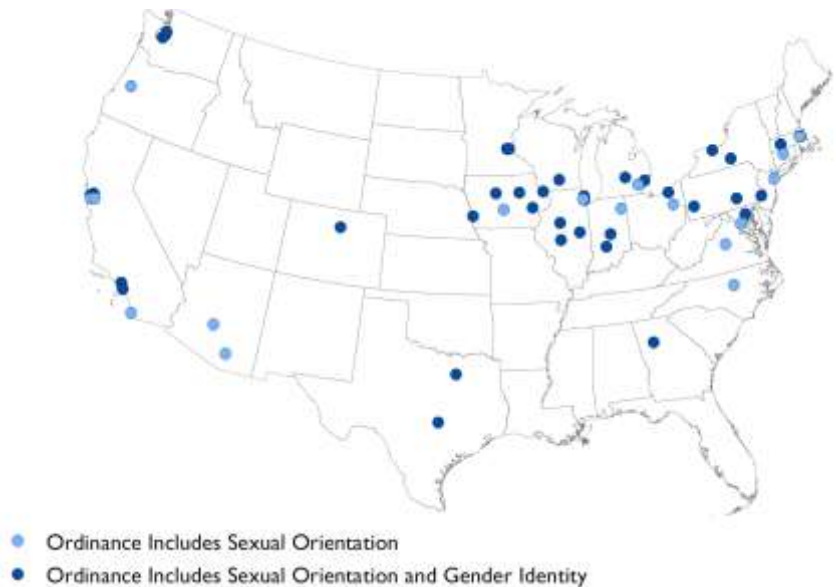
By Christy Mallory and Brad Sears
February 2012

Executive Summary

For several decades, state and local governments have used their contracting power to require private sector employers to adopt LGBT-inclusive policies. A number of local governments have enacted sexual orientation and gender identity non-discrimination ordinances that apply only to contractors. In addition, some have added sexual orientation and gender identity to “affirmative action” requirements for government contractors. Currently, at least 61 local governments have at least one of these types of contractor requirements.

When passing these ordinances, local governments have pointed to several positive effects they would have on the city’s workforce and the government’s operations. For example, council members who proposed a Nashville ordinance that prohibited city contractors from discriminating based on sexual orientation and gender identity said it ensured that employment decisions were based “on performance and talent.”¹

Geographic Distribution of Contractor-Specific Non-Discrimination and Affirmative Action Ordinances



However, these contractor requirements have also generated some criticism. Arguments have been made that a jurisdiction may lose contractors or not have the best contractors if they are required to comply with these policies that reach beyond federal and many state laws.²

Others have argued that the policies will be costly to enforce and will be administratively burdensome for already strained local governments.³ Some are

concerned that localities will face litigation as a result of passing similar ordinances.⁴

This study evaluates the implementation and enforcement of contractor non-discrimination and affirmative action ordinances in order to determine both the positive impact they have on LGBT-related workplace policies and the validity of the arguments made against them. Local agencies charged with administering these ordinances were asked to provide information on their experiences with their implementation and enforcement. Their responses provide the basis for this evaluation.

The three principle findings of this study are:

Almost all of the localities surveyed reported almost uniform compliance with the contractor ordinances, with little to no resistance by contractors. Twenty-five of the 29 localities that provided information about their non-discrimination and affirmative action ordinances reported that contractors complied with the sexual orientation and gender identity requirements without resistance. Three of the 29 localities reported just minimal resistance initially but then the contractors agreed to comply when the requirements were explained to them.⁵

Of all the localities that responded to the survey, none affirmatively reported that there had been individual enforcement investigations or actions for violations of these contractor requirements. Twenty-eight of the 29 localities reported that no complaints of sexual orientation or gender identity discrimination had been filed under their non-discrimination ordinances. The remaining locality was unaware if any complaints had been made because discrimination complaints were handled by a state agency, rather than the local agency

implementing the contractor requirements. In addition, none of these localities reported that contractors had been barred from bidding on future contracts because they did not comply with these ordinances.

The contractor requirements have been adopted, implemented, and enforced with little disruption to government operations or work, administrative burden, cost or litigation. No locality reported that these ordinances made it difficult to find qualified contractors to carry out government work or operations. None of the localities that added sexual orientation and gender identity to non-discrimination or affirmative action ordinances reported that doing so was administratively burdensome or resulted in additional administrative or contractor costs.

Local Contractor Ordinances Mandating LGBT-Related Workplace Policies

To date, at least 61 local governments have used their spending powers to require their contractors to adopt non-discrimination or affirmative action policies to protect LGBT employees.⁶

Non-Discrimination Ordinances

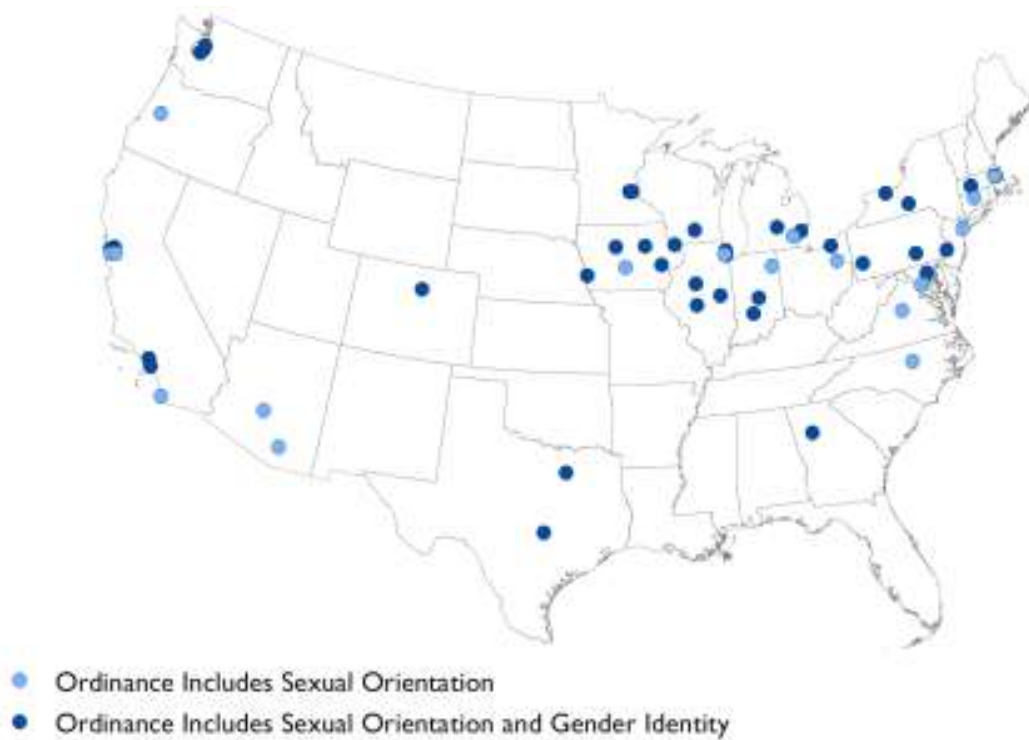
Sixty-one of these localities have ordinances that specifically prohibit discrimination on the basis of sexual orientation in employment by local government contractors, forty-two also prohibit discrimination based on gender identity.⁷ These ordinances include contractor ordinances that are separate from any broader non-discrimination ordinance the locality may have, as well as broad non-discrimination ordinances that specifically state that the ordinance applies to local government contractors.⁸ Cities and counties of various sizes across the

country—from Ypsilanti, Michigan,⁹ to Los Angeles, California¹⁰— have enacted these ordinances.

Twenty-one of these ordinances apply to all local government contracts without exception.¹¹ Twelve of these ordinances apply to contractors with contracts above a certain dollar amount.¹² The dollar thresholds in these ordinances range from

\$1,000 to \$50,000. Eighteen ordinances exempt certain types of contracts.¹³ The most common exemptions are for sole source suppliers (meaning no other contractor can provide a good or service); contracts with government entities; and contracts entered into in order to respond to an emergency. Two contractor non-discrimination ordinances only apply to construction contractors.¹⁴ Seventeen of

Geographic Distribution of Contractor-Specific Non-Discrimination Ordinances



Ordinance includes sexual orientation:

- San Mateo County, CA
- Hayward, CA
- San Diego, CA
- Eugene, OR
- Phoenix, AZ
- Tucson, AZ
- Des Moines, IA
- Oak Park, IL
- Fort Wayne, IN
- Ypsilanti, MI
- Canton, OH
- Raleigh, NC
- Charlottesville, VA
- Arlington County, VA
- Prince George’s County, MD
- Suffolk County, NY
- Hartford, CT
- Brookline, MA

Ordinance includes sexual orientation and gender identity:

- Berkeley, CA
- San Francisco, CA
- Los Angeles, CA
- West Hollywood, CA
- Long Beach, CA
- Burien, WA
- King County, WA
- Seattle, WA
- Tacoma, WA
- Boulder, CO
- Dallas, TX
- Austin, TX
- Minneapolis, MN
- St. Paul, MN
- Council Bluffs, IA
- Fort Dodge, IA
- Cedar Falls, IA
- Iowa City, IA
- Dubuque, IA
- Johnson County, IA
- Dane County, WI
- Madison, WI
- Springfield, IL
- Peoria, IL
- Champaign, IL
- Evanston, IL
- Cook County, IL
- Bloomington, IN
- Indianapolis, IN
- Detroit, MI
- East Lansing, MI
- Atlanta, GA
- Cleveland Heights, OH
- Rochester, NY
- Ithaca, NY
- Tompkins County, NY
- Pittsburgh, PA
- Harrisburg, PA
- Philadelphia, PA
- Northampton, MA
- Boston, MA
- Cambridge, MA
- Baltimore, MD

the contractor non-discrimination ordinances apply to contractors who fit the definition of “employer” in the locality’s broader non-discrimination ordinance.¹⁵ For example, Boston’s ordinance requires that contractors be found in violation of the city’s broader non-discrimination ordinance before contract-specific penalties may be imposed.¹⁶ Boston’s broad non-discrimination ordinance, which applies to all public and private sector employers, exempts employers with 6 or fewer employees, non-profit private membership clubs, and religious organizations.¹⁷

The compliance requirements, enforcement procedures, and remedies available under these ordinances vary. More than half of these local ordinances (35) require that an equal opportunity statement be included in all government contracts, and allow the locality to terminate the contract and debar the employer from future contracting opportunities with the locality if the contractor has been found in violation.¹⁸

Some of these localities have more stringent compliance requirements, or provide additional remedies. Five jurisdictions require employers to undergo a preapproval or certification process before they contract with the local government.¹⁹ For example, Atlanta requires that the office of contract compliance review information submitted by the employer to determine whether the employer is in compliance before awarding a contract.²⁰ A few jurisdictions allow for a monetary penalty against a contractor that has violated the non-discrimination clause. For example, Hayward, California, imposes a per day penalty of the greater of \$250.00 or 1% of the contract amount for the time the contractor is deemed in non-compliance with the ordinance.²¹ Three jurisdictions attribute liability for a contractor’s violation to the local agency that entered into the contract.²²

Two localities, King County and Seattle, Washington, specifically provide for an individual right of action with individual remedies for a violation of the contractor non-discrimination ordinance separate from the enforcement rights and remedies available under a broader non-discrimination ordinance.²³ The contractor non-discrimination ordinances of three other localities do not explicitly provide for individual remedies when a complaint is filed, but may be able to award them or include them in a conciliation agreement if the contractor is found to have violated the ordinance.²⁴

Some localities have less stringent compliance requirements, or provide more limited remedies. Thirteen jurisdictions require only that an equal opportunity statement is included in the contract, and do not explicitly provide for contract remedies, such as termination or debarment.²⁵ Thirteen other jurisdictions require only that an agency actor or body, such as the city manager or the human rights commission, ensure contractor compliance with a non-discrimination requirement, without explicitly requiring that any non-discrimination provision be included in government contracts.²⁶ Six of these limited ordinances explicitly state that the general ordinance prohibiting employment discrimination applies to contractors, but do not explicitly provide for contract remedies, such as termination or debarment.²⁷ Instead, the remedies match those that are available to complainants under the general non-discrimination ordinance.

Affirmative Action Ordinances

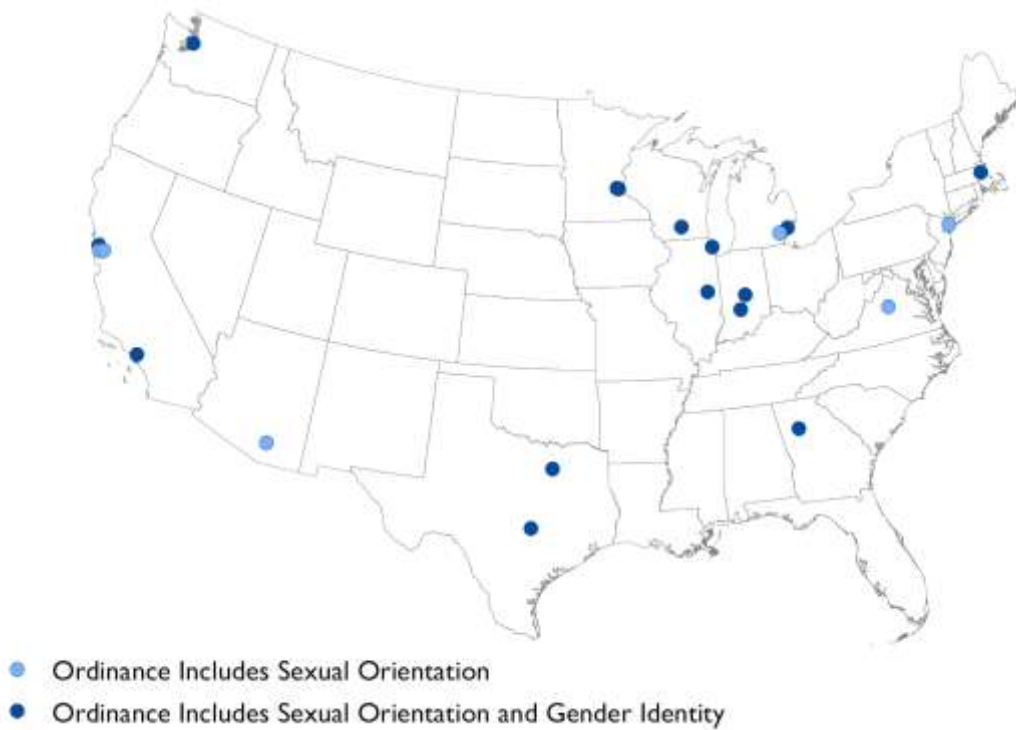
Of the 61 localities with sexual orientation or gender identity contractor non-discrimination ordinances, 35 do not require contractors to take “affirmative

action” or recruitment outreach steps with respect to any characteristic, including race and sex.²⁸

Of the remaining 26 localities, 22 require that contractors take “affirmative action” or recruitment outreach steps with respect to sexual orientation, and 16 of these also include gender identity.²⁹ Four of the 61 localities exclude sexual orientation and gender identity from their “affirmative action” or recruitment outreach ordinances,

With respect to sexual orientation and/or gender identity, these localities generally require contractors to take steps that resemble some of the steps federal government contractors are required to take under Executive Order 11246³¹ with respect to ethnicity and religion.³² These steps include conspicuously posting the non-discrimination policy at the job site,³³ including the policy in all job advertisements,³⁴ notifying unions of equal employment obligations,³⁵ furnishing

Geographic Distribution of Contractor-Specific Affirmative Action Ordinances



Ordinance includes sexual orientation:

- San Mateo County, CA
- Hayward, CA
- Tucson, AZ
- Ypsilanti, MI
- Charlottesville, VA
- Suffolk County, NY

Ordinance includes sexual orientation and gender identity:

- San Francisco, CA
- Los Angeles, CA
- King County, WA
- Austin, TX
- Dallas, TX
- Minneapolis, MN
- St. Paul, MN
- Dane County, WI
- Madison, WI
- Champaign, IL
- Evanston, IL
- Bloomington, IN
- Indianapolis, IN
- Detroit, MI
- Atlanta, GA
- Cambridge, MA

although they do have these requirements for other protected groups such as racial minorities and women.³⁰

employment and personnel information to the city or county if requested,³⁶ filing compliance reports or project cite reports if needed,³⁷ certifying that the contractor has not discriminated in violation of the equal

opportunity requirements,³⁸ developing affirmative action plans,³⁹ disseminating equal employment policies internally and externally,⁴⁰ appointing an internal equal opportunity director to oversee compliance,⁴¹ providing training on equal opportunity and non-discrimination requirements to staff,⁴² reviewing selection procedures to ensure that the contractor is not discriminating,⁴³ and notifying subcontractors of non-discrimination requirements.⁴⁴

The sexual orientation and gender identity “affirmative action” or outreach requirements in eight of these ordinances apply to all local government contracts.⁴⁵ Eleven of these ordinances apply to contracts above a certain dollar amount.⁴⁶ The dollar thresholds in these ordinances range from \$1,000 to \$100,000. Three of these localities have lower thresholds for their non-discrimination requirements than for their “affirmative action” or outreach requirements.⁴⁷ Thirteen ordinances exempt certain types of contracts.⁴⁸ All thirteen localities exempt the same types of contracts from their non-discrimination requirements and their “affirmative action” or outreach requirements. One contractor non-discrimination ordinance only applies to construction contractors.⁴⁹

Of the 22 localities that include sexual orientation or gender identity in their “affirmative action” or outreach ordinances, none requires statistical analysis of employees’ sexual orientation or gender identity, or any numerical goals and timetables based on sexual orientation or gender identity. Twelve of these 22 ordinances require that contractors perform statistical workforce analyses to determine the employment rates of women and minorities (defined as racial and/or ethnic minorities), or set numerical goals and timetables for hiring women and minorities.⁵⁰

Methodology

This study evaluates contractor-specific non-discrimination and affirmative action ordinances in order to determine both the positive impact they have on LGBT-related workplace policies and the validity of the arguments made against them. The 61 localities with contractor non-discrimination and affirmative action ordinances that include sexual orientation and/or gender identity were contacted for purposes of this study.⁵¹ They were asked to answer a set of questions about their experiences with adopting, implementing, and enforcing their non-discrimination ordinances⁵² and ordinances requiring affirmative action or outreach steps.

The positive impact of these ordinances was studied by looking at what the ordinances have accomplished. For example, have more contractors adopted LGBT-inclusive policies as a result of the ordinances? Have they provided redress for specific violations? The arguments against the ordinances were evaluated by asking those enforcing them if the concerns around their enactment have been born out. Have the work and operations of local governments been disrupted because they could not find compliant contractors? Have they been costly to administer or burdened local administrative agencies?

Twenty-nine cities and counties provided responses to our questions. These localities include: Austin (Texas), Baltimore (Maryland), Berkeley (California), Bloomington (Indiana), Cambridge (Massachusetts), Canton (Ohio), Charlottesville (Virginia), Council Bluffs (Iowa), Dane County (Wisconsin), Des Moines (Iowa), Detroit (Michigan), Eugene (Oregon), Hartford (Connecticut), Indianapolis (Indiana), Iowa City (Iowa), Johnson County (Iowa), King County (Washington), the City of Los Angeles

(California), Madison (Wisconsin), Northampton (Massachusetts), Phoenix (Arizona), Prince George's County (Delaware), Raleigh (North Carolina), St. Paul (Minnesota), San Diego (California), San Francisco (California), San Mateo County (California), Tucson (Arizona), and West Hollywood (California).⁵³ Their responses are presented in the next section.

Most of these cities and counties provided detailed responses, but a few localities provided limited information: Cambridge, Berkeley, Eugene, Northampton, Raleigh, and West Hollywood. However, the limited responses from these localities support that they have not invested any significant resources or hired new staff to implement or enforce their contractor non-discrimination or affirmative action ordinances.

The agencies that provided data and information for this study largely reported similar experiences with these ordinances. However, these agencies may be qualitatively different from agencies that did not respond to our requests. Many agencies did not respond despite repeated attempts. This may indicate a lack of staff and resources at these agencies, which, in turn, may mean that these agencies are not able to dedicate the time and effort needed to implement and enforce their ordinances. They may not be equipped or available to answer contractors' questions, which alleviated resistance in almost every case for the agencies that provided information. And they may not be able to produce educational materials, or train staff on enforcing the ordinances, like some of the agencies that responded. Nevertheless, almost half of the localities contacted provided information that can inform future debates in localities seeking to pass similar protections for LGBT workers.

Compliance with LGBT-Inclusive Contractor Requirements

Many private companies have publicly supported ordinances that prohibit contractors from discriminating on the basis of sexual orientation and gender identity.⁵⁴ Local agencies' experiences with implementing these ordinances reflect that support, finding that, almost without exception, private businesses interested in contracting with the locality are willing to adopt and comply with these policies. In almost all localities that responded, any resistance to these policies was minimal and short-lived. In the few localities that reported some initial resistance, contractors quickly agreed to comply with the policies.

In terms of sexual orientation and gender identity non-discrimination ordinances, almost every locality reported that contractors were complying without resistance, and the localities that had encountered some resistance reported that it was easily overcome by explaining the requirements to the contractor. Twenty-five⁵⁵ of twenty-nine localities reported that all contractors doing business with the local government were willing to comply with the sexual orientation and/or gender identity requirements in the local ordinance. Three localities, Bloomington, Iowa City, and Madison, reported that they have encountered a few contractors who were initially resistant to complying with these requirements. All three cities said that they responded to the contractors' questions, and explained that the law requires the inclusion of these characteristics. Bloomington and Iowa City reported that they were unaware of any contractor who failed to bid after the requirements were explained, and Madison reported that in "most instances"

contractors were willing to comply once they understood the law. One locality, Phoenix, did not provide a response to this question.

Additionally, no locality⁵⁶ reported that contractors were unwilling to comply with any particular outreach step, or objected to the use of the phrase “affirmative action” with respect to sexual orientation or gender identity. However, contractor resistance to the sexual orientation and gender identity provisions generally in Bloomington and Madison may have concerned these requirements in addition to the non-discrimination requirements, since their ordinances contained both non-discrimination and affirmative action requirements.

A few localities reported that more companies had adopted LGBT-inclusive policies because of the ordinances. For example, San Diego reported having several conversations with contractors when the ordinance first passed about how to properly add the protections to their handbooks. Bloomington reported that it has instructed several employers to amend their affirmative action plans to include sexual orientation in order to bid on city contracts, and the contractors had done so. These reports are also consistent with several media reports of companies changing their policies in order bid on local government contracts.⁵⁷

The results of this survey indicate that these ordinances have increased workplace protections for LGBT people. The fact that even resistant contractors were willing to comply when the ordinances were explained suggests that the ordinances have resulted in protections from employers who otherwise did not have internal LGBT-inclusive policies. The minimal resistance to these ordinances reported by the localities also indicates that

they have caused little, if any, disruption to the contracting process, for both the agencies and the contractors.

Because agencies do not track whether contractors had the policies in place before they decided to bid on contracts, it is difficult to say how many more contractors have adopted internal LGBT-inclusive policies because of the ordinances. However, even if many of the businesses that were awarded contracts already had protections in place, the local ordinances provide an external enforcement mechanism for the pre-existing internal corporate policies. The ordinances establish an administrative complaint procedure, and provide remedies for violations, which go beyond internal remedies available for breach of corporate policies. In this way, the ordinances provide greater protection for LGBT people, whether or not contractors already have LGBT-inclusive policies in place.

Compliance with these provisions, particularly the affirmative action requirements, demonstrates that the ordinances are valuable in securing protections that go beyond the mandates of current state laws. For example, none of the contractors in these localities were required by state laws applying to all private sector employers to take affirmative action with respect to sexual orientation or gender identity, because no such statewide laws exist.

Most (66%) of the localities⁵⁸ in this study were in states with statewide non-discrimination protection for LGBT people, so the in-state employers they contract with were most likely already legally required to comply with the non-discrimination provisions. Nonetheless, a third were in states without statewide laws,⁵⁹ and these localities reported no more resistance to the requirements than localities in states

with statewide anti-discrimination laws. In addition, the contractors covered by these ordinances that are located outside of the locality and in states without statewide anti-discrimination laws are likely required to comply with the non-discrimination and affirmative action ordinances with respect to at least some of their employees.⁶⁰ The localities did not report that any such contractors were less willing to comply with the ordinances.

Investigation and Enforcement of Individual Violations

All of the local agencies reported having established complaint procedures as required by the local contractor ordinances. However, the agencies reported that no individual complaints have been made under the ordinances.

The 29 localities⁶¹ included in this study that have ordinances specifically prohibiting sexual orientation and gender identity discrimination by contractors indicated that enforcement was complaint driven. Therefore, aside from including the non-discrimination provision in their contracts, they did not monitor contractors until and unless a complaint was filed.

Twenty-eight localities⁶² reported that no sexual orientation or gender identity complaints had been filed against contractors under their ordinances. The one remaining locality, Eugene, Oregon, reported that it refers employees with complaints of discrimination based on any protected characteristic to the Oregon Bureau of Labor Statistics, the state office responsible for enforcing the state non-discrimination statute, and was therefore unaware if complaints had been made on either basis against city contractors. None of these localities reported that contractors

had been debarred for discriminating against an employee on the basis of sexual orientation or gender identity in any locality.

None of 11 localities⁶³ that provided information on affirmative action ordinances that include sexual orientation or gender identity reported proactive monitoring of compliance with the sexual orientation and gender identity requirements. No contractor had been debarred under the sexual orientation or gender identity provisions of the affirmative action requirements in any of these localities.

In this survey, localities were not asked to explain why they had so few individual complaints. However, besides widespread compliance, two other reasons seem likely to contribute to the scarcity of enforcement actions. First, and in particular for anti-discrimination provisions, employees may file complaints under more widely known laws that cover all private employees and provide an individual right of action. Second, the lack of individual complaints may reflect a lack of investment in the enforcement agencies.

It seems likely that in localities or states with laws that prohibit discrimination more generally in the private sector, employees pursue the more widely known enforcement mechanisms under those provisions. Most of the contractor ordinances included in this study are in localities or states that have enacted these more general provisions. Nineteen localities with contractor non-discrimination provisions included in this study are located in states with statutes that prohibit employment discrimination based on sexual orientation and gender identity.⁶⁴ Twenty-two are in localities that also have broad non-discrimination ordinances that apply to all private sector

employers.⁶⁵ Only four are in localities not also covered by either a broad local ordinance or a statewide law that includes sexual orientation and/or gender identity.⁶⁶

However, this explanation for the lack of individual discrimination claims would not equally apply to local affirmative action requirements for contractors. There are not any local or state laws that explicitly require the private sector more broadly to have affirmative action programs that include sexual orientation and/or gender identity.⁶⁷

Second, local agency limitations may also account for the lack of complaints filed under these types of contract ordinances. Studies of complaints filed on the basis of sexual orientation and gender identity under broader local non-discrimination ordinances have concluded that local enforcement agencies often lack the staff and resources needed to fully enforce the ordinances.⁶⁸ Similar limitations were documented in academic literature describing the role of agencies enforcing state and local civil rights laws prior to the enactment of the Civil Rights Act of 1964.⁶⁹

This explanation seems especially likely for the enforcement of non-discrimination and affirmative action ordinances. As noted above, none of the localities that responded reported monitoring of the affirmative action requirements for sexual orientation and gender identity. In fact, the City of Los Angeles indicated that if it were not for a strained budget, it would have been more proactive in monitoring compliance with the affirmative action ordinance, but it currently did not have enough resources. In contrast, a number of these localities do monitor compliance with race and sex affirmative action steps by requiring regular submission of workforce statistics.⁷⁰

In addition, none of the localities with non-discrimination and affirmative action requirements affirmatively responded that it had hired additional permanent staff to enforce these contractor ordinances. Twenty-one⁷¹ localities included in this study with contractor non-discrimination ordinances reported that the implementation duties associated with the sexual orientation and gender identity requirements were integrated into the responsibilities of staff that enforced the ordinances as a whole. Six⁷² other localities did not specifically state whether their staffing needs were affected by the inclusion of sexual orientation and gender identity in the non-discrimination ordinances, but provided other information indicating that no additional staff were hired to enforce these protections when they went into effect.

Similarly, 10⁷³ localities with affirmative action ordinances reported that the inclusion of sexual orientation and gender identity into their existing ordinances did not require any staff beyond that needed to enforce the ordinance as a whole. One city, Cambridge, provided limited responses, but did not indicate that any additional staff had been hired to implement the sexual orientation and gender identity provisions of the ordinance.

The fact that few staff were hired as the result of these ordinances can be looked at in two ways. First, the lack of staff may indicate a lack investment in enforcement of the ordinances – contributing to the low number of individual complaints. Alternatively, these localities could have been making reasonable resource allocations by not investing further in enforcement. They may have determined that given the small size of the LGBT population and the existing capacity of their enforcement staff, no additional staff was necessary to enforce the LGBT-specific

contractor provisions. Research by the Williams Institute has shown that only 3.8% of the population identifies as LGBT⁷⁴ and that workplace discrimination complaint rates on the basis of sexual orientation are approximately 5 in 10,000.⁷⁵

In fact, two cities, Austin and Phoenix, said that they expected that “enforcing” the sexual orientation non-discrimination ordinance would require more staff, but because no complaints had been filed, they had not needed to hire staff. Thus, it is as plausible that significant additional investment is not necessary to enforce these LGBT-specific contractor provisions.

Arguments against LGBT-Related Contractor Ordinances

The survey also asked localities to respond to the concerns raised prior to the passage of the ordinances, including that the localities would be unable to secure contractors to effectively carry out their work, that the ordinances would be administratively burdensome, that they would be costly to implement, and that they would result in litigation.

Disruption of Work and Operations of Government

As indicated by the discussion of widespread compliance with these ordinances above, none of the localities that responded to the survey reported that the ordinances in any way hampered their ability to carry out their work. None of the localities reported that because of the ordinances they were unable to hire the contractors that they needed.

Administrative Burden

Every locality in this study said that their ordinances did not create an administrative burden. All of the 29⁷⁶ localities included in this study with contractor-specific non-discrimination ordinances reported that there was little or no administrative burden associated with implementing or enforcing the sexual orientation and gender identity requirements. Similarly, all 11⁷⁷ localities included in this study that require affirmative action steps with respect to sexual orientation and/or gender identity said that the burden associated with including these characteristics in the general ordinance is minimal, if any.

Costs

The survey asked localities about two types of costs: costs associated with implementing and enforcing the ordinances, and whether the ordinances resulted in an increase in contract prices for the localities. The 29 localities with nondiscrimination and affirmative action contractor ordinances provided no data that these ordinances increased administrative or contractor costs. This is consistent with the reports that none of these localities hired additional staff to enforce these ordinances and there were no reports of investigations or enforcement actions under these ordinances.

Litigation

None of the respondents to this survey reported litigation resulting from adding sexual orientation and gender identity to contractor non-discrimination and affirmative action ordinances. Beyond the responses to this survey, we were only able to locate one challenge to the sexual orientation non-discrimination requirement of a local non-discrimination contractor

ordinance, and in that case the ordinance was upheld.⁷⁸

Conclusion

Local agency experiences with implementing and enforcing contractor non-discrimination and affirmative action ordinances indicate that these ordinances have value in providing workplace protections for LGBT people. In most cases, contractors are willing to comply with the ordinances in order to contract with the local government. There is evidence that more contractors are adopting LGBT-inclusive policies as a direct result of the contracting ordinances. And, in cases where no other law requires contractors to afford protections to LGBT people, high compliance rates show that contractors are willing to accept the possibility of external enforcement in order to contract.

No complaints had been filed under any of the non-discrimination or affirmative action ordinances. This probably reflects widespread compliance with the ordinances resulting from the affirmative requirement that contractors acknowledge and adopt the required policies; the significant threat of losing government contracts; the availability of alternative and more widely known enforcement mechanisms for discrimination complaints; the small size of the LGBT population; and the minimal

resources that almost all jurisdictions have invested in enforcing their ordinances.

The actual experiences of local agencies in enforcing and implementing these ordinances contradict several of the arguments that have been made in opposition to the ordinances. No locality reported that the ordinances inhibited its ability to carry out the operations and work of its government. Every locality that provided information reported that these ordinances were not administratively burdensome to enforce. For almost all localities, any demands created by these ordinances were handled by existing staff, and trainings were developed to ensure smooth integration of the new responsibilities.

In sum, the findings of this survey indicate that ordinances that require contractors to adopt non-discrimination and affirmative action policies that include sexual orientation and gender identity result in widespread compliance, with little resistance by contractors or disruption to government operations or activities. For contractor non-discrimination and affirmative action policies, no locality reported additional administrative burden or increased costs.

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Endnotes

¹ Michael Cass, *Council Advances Anti-Gay Bill*, THE TENNESSEAN, Feb. 16, 2011.

² *E.g.*, Memorandum from Joseph F. Beach, Director, Montgomery County Office of Management and Budget, to Nancy Floreen, President, Montgomery County City Council (Jan. 19, 2010), *available at* http://www.montgomerycountymd.gov/content/council/pdf/agenda/col/2010/100202/20100202_8.pdf; *Nashville Passes 'Gender Identity' Ordinance*, BAPTIST PRESS, Apr. 6, 2011, <http://www.sbc Baptistpress.org/bpnews.asp?id=35000>.

³ *E.g.*, Letter from Ralph Schulz & Debbie Dale Mason, Nashville Area Chamber of Commerce, to Honorable Members of the Metro Council (Feb. 11, 2011), *available at* <http://www.nashvillescene.com/images/blogimages/2011/02/11/1297461121-chamberonbl2011-838.pdf>.

⁴ See *Alito's Fish Co. v. Human Rights Comm. of San Francisco*, 120 Cal. App. 3d 594 (Cal. Ct. App. 1981) (challenge to San Francisco's sexual orientation non-discrimination requirement for contractors).

⁵ The remaining locality did not respond to the authors' question about contractor compliance.

⁶ In addition, 17 localities have adopted equal benefits ordinances (EBOs) that require contractors to offer benefits to the domestic partners of employees on the same terms they are offered to spouses. The authors are conducting a separate study of those ordinances and they are not included in this report.

⁷ Sexual orientation only: Arlington County, VA (ARLINGTON COUNTY, VA., CODE §§ 31-10, 31-3(b)(1) (2010)); Brookline, MA (BROOKLINE, MASS., BY-LAWS § 4.5.1-4.5.3 (2010)); Canton, OH (CANTON, OHIO, CODE § 547.01-547.11 (2010)); Charlottesville, VA (CHARLOTTESVILLE, VA., CODE § 22-10 (2010)); Des Moines, IA (DES MOINES, IOWA, CODE § 62-168 (2010)); Eugene, OR (EUGENE, OR., CODE § 4.625 (2010)); Fort Wayne, IN (FORT WAYNE, IND., CODE § 93.035-93.038 (2010)); Hayward, CA (HAYWARD, CAL., CODE § 2-7.00 - 2-7.08 (2010)); Oak Park, IL (OAK PARK, ILL., CODE § 13-3-1, 13-3-4

(2010)); Phoenix, AZ (PHOENIX, ARIZ., CODE § 18-1, 18-4 (2010)); Prince Georges County, MD (PRINCE GEORGES COUNTY, MD., CODE § 10A-122 (2010)); Raleigh, NC (RALEIGH, N.C., CODE § 4-1004 (2010)); San Diego, CA (SAN DIEGO, CAL., CODE § 22.3501-22.3517 (2010)); San Mateo, CA (SAN MATEO, CAL., CODE § 2.50.040-2.50.050 (2010)); Suffolk County, NY (SUFFOLK COUNTY, N.Y., CODE § 143-12 (2010)); Tucson, AZ (TUCSON, ARIZ., CODE § 28-137, 28-144 (2010)); Ypsilanti, MI (YPSILANTI, MICH., CODE § 2-316—2-329 (2010)).

Sexual orientation and gender identity: Atlanta, GA (ATLANTA, GA., CODE § 2-1414 (2010)); Austin, TX (AUSTIN, TEX., CODE § 5-4-1—5-4-6 (2010)); Baltimore, MD (BALTIMORE, MD., CODE § 5-29-1—5-29-20 (2010)); Berkeley, CA (BERKELEY, CAL., CODE § 13.26.010-13.26.110 (2010)); Bloomington, IN (BLOOMINGTON, IND., CODE §§2.21.030 - 2.21.070, 93.035 (2010)); Boston, MA (BOSTON, MASS., CODE § 12-9.1, 12-9.12 (2010)); Boulder, CO (BOULDER, COLO., CODE § 12-1-3(a)(1), 12-1-10 (2010)); Burien, WA (BURIEN, WASH., CODE § 8.50.030, 8.50.050 (2010)); Cambridge, MA (CAMBRIDGE, MASS., CODE § 2.76.030, 2.76.100(A) (2010)); Cedar Falls, IA (CEDAR FALLS, IOWA, CODE § 15-56, 15-71 (2010)); Champaign, IL (CHAMPAIGN, ILL., CODE §§ 12-5.61-12-5.68; 17.3 (2010) (although gender identity is not explicitly included in the contractor non-discrimination ordinance, gender identity and expression is included in the definition of “sex” in the city’s broader non-discrimination ordinance and therefore is likely protected under “sex” in the contractor-specific ordinance)); Cleveland Heights, OH (CLEVELAND HEIGHTS, OHIO, CODE § 171.09 (2010)); Cook County, IL (COOK COUNTY, ILL., CODE § 42-40, 42-31 (2010)); Council Bluffs, IA (COUNCIL BLUFFS, IOWA, CODE § 1.40.060(17); 1.40.080(a)(1) (2010)); Dallas, TX (DALLAS, TEX., CODE § 15B-1 - 15B-7 (2010)); Dane County, WI (DANE COUNTY, WIS., CODE § 19.04(7), 19.50-19.71 (2010)); Detroit, MI (DETROIT, MICH., CODE § 27-3-2 (2010)); Dubuque, IA (DUBUQUE, IOWA, CODE §§ 8-3-3, 8-4-6(A)(2)(b) (2010)); East Lansing, MI (EAST LANSING, MICH., CODE § 22-33 (2010)); Evanston, IL (EVANSTON, ILL., CODE §§ 1-12-3, 1-12-5 (2010)); Fort Dodge, IA (FORT DODGE, IOWA, CODE § 2.16.070(a)(1), 2.16.050(15) (2010)); Harrisburg, PA (HARRISBURG, PENN., CODE § 4-101.4, 4-101.2 (2010)); Hartford, CT (HARTFORD, CONN., CODE § 2-655 (2010)); Indianapolis, IN (INDIANAPOLIS, IND., CODE § 581-102 (2010)); Iowa City, IA (IOWA CITY, IOWA, CODE § 2-3-1, 2-4-5(I)(3) (2010)); Ithaca, NY (ITHACA, N.Y., CODE §§ 215-2, 39-1 (2010)); Johnson County, IA (JOHNSON COUNTY, IOWA, CODE §§ 4(A), 10(B)(3) (2010)); King County, WA (KING COUNTY, WASH., CODE § 12.16.010-12.16.180 (2010)); Long Beach, CA (LONG BEACH, CAL., CODE § 2.72.010-2.72.030 (2010)); City of Los Angeles, CA (LOS ANGELES, CAL., ADMIN. CODE § 10.8-10.8.4 (2010) (although gender identity is not explicitly included in the contractor non-discrimination ordinance, gender identity and expression is included in the definition of “sex” in the city’s broader non-discrimination ordinance and therefore is likely protected under “sex” in the contractor-specific ordinance)); Madison, WI (MADISON, WIS., CODE § 39.02(9)(b), 39.03(2)(hh) (2010)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE § 139.50 (2010)); Northampton, MA (NORTHAMPTON, MASS., CODE § 22-100, 22-104 (2010)); Peoria, IL (PEORIA, ILL., CODE § 17-116, 17-118, 17-120 (2010)); Philadelphia, PA (PHILADELPHIA, PA., CHARTER § 8-200 (2010)); Pittsburgh, PA (PITTSBURGH, PA., CODE §§ 651.01, 651.04, 657.01 (2010)); Rochester, NY (ROCHESTER, N.Y., CODE § 63-2, 63-7 (2010)); St. Paul, MN (ST. PAUL, MINN., CODE § 183.02, 183.04 (2010)); San Francisco, CA (SAN FRANCISCO, CAL., CODE § 12B.1-12B.6 (2010)); Seattle, WA (SEATTLE, WASH., CODE § 14.10.010, 14.10.030 (2010)); Springfield, IL (SPRINGFIELD, ILL., CODE § 93.01, 93.08 (2010)); Tacoma, WA (TACOMA, WASH., CODE § 1.07.030 (2010)); Tompkins County, NY (TOMPKINS COUNTY, N.Y., CODE § 92-5(A)(6) (2010)); West Hollywood, CA (WEST HOLLYWOOD, CAL., CODE § 9.28.050 (2010)).

⁸ For an example of a separate contractor ordinance, see ATLANTA, GA., CODE § 2-1414 (2010). For an example of a broad non-discrimination ordinance that explicitly applies to local government contractors, see PHOENIX, ARIZ., CODE § 18-1, 18-4 (2010).

⁹ Ypsilanti, MI (YPSILANTI, MICH., CODE § 2-320 (2010)).

¹⁰ City of Los Angeles, CA (LOS ANGELES, CAL., ADMIN. CODE § 10.8-10.8.4 (2010)).

¹¹ Austin, TX (AUSTIN, TEX., CODE § 5-4-2 (2010) (applies to all contractors, but applies to only subcontractors with contracts of \$2,000 or more and 15 or more employees)); Baltimore, MD (BALTIMORE, MD., CODE § 5-29-1 (2010)); Berkeley, CA (BERKELEY, CAL., CODE § 13.26.030 (2010)); Cambridge, MA (CAMBRIDGE, MASS., CODE § 2.76.100(A) (2010) (although part of the city’s broader non-discrimination ordinance that does not apply to all private sector employers, the contractor non-discrimination requirements appear to apply to all contractors)); Cedar Falls, IA

(CEDAR FALLS, IOWA, CODE § 15-71 (2010) (although part of the city's broader non-discrimination ordinance that does not apply to all private sector employers, the contractor non-discrimination requirements appear to apply to all contractors); Cook County, IL (COOK COUNTY, ILL., CODE § 42-40 (2010)); Dane County, WI (DANE COUNTY, WIS., CODE §§19.52; 19.54 (2010)); Des Moines, IA (DES MOINES, IOWA, CODE § 62-168 (2010) (although part of the city's broader non-discrimination ordinance that does not apply to all private sector employers, the contractor non-discrimination requirements appear to apply to all contractors)); East Lansing, MI (EAST LANSING, MICH., CODE § 22-33(g) (2010) (although part of the city's broader non-discrimination ordinance that does not apply to all private sector employers, the contractor non-discrimination requirements appear to apply to all contractors)); Evanston, IL (EVANSTON, ILL., CODE § 1-12-5 (2010)); Fort Wayne, IN (FORT WAYNE, IND., CODE § 93.036 (2010)); Hartford, CT (HARTFORD, CONN., CODE § 2-655 (2010)); Hayward, CA (HAYWARD, CAL., CODE § 2-7.02 (2010)); Indianapolis, IN (INDIANAPOLIS, IND., CODE § 581-102 (2010) (although part of the city's broader non-discrimination ordinance that does not apply to all private sector employers, the contractor non-discrimination requirements appear to apply to all contractors)); Ithaca, NY (ITHACA, N.Y., CODE § 39-1 (2010)); City of Los Angeles, CA (LOS ANGELES, CAL., ADMIN. CODE § 10.8.1.1 (2010)); Prince Georges County, MD (PRINCE GEORGES COUNTY, MD., CODE § 10A-122 (2010)); Raleigh, NC (RALEIGH, N.C., CODE § 4-1004 (2010)); St. Paul, MN (ST. PAUL, MINN., CODE § 183.04 (2010) (although part of the city's broader non-discrimination ordinance that does not apply to all private sector employers, the contractor non-discrimination requirements appear to apply to all contractors)); Seattle, WA (SEATTLE, WASH., CODE § 14.10.010, .030 (2010)).

¹² Atlanta, GA (ATLANTA, GA., CODE § 2-1411 (2010) (applies to contracts over \$1,000)); Brookline, MA (BROOKLINE, MASS., BY-LAWS § 4.4.2(e) (2010) (applies to contracts of \$10,000 or more)); Champaign, IL (CHAMPAIGN, ILL., CODE § 12.5-12 (2010) (applies to contracts of \$17,500 or more, or as adjusted annually by city council)); Charlottesville, VA (CHARLOTTESVILLE, VA., CODE § 22-10 (2010) (applies to contracts over \$10,000)); Council Bluffs, IA (COUNCIL BLUFFS, IOWA, CODE § 1.40.060(17) (2010) (applies to contracts over \$50,000); Dallas, TX (DALLAS, TEX., CODE § 15B-3 (2010) (applies to construction contracts for over \$10,000 and to contracts for goods and services over \$50,000); Eugene, OR (EUGENE, OR., CODE § 4.615 (2010) (applies to contracts of \$25,000 or more)); Fort Dodge, IA (FORT DODGE, IOWA, CODE § 2.16.050(15) (2010) (applies to contracts over \$10,000); Philadelphia, PA (PHILADELPHIA, PA., CHARTER § 8-200 (2010) (applies to contracts over \$25,000 indexed for inflation)); San Francisco, CA (SAN FRANCISCO, CAL., CODE § 12B.1(c) (2010) (applies to contracts over \$5,000); Tucson, AZ (TUCSON, ARIZ., CODE § 28-138, 28-20 (2010) (applies to contracts over \$50,000)); Ypsilanti, MI (YPSILANTI, MICH., CODE § 2-316 (2010) (applies to contracts over \$2,000)).

¹³ Atlanta, GA (ATLANTA, GA., CODE § 2-1413(3), (4) (2010) (exempts emergency or sole source procurement contracts, and contracts with contractors that have 14 or fewer employees)); Bloomington, IN (BLOOMINGTON, IND., CODE § 2.21. 070(8) (2010) (exempts contracts specifically exempted by regulations promulgated by the human rights commission and approved by the common council)); Brookline, MA (BROOKLINE, MASS., BY-LAWS § 4.4.2 (2010) ((requirements do not apply to contracts for work outside the state and no recruitment of workers within the state is involved; contracts involving standard commercial supplies or raw materials; when the contractor is a non-profit private membership club; when the contractor has fewer than 6 employees; contracts involving joint purchases with the state; contracts with the state for construction of public works; contracts for financial assistance with a government; notes and bonds of the town; employment by the town of officers and employees of the town; whenever it is deemed necessary or appropriate by the Human Relations Commission or the Board of Selectman to exempt the contract)); Champaign, IL (CHAMPAIGN, ILL., CODE § 12.5-67 (2010) (exempts contracts for the purchase or sale of real estate or for the development or annexation of real estate; contracts with other governmental entities; collective bargaining and employment contracts; purchases made at auctions or bankruptcy sales; purchase of goods or services which can only be made from a sole source; contracts with contracting entities which the City Manager determines have met affirmative action requirements of other governmental entities with requirements similar to those of the city; contracts with contracting entities which employ only owners or the owner's relatives or which employee less than three employees; contracts for sale of goods, services, or property by the city; contracts for emergency purchases)); Hayward, CA (HAYWARD, CAL., CODE § 2-7.06 (2010) (exempts contracts with other governmental jurisdictions; contracts with manufacturers whose principal place of business is outside of the U.S.; contracts with manufacturers whose principal place of business is in the U.S. but outside the State of

California; contracts with a sole source supplier; contracts resulting from an emergency where a delay would jeopardize the welfare of citizens or the city's operational effectiveness would be threatened)); King County, WA (KING COUNTY, WASH., CODE § 12.16.050 (2010) (real property sale and lease transactions and government agency contracts)); Long Beach, CA (LONG BEACH, CAL., CODE § 2.72.130 (2010) (exempts contracts with other governmental jurisdictions; contracts with manufacturers located outside the U.S.; contracts with sole source suppliers of goods and services; and contracts entered into because of an emergency where the general welfare is at stake)); Madison, WI (MADISON, WIS., CODE § 39.02(9)(b) (2010) (contracts with the State of Wisconsin, another state government, the federal government)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE § 139.50(a)(4) (2010) (requirements do not apply to contracts exempted by the director of the Minneapolis Department of Civil Rights or the Minneapolis Commission on Civil Rights)); Peoria, IL (PEORIA, ILL., CODE § 17-120 (2010) (requirements do not apply when contractor is a sole source for the good or service and the good or service is essential for governmental operations)); Philadelphia, PA (PHILADELPHIA, PA., CHARTER § 8-200 (2010) (exempts joint procurement contracts if likely to result in lower cost to the city)); Phoenix, AZ (PHOENIX, ARIZ., CODE § 18-4(A)(5) (2010) (exempts contractors with 35, otherwise applies to all contractors that meet the definition of "employer" in the broader non-discrimination ordinance)); San Diego, CA (SAN DIEGO, CAL., CODE § 22.35037 (2010) (exempts contracts with other public entities)); San Francisco, CA (SAN FRANCISCO, CAL., CODE § 12B.5 (2010) (requirements do not apply when contractor is the sole source; contract is needed to respond to an emergency; contract involves specialized litigation requirements; contract is with another public entity and the goods or services are not available from another source or the contract is necessary to serve a substantial public interest; the requirements of the contract would be inconsistent with terms or conditions of a grant; subvention or agreement with a public agency; no compliant bidder is available; where the city determines that bulk purchasing arrangements through other public entities would reduce purchasing costs; where the city determines that the requirements would result in the city entering into a contract with an entity that is being used to evade the intent of the ordinance)); San Mateo, CA (SAN MATEO, CAL., CODE §§ 2.50.040; 2.50.060 (2010) (The board may waive the requirements if the contractor demonstrates that compliance would cause undue hardship)); Suffolk County, NY (SUFFOLK COUNTY, N.Y., CODE § 143-12(c) (2010) (requirements do not apply to activities of the contractor that are unrelated, separate, or distinct from the county contract)); Tucson, AZ (TUCSON, ARIZ., CODE § 28-143(2) (2010) (exempts federally funded contracts, and contracts entered into in the case of an emergency or when special circumstances exist which, in the interest of the city, compel such exemption)); Ypsilanti, MI (YPSILANTI, MICH., CODE § 2-316 (2010) (exempts creditor or debtors of the city, and persons who are sole proprietors of their business and who have no employees)).

¹³ For an example of a separate contractor ordinance, *see* ATLANTA, GA., CODE § 2-1414 (2010). For an example of a broad non-discrimination ordinance that explicitly applies to local government contractors, *see* PHOENIX, ARIZ., CODE § 18-1, -4 (2010).

¹⁴ Cleveland Heights, OH (CLEVELAND HEIGHTS, OHIO, CODE § 171.09 (2010)); San Mateo, CA (SAN MATEO, CAL., CODE §§ 2.50.040, 2.50.060 (2010)).

¹⁵ Arlington County, VA (ARLINGTON COUNTY, VA., CODE § 31-10 (2010)); Boston, MA (BOSTON, MASS., CODE § 12-9.12 (2010)); Boulder, CO (BOULDER, COLO., CODE § 12-1-10 (2010)); Burien, WA (BURIEN, WASH., CODE § 8.50.040 (2010)); Canton, OH (CANTON, OHIO, CODE § 547.04(b) (2010)); Dubuque, IA (DUBUQUE, IOWA, CODE § 8-4-1 – 8-4-10 (2010)); Harrisburg, PA (HARRISBURG, PENN., CODE § 4-101.4 (2010)); Iowa City, IA (IOWA CITY, IOWA, CODE § 2-4-1 – 2-4-9(2010)); Johnson County, IA (JOHNSON COUNTY, IOWA, CODE § 10, § 11 (2010)); Northampton, MA (NORTHAMPTON, MASS., CODE § 22-104 (2010)); Oak Park, IL (OAK PARK, ILL., CODE § 13-3-4 (2010)); Pittsburgh, PA (PITTSBURGH, PA., CODE § 657.01 (2010)); Rochester, NY (ROCHESTER, N.Y., CODE § 63-2 (2010)); Springfield, IL (SPRINGFIELD, ILL., CODE §§ 93.08, 93.01 (2010) (appears to incorporate the religious exemption from the definition of "employer" in the local broader non-discrimination ordinance, which allows religious organizations to give employment preferences based on religion; but explicitly states that the non-discrimination requirements apply to all contractors regardless of the number of employees, while the broader ordinance applies only to employers with 5 or more employees)); Tacoma, WA (TACOMA, WASH., CODE § 1.07.030 (2010)); Tompkins County, NY (TOMPKINS COUNTY, N.Y., CODE § 92-5(A)(6) (2010)); West Hollywood, CA (WEST HOLLYWOOD, CAL., CODE § 9.28.050 (2010)).

¹⁶ BOSTON, MASS., CODE § 12-9.12 (2010).

¹⁷ BOSTON, MASS., CODE § 12-9.2 (2010).

¹⁸ Atlanta, GA (ATLANTA, GA., CODE § 2-1414 (2010)); Austin, TX (AUSTIN, TEX., CODE § 5-4-2—5-4-6 (2010)); Baltimore, MD (BALTIMORE, MD., CODE § 5-29-1—5-29-20 (2010)); Berkeley, CA (BERKELEY, CAL., CODE § 13.26.010—13.26.110 (2010)); Bloomington, IN (BLOOMINGTON, IND., CODE § 2.21.030, 2.21.070 (2010)); Brookline, MA (BROOKLINE, MASS., BY-LAWS § 4.5.1-4.5.3 (2010)); Cambridge, MA (CAMBRIDGE, MASS., CODE § 2.76.100(A) (2010)); Canton, OH (CANTON, OHIO, CODE § 547.01-547.11 (2010)); Champaign, IL (CHAMPAIGN, ILL., CODE § 12-5.61- 12-5-.68 (2010)); Cook County, IL (COOK COUNTY, ILL., CODE § 42-40, 42-31 (2010)); Dallas, TX (DALLAS, TEX., CODE § 15B-3—15B-7 (2010)); Dane County, WI (DANE COUNTY, WIS., CODE §19.50-19.71 (2010)); Detroit, MI (DETROIT, MICH., CODE § 27-3-2 (2010)); East Lansing, MI (EAST LANSING, MICH., CODE § 22-33 (2010)); Eugene, OR (EUGENE, OR., CODE § 4.625 (2010)); Evanston, IL (EVANSTON, ILL., CODE § 1-12-5 (2010)); Fort Wayne, IN (FORT WAYNE, IND., CODE § 93.036-93.038 (2010)); Hartford, CT (HARTFORD, CONN., CODE § 2-655 (2010)); Hayward, CA (HAYWARD, CAL., CODE § 2-7.00-2-7.08 (2010)); Indianapolis, IN (INDIANAPOLIS, IND., CODE § 581-102 (2010)); King County, WA (KING COUNTY, WASH., CODE § 12.16.010-12.16.180 (2010)); Long Beach, CA (LONG BEACH, CAL., CODE § 2.72.010-2.72.030 (2010)); City of Los Angeles, CA (LOS ANGELES, CAL., ADMIN. CODE § 10.8-10.8.4 (2010)); Madison, WI (MADISON, WIS., CODE § 39.02(9)(b) (2010)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE § 139.50 (2010)); Prince Georges County, MD (PRINCE GEORGES COUNTY, MD., CODE § 10A-122 (2010)); St. Paul, MN (ST. PAUL, MINN., CODE § 183.04, .02 (2010)); San Diego, CA (SAN DIEGO, CAL., CODE § 22.3501-22.3517 (2010)); San Francisco, CA (SAN FRANCISCO, CAL., CODE § 12B.1-12B.6 (2010)); San Mateo, CA (SAN MATEO, CAL., CODE § 2.50.040-2.50.050 (2010)); Springfield, IL (SPRINGFIELD, ILL., CODE § 93.08 (2010)); Suffolk County, NY (SUFFOLK COUNTY, N.Y., CODE § 143-12 (2010)); Tacoma, WA (TACOMA, WASH., CODE § 1.07.030 (2010)); Tucson, AZ (TUCSON, ARIZ., CODE § 28-137, 28-144 (2010)); Ypsilanti, MI (YPSILANTI, MICH., CODE § 2-316-329 (2010)).

¹⁹ Atlanta, GA (ATLANTA, GA., CODE § 2-1412(10) (2010)); Brookline, MA (BROOKLINE, MASS., BY-LAWS § 4.5.2 (2010)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE § 139.50(d) (2010)); San Mateo, CA (SAN MATEO, CAL., CODE § 2.50.040(a) (2010)); Ypsilanti, MI (YPSILANTI, MICH., CODE § 2-319 (2010)). Additionally, the ordinances of Oak Park, Illinois, grant the city council the right to ask for policy verification from contractors, but it is unclear whether the council has exercised this right; and the ordinances of Canton, Ohio, permit (but do not require) the Executive Secretary to hold a pre-award conference with the successful bidder to ensure compliance with the non-discrimination requirements. OAK PARK, ILL., CODE § 13-3-2 (2010); CANTON, OHIO, CODE § 547.05 (2010).

²⁰ Atlanta, GA (ATLANTA, GA., CODE § 2-1412(10) (2010)).

²¹ Hayward, CA (HAYWARD, CAL., 2-7.02(g) (2010)).

²² Dubuque, IA (DUBUQUE, IOWA, CODE § 8-4-6(A)(2)(b) (2010)); Iowa City, IA (IOWA CITY, IOWA, CODE § 2-4-5(I)(2) (2010)); Johnson County, IA (JOHNSON COUNTY, IOWA, CODE § 10(B)(2) (2010)).

²³ King County, WA (KING COUNTY, WASH., CODE § 12.16.030-.180 (2010)); Seattle, WA (SEATTLE, WASH., CODE § 14.10.050 (2010)).

²⁴ Austin, TX (AUSTIN, TEX., CODE § 5-4-3 (2010) (Equal Employment/Fair Housing Office shall “endeavor to eliminate or correct the practice or violation complained of by informal methods of conference, conciliation, and persuasion”); San Diego, CA (SAN DIEGO, CAL., CODE § 22.3505-22.3509 (2010) (may award “any remedy provided by law or agreed to by the business firm”)).

²⁵ Cedar Falls, IA (CEDAR FALLS, IOWA, CODE § 15-56, 15-71 (2010)); Charlottesville, VA (CHARLOTTESVILLE, VA., CODE § 22-10 (2010)); Cleveland Heights, OH (CLEVELAND HEIGHTS, OHIO, CODE § 171.09 (2010) (allows for minor monetary penalties, but not termination or debarment); Council Bluffs, IA (COUNCIL BLUFFS, IOWA, CODE § 1.40.060(17) (2010));

Des Moines, IA (DES MOINES, IOWA, CODE § 62-168 (2010)); Ithaca, NY (ITHACA, N.Y., CODE § 39-1 (2010)); Oak Park, IL (OAK PARK, ILL., CODE § 13-3-1, 13-3-4 (2010)); Philadelphia, PA (PHILADELPHIA, PA., CHARTER § 8-200 (2010)); Pittsburgh, PA (PITTSBURGH, PA., CODE §§ 651.01, 657.01 (2010)); Raleigh, NC (RALEIGH, N.C., CODE § 4-1004 (2010)); Rochester, NY (ROCHESTER, N.Y., CODE § 63-7 (2010)); Tompkins County, NY (TOMPKINS COUNTY, N.Y., CODE § 92-5(A)(6) (2010)); West Hollywood, CA (WEST HOLLYWOOD, CAL., CODE § 9.28.050 (2010)).

²⁶ Arlington County, VA (ARLINGTON COUNTY, VA., CODE § 31-10 (2010)); Boston, MA (BOSTON, MASS., CODE § 12-9.12 (2010)); Boulder, CO (BOULDER, COLO., CODE § 12-1-10 (2010)); Burien, WA (BURIEN, WASH., CODE § 8.50.050 (2010)); Dubuque, IA (DUBUQUE, IOWA, CODE § 8-4-6(A)(2)(b) (2010)); Fort Dodge, IA (FORT DODGE, IOWA, CODE § 2.16.050(15) (2010)); Harrisburg, PA (HARRISBURG, PENN., CODE § 4-101.4, .2 (2010)); Iowa City, IA (IOWA CITY, IOWA, CODE § 2-4-5(I)(3) (2010)); Johnson County, IA (JOHNSON COUNTY, IOWA, CODE § 10(B)(3) (2010)); Northampton, MA (NORTHAMPTON, MASS., CODE § 22-100 (2010)); Peoria, IL (PEORIA, ILL., CODE § 17-116, 17-118, 17-120 (2010)); Phoenix, AZ (PHOENIX, ARIZ., CODE § 18-1, 18-4 (2010)); Seattle, WA (SEATTLE, WASH., CODE § 14.10.010, 14.10.030 (2010)).

²⁷ Burien, WA (BURIEN, WASH., CODE § 8.50.050 (2010)); Harrisburg, PA (HARRISBURG, PENN., CODE § 4-101.2, 4-101.4 (2010)); Northampton, MA (NORTHAMPTON, MASS., CODE § 22-100 (2010)); Phoenix, AZ (PHOENIX, ARIZ., CODE § 18-1, 18-4 (2010)); Rochester, NY (ROCHESTER, N.Y., CODE § 63-7 (2010)); Tompkins County, NY (TOMPKINS COUNTY, N.Y., CODE § 92-5(A)(6) (2010)).

²⁸ “Affirmative action ordinance” here refers to those ordinances that explicitly require “affirmative action,” and those that require contractors to take certain outreach steps but do not use the term “affirmative action.” Both types of ordinances require contractors to take outreach steps that resemble some of the steps federal government contractors are required to take under Executive Order 11246 with respect to ethnicity and religion, such as conspicuously posting the non-discrimination policy at the job site and including the policy in all job advertisements. In addition, “affirmative action” and outreach steps mean only those ordinances that address practices of an employer directed at its individual employees and applicants; it does not include ordinances that require the city to ensure that Minority- and Women-owned businesses are represented among their contractors.

²⁹ Sexual orientation only: Charlottesville, VA (CHARLOTTESVILLE, VA., CODE § 22-10 (2010)); Hayward, CA (HAYWARD, CAL., CODE § 2-7.02(a) (2010)); San Mateo, CA (SAN MATEO, CAL., CODE § 2.50.040 (2010)); Suffolk County, NY (SUFFOLK COUNTY, N.Y., CODE § 143-12 (2010)); Tucson, AZ (TUCSON, ARIZ., CODE § 28-138 (2010)); Ypsilanti, MI (YPSILANTI, MICH., CODE § 2-320 (2010)).

Sexual orientation and gender identity: Atlanta, GA (ATLANTA, GA., CODE § 2-1413(2), 2-1414 (2010)); Austin, TX (AUSTIN, TEX., CODE § 5-4-2(2) (2010)); Bloomington, IN (BLOOMINGTON, IND., CODE § 2.21.070(8), 2.31.030(d) (2010)); Cambridge, MA (CITY OF CAMBRIDGE, CITY OF CAMBRIDGE AFFIRMATIVE ACTION PROGRAM, YEARS 2007-2010 6-8, *available at* www.cambridgema.gov (last visited Sept. 13, 2011)); Champaign, IL (CHAMPAIGN, ILL., CODE § 12-6.65 (2010)); Dallas, TX (DALLAS, TEX., CODE § 15B-3 (2010)); Dane County, WI (DANE COUNTY, WIS., CODE § 19.54 (2010)); Detroit, MI (DETROIT, MICH., 27-3-2 (2010)); Evanston, IL (EVANSTON, ILL., CODE § 1-12-5 (2010)); Indianapolis, IN (INDIANAPOLIS, IND., CODE § 581-102 (2010)); King County, WA (KING COUNTY, WASH., CODE § 12.16.040 (2010)); City of Los Angeles, CA (LOS ANGELES, CAL., ADMIN. CODE § 10.8.3 (2010)); Madison, WI (MADISON, WIS., CODE § 39.02(9)(b) (2010)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE § 139.50(a)(1) (2010)); St. Paul, MN (ST. PAUL, MINN., CODE § 183.04, .02 (2010)); San Francisco, CA (SAN FRANCISCO, CAL., CODE § 12B.2 (2010)).

³⁰ Berkeley, CA (BERKELEY, CAL., CODE § 13.26.060 (2010)); Brookline, MA (BROOKLINE, MASS., BY-LAWS § 4.4.1(d) (2010)); Long Beach, CA (LONG BEACH, CAL., CODE § 2.72.030 (2010)); Phoenix, AZ (PHOENIX, ARIZ., CODE § 18-12 (2010)).

³¹ Executive Order 11246 prohibits covered federal contractors and subcontractors from discriminating against their employees based on race, color, religion, sex, and national origin. It also requires covered contractors to take affirmative action with respect to these characteristics to ensure equal opportunity in employment. Exec. Order No. 11,246, 3 C.F.R. 339 (1964-1965).

³² 41 C.F.R. § 60-50 *et seq.* (2005).

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- ³³ See, e.g., YPSILANTI, MICH., CODE § 2-321 (2010).
- ³⁴ See, e.g., TUCSON, ARIZ., CODE § 28-138(b) (2010).
- ³⁵ See, e.g., ST. PAUL, MINN., CODE § 183.04(3) (2010).
- ³⁶ See, e.g., EVANSTON, ILL., CODE § 1-12-5 (2010).
- ³⁷ See, e.g., ATLANTA, GA., CODE § 2-1418(f) (2010).
- ³⁸ See, e.g., LOS ANGELES, CAL., ADMIN. CODE § 10.8.3(A) (2010).
- ³⁹ See, e.g., BLOOMINGTON, IND., CODE § 2.21.070(8) (2010).
- ⁴⁰ See, e.g., CHAMPAIGN, ILL., CODE § 12.5-65(b)(3) (2010).
- ⁴¹ See, e.g., CHAMPAIGN, ILL., CODE § 12.5-65(b)(2) (2010).
- ⁴² See, e.g., BLOOMINGTON, IND., CODE § 2.21.070(8) (2010).
- ⁴³ See, e.g., KING COUNTY, WASH., CODE § 12.16.040(C) (2010).
- ⁴⁴ See, e.g., CITY OF CAMBRIDGE, CITY OF CAMBRIDGE AFFIRMATIVE ACTION PROGRAM, YEARS 2007-2010 6-8, *available at* www.cambridgema.gov (last visited Sept. 13, 2011).
- ⁴⁵ Austin, TX (AUSTIN, TEX., CODE § 5-4-2(2) (2010) (applies to all contractors, but applies to subcontractors with contracts of \$2,000 or more and 15 or more employees)); Cambridge, MA (CITY OF CAMBRIDGE, CITY OF CAMBRIDGE AFFIRMATIVE ACTION PROGRAM, YEARS 2007-2010 6-8, *available at* www.cambridgema.gov (last visited Sept. 13, 2011)); Dane County, WI (DANE COUNTY, WIS., CODE § 19.54 (2010)); Detroit, MI (DETROIT, MICH., 27-3-2 (2010)); Evanston, IL (EVANSTON, ILL., CODE § 1-12-5 (2010)); Indianapolis, IN (INDIANAPOLIS, IND., CODE § 581-102 (2010)); Madison, WI (MADISON, WIS., CODE § 39.02(9)(b) (2010)); St. Paul, MN (ST. PAUL, MINN., CODE § 183.04, .02 (2010)).
- ⁴⁶ Atlanta, GA (ATLANTA, GA., CODE § 2-1411 (2010) (applies to contracts over \$1,000)); Brookline, MA (BROOKLINE, MASS., BY-LAWS § 4.4.2(e) (2010) (applies to contracts of \$10,000 or more)); Champaign, IL (CHAMPAIGN, ILL., CODE § 12.5-12 (2010) (applies to contracts of \$17,500 or more, or as adjusted annually by city council)); Charlottesville, VA (CHARLOTTESVILLE, VA., CODE § 22-10 (2010) (applies to contracts over \$10,000)); Council Bluffs, IA (COUNCIL BLUFFS, IOWA, CODE § 1.40.060(17) (2010) (applies to contracts over \$50,000)); Dallas, TX (DALLAS, TEX., CODE § 15B-3 (2010) (applies to construction contracts for over \$10,000 and to contracts for goods and services over \$50,000)); Eugene, OR (EUGENE, OR., CODE § 4.615 (2010) (applies to contracts of \$25,000 or more)); Fort Dodge, IA (FORT DODGE, IOWA, CODE § 2.16.050(15) (2010) (applies to contracts over \$10,000)); City of Los Angeles, CA (LOS ANGELES, CAL., ADMIN. CODE § 10.8.1.1 (2010) (contractors with contracts of \$1,000 or more must comply with the outreach steps; construction contractors with contracts of \$5,000 or more and non-construction contractors with contracts of \$100,000 or more must develop a written affirmative action plan)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE § 139.50(d) (2010) (a written affirmative action plan is required if the contract is over \$50,000)); Philadelphia, PA (PHILADELPHIA, PA., CHARTER § 8-200 (2010) (applies to contracts over \$25,000 indexed for inflation)); San Francisco, CA (SAN FRANCISCO, CAL., CODE § 12B.1(c) (2010) (applies to contracts over \$5,000)); San Mateo, CA (SAN MATEO, CAL., CODE §§ 2.50.040 (2010) (applies to contracts of \$100,000 or more)) Tucson, AZ (TUCSON, ARIZ., CODE § 28-138, 28-20 (2010) (applies to contracts over \$50,000)); Ypsilanti, MI (YPSILANTI, MICH., CODE § 2-316 (2010) (applies to contracts over \$2,000)).

⁴⁷ City of Los Angeles, CA (LOS ANGELES, CAL., ADMIN. CODE § 10.8.1.1 (2010) (all contractors must comply with non-discrimination requirements, only contractors with contracts of \$1,000 or more must comply with the outreach steps; construction contractors with contracts of \$5,000 or more and non-construction contractors with contracts of \$100,000 or more must develop a written affirmative action plan)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE § 139.50(d) (2010) (no threshold for non-discrimination requirements, but a written affirmative action plan is not required unless the contract is over \$50,000)); San Mateo, CA (SAN MATEO, CAL., CODE §§ 2.50.040 (2010) (no threshold for non-discrimination requirements, but outreach steps are not required unless the contract is \$100,000 or more)).

⁴⁸ Atlanta, GA (ATLANTA, GA., CODE § 2-1413(3), (4) (2010) (exempts emergency or sole source procurement contracts, and contracts with contractors that have 14 or fewer employees)); Bloomington, IN (BLOOMINGTON, IND., CODE § 2.21.070(8) (2010) (exempts contracts specifically exempted by regulations promulgated by the human rights commission and approved by the common council)); Champaign, IL (CHAMPAIGN, ILL., CODE § 12.5-67 (2010) (exempts contracts for the purchase or sale of real estate or for the development or annexation of real estate; contracts with other governmental entities; collective bargaining and employment contracts; purchases made at auctions or bankruptcy sales; purchase of goods or services which can only be made from a sole source; contracts with contracting entities which the City Manager determines have met affirmative action requirements of other governmental entities with requirements similar to those of the city; contracts with contracting entities which employ only owners or the owner's relatives or which employ less than three employees; contracts for sale of goods, services, or property by the city; contracts for emergency purchases)); Hayward, CA (HAYWARD, CAL., CODE § 2-7.06 (2010) (exempts contracts with other governmental jurisdictions; contracts with manufacturers whose principal place of business is outside of the U.S.; contracts with manufacturers whose principal place of business is in the U.S. but outside the State of California; contracts with a sole source supplier; contracts resulting from an emergency where a delay would jeopardize the welfare of citizens or the city's operational effectiveness would be threatened)); King County, WA (KING COUNTY, WASH., CODE § 12.16.050 (2010) (real property sale and lease transactions and government agency contracts)); Long Beach, CA (LONG BEACH, CAL., CODE § 2.72.130 (2010) (exempts contracts with other governmental jurisdictions; contracts with manufacturers located outside the U.S.; contracts with sole source suppliers of goods and services; and contracts entered into because of an emergency where the general welfare is at stake)); Madison, WI (MADISON, WIS., CODE § 39.02(9)(b) (2010) (contracts with the State of Wisconsin, another state government, the federal government)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE § 139.50(a)(4) (2010) (requirements do not apply to contracts exempted by the director of the Minneapolis Department of Civil Rights or the Minneapolis Commission on Civil Rights)); San Francisco, CA (SAN FRANCISCO, CAL., CODE § 12B.5 (2010) (requirements do not apply when contractor is the sole source; contract is needed to respond to an emergency; contract involves specialized litigation requirements; contract is with another public entity and the goods or services are not available from another source or the contract is necessary to serve a substantial public interest; the requirements of the contract would be inconsistent with terms or conditions of a grant; subvention or agreement with a public agency; no compliant bidder is available; where the city determines that bulk purchasing arrangements through other public entities would reduce purchasing costs; where the city determines that the requirements would result in the city entering into a contract with an entity that is being used to evade the intent of the ordinance)); San Mateo, CA (SAN MATEO, CAL., CODE §§ 2.50.040; 2.50.060 (2010) (The board may waive the requirements if the contractor demonstrates that compliance would cause undue hardship)); Suffolk County, NY (SUFFOLK COUNTY, N.Y., CODE § 143-12(c) (2010) (requirements do not apply to activities of the contractor that are unrelated, separate, or distinct from the county contract)); Tucson, AZ (TUCSON, ARIZ., CODE § 28-143(2) (2010) (exempts federally funded contracts, and contracts entered into in the case of an emergency or when special circumstances exist which, in the interest of the city, compel such exemption)); Ypsilanti, MI (YPSILANTI, MICH., CODE § 2-316 (2010) (exempts creditor or debtors of the city, and persons who are sole proprietors of their business and who have no employees)).

⁴⁸ For an example of a separate contractor ordinance, see ATLANTA, GA., CODE § 2-1414 (2010). For an example of a broad non-discrimination ordinance that explicitly applies to local government contractors, see PHOENIX, ARIZ., CODE § 18-1, -4 (2010).

⁴⁹ San Mateo, CA (SAN MATEO, CAL., CODE §§ 2.50.040, 2.50.060 (2010)).

⁵⁰ Some localities also include people with disabilities in these requirements. Atlanta, GA (ATLANTA, GA., CODE § 2-1314 (2010)); Berkeley, CA (BERKELEY, CAL., CODE § 13.26.050 (2010)); Cambridge, MA (CITY OF CAMBRIDGE, CITY OF CAMBRIDGE AFFIRMATIVE ACTION PROGRAM, YEARS 2007-2010 6-8, *available at* www.cambridgema.gov (last visited Sept. 13, 2011)); Champaign, IL (CHAMPAIGN, ILL., CODE § 12.5-65(b)(4), (5) (2010)); Dane County, WI (DANE COUNTY, WIS., CODE § 19.50, 19.58-19.63 (2010)); Detroit, MI (DETROIT, MICH., 27-3-2 (2010)); Evanston, IL (EVANSTON, ILL., CODE § 1-12-5(A) (2010)); Hayward, CA (HAYWARD, CAL., CODE §§ 2-7.03(e) (2010)); King County, WA (KING COUNTY, WASH., CODE § 12.16.156 (2010)); Long Beach, CA (LONG BEACH, CAL., 2.72.030 (2010)); City of Los Angeles, CA (LOS ANGELES, CAL., ADMIN. CODE § 10.8.4 (2010)); Madison, WI (MADISON, WIS., CODE § 39.02(9) (2010)); Peoria, IL (PEORIA, ILL., CODE § 17-120 (2010)); Tucson, AZ (TUCSON, ARIZ., CODE § 28-137 (2010)); Ypsilanti, MI (YPSILANTI, MICH., CODE § 2-322 (2010)).

⁵¹ The localities were contacted about these provisions by email on June 28, 2011. Those that did not respond were contacted again by email on August 30, 2011 and finally by phone on September 16, 2011. On December 7, 2011, just those jurisdictions who had already responded to early requests were sent a set of further questions to clarify statements about compliance with their ordinances. Follow-up emails with these questions were sent on December 21, 2011.

⁵² These questions included: Have contractors been willing to comply with the sexual orientation and/or gender identity requirements of the contractor-specific non-discrimination/affirmative action ordinances? Do you think more contractors adopted workplace policies that include sexual orientation and/or gender identity as a result of the contractor non-discrimination/affirmative action ordinances? If so, do you have any anecdotal evidence of this? Have contractors ever told the city/county that they adopted the policies in order to bid for contracts? Did adding sexual orientation and/or gender identity to the contractor-specific non-discrimination/affirmative action ordinances require hiring additional staff, conducting additional trainings, or require any other specific actions on the part of the city/county beyond what was already required to implement the non-discrimination/affirmative action ordinances? Have any administrative complaints of sexual orientation or gender identity discrimination been filed under the ordinances? Does the inclusion of sexual orientation and/or gender identity to the ordinances present any administrative burden beyond that associated with the other characteristics included in the ordinances?

⁵³ All information gathered from the local government agencies is on file with the authors.

⁵⁴ For example, more than 70 businesses endorsed a Nashville, Tennessee ordinance prohibiting contractors from discriminating on the basis of sexual orientation and gender identity. Tennessee Equality Project, Supporters of the Metro Contract Accountability Non-Discrimination Ordinance, <https://docs.google.com/document/d/1QPU20PiCzz7tFljnumBw13aMhSvn2bgqwyrpjf18Q/edit?hl=en&pli=1#>.

⁵⁵ Austin, Baltimore, Berkeley, Cambridge, Canton, Charlottesville, Council Bluffs, Dane County, Des Moines, Detroit, Eugene, Hartford, Indianapolis, Johnson County, King County, City of Los Angeles, Northampton, Prince George's County, St. Paul, Raleigh, San Diego, San Francisco, San Mateo County, Tucson, and West Hollywood.

⁵⁶ Austin, Bloomington, Cambridge, Charlottesville, Detroit, King County, City of Los Angeles, Madison, St. Paul, San Francisco, and Tucson.

⁵⁷ *E.g.*, Rachel Gordon, *Bechtel Agrees to Extend its Benefits Policy*, SFGATE, May 4, 2000; Eve Mitchell, *Benefits for Both*, ALAMEDA TIMES-STAR, Aug. 3, 2003; Julie Forster, *Domestic Partner Benefits Solid*, ST. PAUL PIONEER, Mar. 14, 2004.

⁵⁸ Berkeley, Cambridge, Council Bluffs, Dane County, Des Moines, Eugene, Hartford, Iowa City, Johnson County, King County, City of Los Angeles, Madison, Minneapolis, Northampton, Prince George's County, St. Paul, San Diego,

San Francisco, West Hollywood. For an overview of state statutes that prohibit discrimination on the basis of sexual orientation and/or gender identity, see BRAD SEARS, NAN D. HUNTER & CHRISTY MALLORY, *Analysis of Scope and Enforcement of State Laws and Executive Orders Prohibiting Employment Discrimination against LGBT People*, in DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT (2009), available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/15_ENDAvStateLaws.pdf (since publication in September, 2009, Massachusetts added gender identity to its non-discrimination statute, H. 3810, 187th Gen. Ct., Reg. Sess. (Mass. 2011)).

⁵⁹ When broader local ordinances are also considered, four localities in this study have neither a broad local non-discrimination ordinance that includes sexual orientation and/or gender identity or are in a state with statutory non-discrimination protections for sexual orientation and/or gender identity (Bloomington, Charlottesville, Phoenix, Raleigh).

⁶⁰ A federal district court in California has held that equal benefits ordinances may reach contractors' operations in the locality; contractors' operations which occur elsewhere in the United States where work related to the contract is being performed, and work performed on real property outside of the locality if the property is owned or occupied by the locality and the contractor's presence is related to the contract. *Air Transport Ass'n v. City and County of San Francisco*, 992 F. Supp. 1149, 1161-65 (N.D. Cal. 1998). While the permissible geographic scope of contractor non-discrimination ordinances has not been litigated, presumably they may reach contractors' operations in other jurisdictions to the same extent as EBOs.

⁶¹ Austin, Baltimore, Berkeley, Bloomington, Cambridge, Canton, Charlottesville, Council Bluffs, Dane County, Des Moines, Detroit, Eugene, Hartford, Indianapolis, Iowa City, Johnson County, King County, City of Los Angeles, Madison, Northampton, Phoenix, Prince George's County, St. Paul, Raleigh, San Diego, San Francisco, San Mateo County, Tucson, and West Hollywood.

⁶² Austin, Baltimore, Berkeley, Bloomington, Cambridge, Canton, Charlottesville, Council Bluffs, Dane County, Des Moines, Detroit, Eugene, Hartford, Indianapolis, Iowa City, Johnson County, King County, City of Los Angeles, Madison, Northampton, Phoenix, Prince George's County, St. Paul, Raleigh, San Diego, San Francisco, San Mateo County, Tucson, and West Hollywood.

⁶³ Austin, Bloomington, Cambridge, Charlottesville, Detroit, King County, City of Los Angeles, Madison, St. Paul, San Francisco, and Tucson.

⁶⁴ See *supra* note 58.

⁶⁵ Austin, TX (AUSTIN, TEX., CODE §§ 5-3-4, 5-4-1—5-4-6 (2010)); Baltimore, MD (BALTIMORE, MD., CODE §§ 3-1, 5-29-1—5-29-20 (2010)); Berkeley, CA (BERKELEY, CAL., CODE §§ 13.26.010-13.26.110, 13.28.030 (2010)); Cambridge, MA (CAMBRIDGE, MASS., CODE § 2.76.030, 2.76.100(A), 2.76.120(D) (2010)); Canton, OH (CANTON, OHIO, CODE § 547.01-547.11 (2010)); Council Bluffs, IA (COUNCIL BLUFFS, IOWA, CODE § 1.40.060(17); 1.40.080 (2010)); Des Moines, IA (DES MOINES, IOWA, CODE § 62-71, 62-168 (2010)); Detroit, MI (DETROIT, MICH., CODE § 27-3-1, 27-3-2 (2010)); Eugene, OR (EUGENE, OR., CODE § 4.620, 4.625 (2010)); Indianapolis, IN (INDIANAPOLIS, IND., CODE § 581-102, 581-103, 581-403 (2010)); Iowa City, IA (IOWA CITY, IOWA, CODE § 2-3-1, 2-4-5(l)(3) (2010)); Johnson County, IA (JOHNSON COUNTY, IOWA, CODE §§ 4(A), 10(B)(3) (2010)); King County, WA (KING COUNTY, WASH., CODE § 12.16.010-12.16.180, 12.18.030 (2010)); City of Los Angeles, CA (LOS ANGELES, CAL., ADMIN. CODE §§ 10.8-10.8.4, 49.72 (2010)); Madison, WI (MADISON, WIS., CODE § 39.02(9)(b), 39.03(2)(hh), 39.03(8) (2010)); Minneapolis, MN (MINNEAPOLIS, MINN., CODE §§ 139.40(b), 139.50 (2010)); Northampton, MA (NORTHAMPTON, MASS., CODE § 22-100, 22-104 (2010)); Prince Georges County, MD (PRINCE GEORGES COUNTY, MD., CODE § 10A-122 (2010)); St. Paul, MN (ST. PAUL, MINN., CODE § 183.02, 183.03, 183.04 (2010)); San Diego, CA (SAN DIEGO, CAL., CODE §§ 22.3501-22.3517, 52.9603 (2010)); San Francisco, CA (SAN FRANCISCO, CAL., CODE §§ 12B.1-12B.6, 3303 (2010)); Tucson, AZ (TUCSON, ARIZ., CODE §§ 17-12(b), 28-137, 28-144 (2010)).

⁶⁶ Bloomington, Charlottesville, Phoenix, Raleigh.

⁶⁷ State laws requiring these policies extend only to state government contractors. See, e.g., Mass. Exec. Order 526 (Feb. 17, 2011) (adding gender identity to contractor non-discrimination and affirmative action requirements in Massachusetts); MD. CODE ANN., STATE FIN. & PROC. § 19-101—19-120 (2011) (requiring that state government contractors not discriminate based on sexual orientation); CAL. PUB. CONT. CODE § 10295.3 (2009) (requiring state government contractors to offer equal benefits to domestic partners).

⁶⁸ Roddrick A. Colvin, *Improving State Policies Prohibiting Public Employment Discrimination Based on Sexual Orientation*, 20 REVIEW OF PUBLIC PERSONNEL ADMINISTRATION 5 (2000); Norma M. Riccucci & Charles W. Gossett, *Employment Discrimination in State and Local Government: The Lesbian and Gay Male Experience*, 26 AMERICAN REVIEW OF PUBLIC ADMINISTRATION 175 (1996); BRAD SEARS, NAN D. HUNTER & CHRISTY MALLORY, *Administrative Complaints on the Basis of Sexual Orientation and Gender Identity*, in DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT (2009), available at http://wiwp.law.ucla.edu/wp-content/uploads/11_AdministrativeComplaints.pdf.

⁶⁹ Alfred W. Blumrosen, BLACK EMPLOYMENT AND THE LAW 14 (1971).

⁷⁰ See, for example, Los Angeles's workforce analysis form. City of Los Angeles, Nondiscrimination, Equal Employment Practices, Affirmative Action, BCA Form, available at http://www.portoflosangeles.org/forms/Affirmative_Action.PDF (last visited Sept. 30, 2011).

⁷¹ Baltimore, Bloomington, Canton, Charlottesville, Council Bluffs, Dane County, Des Moines, Detroit, Hartford, Indianapolis, Iowa City, Johnson County, King County, City of Los Angeles, Madison, Prince George's County, St. Paul, San Diego, San Francisco, San Mateo County, and Tucson.

⁷² Berkeley, Cambridge, Eugene, Northampton, Raleigh, and West Hollywood.

⁷³ Austin, Bloomington, Charlottesville, Detroit, King County, City of Los Angeles, Madison, St. Paul, San Francisco, and Tucson.

⁷⁴ GARY J. GATES, HOW MANY PEOPLE ARE LESBIAN, GAY, BISEXUAL AND TRANSGENDER? 1 (2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

⁷⁵ M.V. LEE BADGETT, CHRISTOPHER RAMOS & BRAD SEARS, EVIDENCE OF EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY: COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES 1999-2007 (2008), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Ramos-Emply-Discrim-1999-2007-Nov-08.pdf>.

⁷⁶ Austin, Baltimore, Berkeley, Bloomington, Cambridge, Canton, Charlottesville, Council Bluffs, Dane County, Des Moines, Detroit, Eugene, Hartford, Indianapolis, Iowa City, Johnson County, King County, City of Los Angeles, Madison, Northampton, Phoenix, Prince George's County, St. Paul, Raleigh, San Diego, San Francisco, San Mateo County, Tucson, and West Hollywood.

⁷⁷ Austin, Bloomington, Cambridge, Charlottesville, Detroit, King County, City of Los Angeles, Madison, St. Paul, San Francisco, and Tucson.

⁷⁸ *Alito's Fish Company*, 120 Cal. App. 3d 594. The main issues raised in that case were whether the locality had the authority to enact the ordinance under the state constitution, state law, or the municipal charter, and relatedly, whether the ordinance was preempted by any state law. Because the analysis in this case is highly dependent on state law, it is difficult to determine what the outcome may be for a similar challenge to a different localities ordinance.



Report Update: Sexual Orientation and Gender Identity Non-Discrimination Policies of the Top 50 Contractors, FY 2011

This Appendix updates the report *Economic Motives for Adopting LGBT-Related Workplace Policies* released by the Williams Institute in October of 2011. It provides an updated list of federal contractors who have non-discrimination policies that include sexual orientation and gender identity. The list of top contractors is based on federal procurement data reported for fiscal year 2011.¹

As of April 2012, 86% of the top 50 federal contractors prohibit discrimination based on sexual orientation, and 55% prohibit discrimination based on gender identity. While the numbers increased for both categories of anti-discrimination policies, the bigger increase was for the number of top 50 contractors prohibiting gender identity discrimination, for which there was a 29% increase from the previous year. Combined, these contractors represent 46.9% of all contracting dollars awarded by the federal government, over \$249 billion in spending.

All of the top six federal contractors—Lockheed Martin, Boeing, General Dynamics, Northrop Grumman, Raytheon, and United Technologies —prohibit discrimination based on both sexual orientation and gender identity. These six companies alone receive 23% of all federal contracting dollars. Of the top 25 federal contractors, 92% prohibit discrimination based on sexual orientation, and 58% prohibit discrimination based on gender identity. These 25 companies receive 38% of federal contracting dollars.

The percentage of top 50 federal contractors with these policies has increased steadily in recent years. The October 2011 Williams Institute report, based on fiscal year 2010 data, found that 81% of the top 50 federal contractors prohibited discrimination based on sexual orientation, and 44% prohibited discrimination based on gender identity. The increase is due in part to a change in contractors that ranked in the top 50 from year to year, and in part to more contractors adopting these policies.

Notably, four contractors that ranked among the top 50 in both 2010 and 2011—BAE, McKesson, KBR, and Humana— have added gender identity to their non-discrimination policies since the beginning of the 2010 fiscal year. One company that ranks on both lists, KBR, has since added sexual orientation. DynCorp became the most recent of these top contractors to protect

¹ The list of top 50 federal contractors for fiscal year 2011, determined by dollar amount of their combined federal contracts, is available at Federal Procurement Data System – Next Generation, Top 100 Contractors Report, <https://www.fpds.gov/fpdsng/cms/index.php/reports>. Due to partnerships involving two or more companies contracting under one name, the top 50 federal contractors on this list consist of 49 unique entities. The percentages reported here are based on the number of unique companies represented (49).”

LGBT people when it added both sexual orientation and gender identity to its non-discrimination policy in February 2012.

With the recent policy changes at BAE, McKesson, KBR, Humana, and DynCorp, over half of the contractors that ranked among the top 50 in 2010 now prohibit discrimination based on gender identity, and 84% of those contractors now prohibit discrimination based on sexual orientation.

Table 1: Sexual Orientation and Gender Identity Non-Discrimination Policies of the Top 50 Contractors, FY 2011

Rank	Company	% of Total Contracting Dollars Awarded	Dollars Awarded (millions)	Sexual Orientation	Gender Identity
1	Lockheed Martin Corp.	8.0%	42,447	X	X
2	The Boeing Co.	4.1%	21,599	X	X
3	General Dynamics Corp.	3.7%	19,443	X	X
4	Northrop Grumman Corp.	2.8%	15,020	X	
5	Raytheon Co.	2.8%	14,771	X	X
6	United Technologies Corp.	1.5%	7,908	X	X
7	SAIC Inc.	1.4%	7,379	X	
8	L-3 Communications Holdings Inc.	1.4%	7,358	X	
9	BAE Systems PLC	1.3%	6,876	X	X
10	Oshkosh Corp.	0.9%	4,942	X	X
11	McKesson Corp.	0.9%	4,796	X	X
12	Computer Sciences Corp.	0.8%	4,509	X	X
13	Bechtel Group Inc.	0.8%	4,499	X	
14	URS Corp.	0.8%	4,409	X	
15	Huntington Ingalls Industries Inc.	0.8%	4,040	X	
16	Booz Allen Hamilton Holding Corp.	0.7%	3,935	X	X
17	ITT Corp.	0.7%	3,863	X	X
18	The Veritas Capital Fund II LP	0.7%	3,843		
19	Humana Inc.	0.6%	3,445	X	X
20	Health Net Inc.	0.6%	3,145	X	X
21	Triwest Healthcare Alliance Corp.	0.6%	3,093		
22	Hewlett-Packard Co.	0.6%	2,942	X	X
23	General Electric Co.	0.5%	2,847	X	
24	Fluor Corp.	0.5%	2,774	X	
25	Bell Boeing Joint Project Office ^a	0.5%	2,666		

	Bell Helicopter (Textron Inc.)			-	
	The Boeing Co.			-	
26	CACI International Inc.	0.5%	2,615	X	
27	Textron Inc.	0.5%	2,515	X	
28	Los Alamos National Security LLC ^a	0.5%	2,505		
	Bechtel Group Inc.			-	
	University of California			X	X
	The Babcock & Wilcox Co.			-	
	URS Corp.			-	
29	KBR Inc.	0.4%	2,277	X	X
30	Honeywell International Inc.	0.4%	2,193	X	X
31	Battelle Memorial Institute Inc.	0.4%	2,149	X	
32	Harris Corp.	0.4%	2,125	X	X
33	Alliant Techsystems Inc.	0.4%	2,122	X	X
34	General Atomic Technologies Corp.	0.4%	2,068		
35	The Babcock & Wilcox Co.	0.4%	2,057		
36	Supreme Group Holding SARL	0.4%	2,033		
37	ManTech International Corp.	0.4%	1,953	X	X
38	Coins 'n Things Inc.	0.4%	1,894		
39	Jacobs Engineering Group Inc.	0.3%	1,843	X	X
40	IBM Corp.	0.3%	1,745	X	X
41	California Institute of Technology	0.3%	1,646	X	X
42	FedEx Corp.	0.3%	1,592	X	X
43	Lawrence Livermore National Security LLC	0.3%	1,575	X	
44	BP PLC	0.3%	1,473	X	X
45	Dell Inc.	0.3%	1,423	X	X
46	AmerisourceBergen Corp.	0.3%	1,416	X	
47	Navistar International Corp.	0.3%	1,407		
48	Evergreen International Airlines	0.3%	1,400	X	
49	Computershare Ltd.	0.3%	1,365	X	
50	Merck & Co. Inc.	0.3%	1,331	X	X
Total		46.9% ^b	249,182 ^b	42	27

^a Contractor is a partnership that consists of two or more companies. The companies in the partnership are listed directly under the partnership name. A policy is only listed for the individual company within the partnership if the company does not appear elsewhere on this list.

^b Numbers may not sum to total due to rounding.

The Relationship between the EEOC's Decision that Title VII Prohibits Discrimination Based on Gender Identity and the Enforcement of Executive Order 11246



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May 2012

Executive Summary

The U.S. Equal Employment Opportunity Commission (EEOC) has held that discrimination based on gender identity or expression violates Title VII's requirement that employers not discriminate based on sex.¹ According to the EEOC decision in the Macy case, discrimination based on gender identity or expression occurs when an employer treats an employee differently "because the individual has expressed his or her gender in a non-stereotypical fashion, because the employer is uncomfortable with the fact that the person has transitioned or is in the process of transitioning from one gender to another, or because the employer simply does not like that the person is identifying as a transgender person."² The Macy decision means that all 53 EEOC field offices throughout the United States will accept and investigate complaints filed by employees who believe that they were discriminated against on the basis of their gender identity or expression.³

In addition to setting a standard for how complaints of gender identity discrimination filed with the EEOC under Title VII will be handled, the decision will almost certainly impact the enforcement of Executive Order 11246 (EO 11246). EO 11246 is a presidential order enforced by the Office of Federal Contract Compliance Programs (OFCCP) that requires that federal contractors not discriminate against their employees based on certain characteristics,

including sex.⁴ Complaints of gender identity discrimination filed with the OFCCP under EO 11246 should be treated the same as complaints filed with the EEOC under Title VII because:

1. The OFCCP has an explicit policy of interpreting the nondiscrimination requirements of EO 11246 in a manner consistent with Title VII principles, and has followed EEOC regulations and guidance in enforcing EO 11246.
2. Complaints filed under EO 11246 that allege a Title VII basis are considered as "dual-filed" under Title VII. The EEOC will directly enforce many of these "dual-filed" complaints, as if they had been filed directly with the EEOC under Title VII. In other cases, OFCCP will enforce complaints that are filed with it under EO 11246, but will do so as an agent of the EEOC and in a manner "consistent with Title VII principles on liability and relief."

In short, the OFCCP should follow the EEOC decision in both its determinations of jurisdiction and its interpretation of sex discrimination, as well as in the remainder of its enforcement activities.

The Macy decision will also affect broader policymaking under EO 11246. The OFCCP has announced plans to update its regulations on the scope and meaning of

sex discrimination in order “to reflect the current state of the law in this area.” OFCCP planned to update its regulations by April 2012.⁵

The OFCCP Has an Explicit Policy of Interpreting the Non-Discrimination Requirements of EO 11246 in a Manner Consistent with Title VII Principles, and Has Followed EEOC Regulations and Guidance in Enforcing EO 11246

The OFCCP publishes its guidance for enforcing EO 11246 in its Federal Contract Compliance Manual (the Manual).⁶ The chapter of the Manual that “focuses on how to determine whether the facts of a case show employment discrimination”⁷ states that “[i]t is OFCCP’s policy to interpret the non-discrimination requirements of Executive Order 11246, as amended, in a manner consistent with Title VII principles.”⁸ For example, the Manual further states that OFCCP “follows Title VII principles when determining whether sexual harassment has occurred,”⁹ and that its “longstanding policy is to follow Title VII principles when conducting analyses of potential discrimination under Executive Order 11246.”¹⁰

Consistent with the Manual’s direction, administrative law judges (ALJs) and the Administrative Review Board have followed courts’ interpretations of Title VII when deciding cases brought under EO 11246.¹¹ In practice, ALJs and the Administrative Review Board commonly follow Title VII case law when deciding EO 11246 cases; in fact, we have been unable to locate a single case where they declined to follow courts’ Title VII precedent.¹²

Also consistent with the Manual, the OFCCP and the EEOC have agreed in a Memorandum of Understanding (MOU) to

coordinate enforcement efforts under Title VII and EO 11246 so as to “maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistency among the operations, functions and jurisdictions” of the agencies.¹³ For example, under the MOU, last updated in 2011, the OFCCP agreed to treat discrimination based on an employee’s accent as national origin discrimination in order to conform with EEOC policy.¹⁴

There is little question that establishing a uniform procedure for accepting and enforcing gender identity discrimination complaints under Title VII and EO 11246 would “further the agencies’ joint objectives in ensuring equal employment opportunities for applicants and employees under Title VII of the Civil Rights Act of 1964 and Executive Order 11246.”¹⁵ Given the Manual, the administrative case law and the MOU, a failure to do so arguably violates OFCCP’s obligations to enforce the law.

Complaints Filed under EO 11246 that Allege a Title VII Basis are Considered as “Dual-Filed” Under Title VII with the EEOC. These Complaints Will Be Handled by the EEOC or the OFCCP, Acting as the EEOC’s Agent, as if They Were Initially Filed under Title VII

All complaints of employment discrimination filed with OFCCP under EO 11246 that allege a Title VII basis, including sex discrimination, are considered to be dual-filed under Title VII with the EEOC.¹⁶ In general, OFCCP refers individual complaints to the EEOC,¹⁷ where they are handled the same as complaints initially filed with EEOC under Title VII.¹⁸ The OFCCP retains complaints alleging a pattern or practice of discrimination, and complaints filed by a class of employees. The OFCCP acts as the

EEOC's agent for the purpose of resolving the Title VII component of these cases, and does so in a manner "consistent with Title VII principles on liability and relief."¹⁹

In either of these situations, the OFCCP would have to initially determine jurisdiction, i.e., whether the complaint alleged a claim under Title VII. In order to ensure that claims of gender identity discrimination under EO 11246 are treated the same by both agencies – whether enforced by the EEOC or by the OFCCP acting as the EEOC's agent - OFCCP will be compelled to follow the determination articulated by the EEOC in the Macy decision.

The OFCCP Will Soon Need to Address the Impact of the EEOC Decision on How it Handles Sex Discrimination Complaints Filed under EO 11246

The OFCCP has given notice that it will develop new regulations regarding sex discrimination "to reflect the current state of the law in this area,"²⁰ having noted that the current guidance on sex discrimination is 30 years old.²¹ The OFCCP planned to issue new rules in April 2012.²² It is almost certain that the new regulations will have to address the holding in the Macy decision, although some of the more detailed issues could be dealt with in subregulatory guidance.

One venue for working out new policy positions may be the biannual meetings of the EEOC's and the OFCCP's District Directors and Regional Attorneys.²³ These meetings are intended to facilitate coordinated enforcement and allow staff of the two agencies to "work to increase efficiency, and eliminate competition and duplication, and... engage in consultation regarding any topic that enhances the agencies' mutual enforcement interests."²⁴

Conclusion

It is the OFCCP's policy and practice to interpret EO 11246's non-discrimination requirements to be the same as Title VII's requirements. This policy and practice indicates that the OFCCP will likely treat complaints of gender identity discrimination filed under EO 11246 as actionable complaints of sex discrimination, consistent with the EEOC's recent Title VII decision. For OFCCP to do otherwise would be inconsistent with its Compliance Manual, its Memorandum of Understanding with EEOC, its internal Departmental precedent in ALJ and Administrative Review Board decisions, and the necessity of parallel interpretation built into the dual filing processes for complaints alleging a cause of action under Title VII.

OFCCP will also need to address the impact of the EEOC decision in its forthcoming rulemaking pertaining to sex discrimination under EO 11246 and during future staff conferences with the EEOC.

Endnotes

¹ Mia Macy, Appeal No. 0120120821 (EEOC Apr. 20, 2012).

² *Id.* slip op. at 7-8.

³ Jeff Krehely & Crosby Burns, A Watershed Moment for Workplace Equality: Equal Employment Opportunity Commission Ruling Protects Transgender Workers (Apr. 4, 2012), http://www.americanprogress.org/issues/2012/04/eeoc_decision.html.

⁴ Exec. Order. No. 11,246, § 202, 3 C.F.R. 339 (1964-1965). Available, as amended, at <http://www.presidency.ucsb.edu/ws/index.php?pid=59153>.

⁵ Office of Federal Contract Compliance, United States Dep't of Labor, Sex Discrimination Guidelines, RIN 1250-AA05 (2011), <http://www.dol.gov/ofccp/regs/unifiedagenda/Fall-2011/1250-AA05.htm>.

⁶ Office of Federal Contract Compliance Programs, Federal Contract Compliance Manual, *available at* <http://www.dol.gov/ofccp/regs/compliance/fccm/fccmanul.htm> (last visited Apr. 27, 2012) [hereinafter FCCM].

⁷ FCCM at 7A01.

⁸ FCCM at 7A06.

⁹ FCCM at 3G01(h)(4).

¹⁰ Proposed Rules: Interpretive Standards for Systemic Compensation Discrimination and Voluntary Guidelines for Self-Evaluation of Compensation Practices Under Executive Order 11246; Notice of Proposed Rescission, 75 Fed. Reg. 62-01 (Jan. 3, 2011). The OFCCP has also decided to follow Title VII case law "in determining whether a successor employer is liable for the discriminatory acts of its predecessor" and "in construing what constitutes make whole relief." FCCM at 7F14, 7F03.

¹¹ Several ALJ decisions have enunciated a standard for applying Title VII case law to EO 12246 cases. One decision simply says that Title VII analysis is used to determine if there has been a violation of EO 11246. *Greenwood Milles, Inc.*, Case No. 1989-OFC-0039, 2000 WL 34601379 (U.S. Dep't of Labor Feb. 24, 2000) ("Violations of Executive Order 11246 are analyzed using the same standards as Title VII of the Civil Rights Act of 1964.") Two other decisions say that Title VII cases are not binding, but they do provide "guidance." *TNT Crust*, Case No. 04-OFC-3, 2007 WL 5309232, at *14 (U.S. Dep't of Labor Sept. 10, 2007) ("Cases interpreting Title VII, while not necessarily binding authority for administrative proceedings under the Executive Order [11246], do supply guidance in analyzing allegations brought by the government."); *Harris Trust & Sav. Bank*, Case No. 78-OFCCP-2, 1986 OFCCP LEXIS 17, at *7 (U.S. Dep't of Labor Dec. 22, 1986) ("While not necessarily binding upon administrative tribunals in enforcement proceedings under the Order [11246], cases interpreting Title VII... do provide guidance in examining alleged violations.").

¹² Examples of ALJs and the Administrative Review Board relying on Title VII case law include: *Frito-Lays, Inc.*, Case No. 10-OFC-0002, 2010 WL 3211718 (U.S. Dep't of Labor July 23, 2010) (relying on case law that determined the scope of the EEOC's power to investigate under Title VII to determine the OFCCP's power to investigate under EO 11246); *U.S. Airways, Inc.*, Case No. 1988-OFC-17, 2002 WL 32984073 (U.S. Dep't of Labor Feb. 14, 2002) (using case law developed under Title VII and other labor and employment statutes to find that defendant could properly reject a proposed consent decree in a proceeding brought EO 11246 because it would alter the terms of its collective bargaining agreement); *Volvo GM Heavy Truck Corp.*, Case No. 96-OFC-2, 1998 WL 34373222 (U.S. Dep't of Labor Apr. 27, 1998) (citing Title VII cases to support the proposition that "discovery rules, particularly with respect to employment discrimination cases, are to be construed liberally in favor of the party seeking discovery."); *Cleveland Clinic Foundation*, Case No. 91-OFC-20, 1996 WL 33170033 (U.S. Dep't of Labor July 17, 1996) (applying case law developed under the anti-retaliation provision in Title VII to analyze the anti-retaliation provision contained in the regulations implementing EO 11246); *Cambridge Wire*, Case No. 94-OFC-12, 1995 WL 17222640 (U.S. Dep't of Labor Dec. 18, 1995) (using Title VII case law to evaluate the legality of a consent decree entered into under EO 11246); *Burlington Indust.*, Case No. 90-OFC-10, 1991 OFCCP LEXIS 59 (Dep't of Labor Nov. 1, 1991) (applying McDonnell Douglas and other Title VII case law to allocate burdens of proof in a disparate treatment case brought under EO 11246).

¹³ Equal Employment Opportunity Commission & Office of Federal Contract Compliance, Memorandum of Understanding Between the U.S. Department of Labor and the Equal Employment Opportunity Commission (Nov. 7, 2011), *available at* http://www.eeoc.gov/laws/mous/eeoc_ofccp.cfm.

¹⁴ FCCM at 7E10.

¹⁵ Equal Employment Opportunity Commission, Notice: Coordination of Functions; Memorandum of Understanding (Nov. 9, 2011), *available at* http://www.eeoc.gov/laws/mous/eeoc_ofccp.cfm.

¹⁶ Equal Employment Opportunity Commission & Office of Federal Contract Compliance, Memorandum of Understanding Between the U.S. Department of Labor and the Equal Employment Opportunity Commission (Nov. 7, 2011), *available at* http://www.eeoc.gov/laws/mous/eeoc_ofccp.cfm.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Equal Employment Opportunity Commission & Office of Federal Contract Compliance, Memorandum of Understanding Between the U.S. Department of Labor and the Equal Employment Opportunity Commission (Nov. 7, 2011), *available at* http://www.eeoc.gov/laws/mous/eeoc_ofccp.cfm.

²⁰ Office of Federal Contract Compliance, United States Dep't of Labor, Sex Discrimination Guidelines, RIN 1250-AA05 (2011), <http://www.dol.gov/ofccp/regs/unifiedagenda/Fall-2011/1250-AA05.htm>.

²¹ *Id.*

²² *Id.*

²³ Equal Employment Opportunity Commission & Office of Federal Contract Compliance, Memorandum of Understanding Between the U.S. Department of Labor and the Equal Employment Opportunity Commission (Nov. 7, 2011), *available at* http://www.eeoc.gov/laws/mous/eeoc_ofccp.cfm.

²⁴ *Id.*



May 18, 2011

From: Brad Sears, Executive Director, Nan Hunter, Legal Scholarship Director, and Christy Mallory, Legal Research Fellow, Williams Institute, UCLA School of Law

Re: President's Authority and Other Legal Issues Related to Proposed Executive Order

Introduction

This memorandum evaluates the feasibility of a Presidential executive order (“the proposed executive order”) that 1) prohibits federal contractors from discriminating against their employees on the basis of sexual orientation and gender identity, and 2) requires federal contractors to extend employment benefits to domestic partners.

Current executive orders and federal laws prohibit federal contractors from discriminating on the basis of race, color, national origin, religion sex, disability status, age, and veteran status. These requirements are imposed by Executive Order 11246 (EO 11246), Sections 503 and 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (VEVRAA). The non-discrimination requirements for federal contractors for all of these laws are enforced by the Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor. Currently, federal contractors are not required to offer benefits to domestic partners on the same terms that benefits are available to spouses.

EO 11246 and its implementing regulations provide the foundation for the legal and policy analysis in this report.

Summary of Issues

Findings from a review of the history behind and requirements of EO 11246 support the importance of including sexual orientation and gender identity in federal contractors’ non-discrimination requirements by executive order.

- More than one-fifth of the U.S. workforce is covered by EO 11246, and in 2007, more than two-thirds of federal contract dollars were awarded to contractors in states that do not have sexual orientation or gender identity non-discrimination laws.

- EO 11246 is part of a history of executive orders in which the President imposed civil rights obligations on federal contractors in advance of Congress passing federal statutes imposing similar requirements more generally. This pattern provides strong precedent for the President applying sexual orientation and gender identity non-discrimination requirements prior to the passage of ENDA.
- EO 11246 requires federal contractors to have and follow a plan to encourage the increased representation of women and minorities in the workplace and to change workplace conditions to be more supportive of them. With appropriate modifications, these measures could be extended to LGBT people.
- Further, EO 11246 and the OFCCP require federal contractors to engage in annual, documented self-analysis of their efforts to hire and support women and minorities for the purpose of discovering any continuing barriers to equal employment opportunity. These measures, too, could be extended to LGBT people.
- The OFCCP has extensive compliance, education and administrative enforcement mechanisms and sanctions that have been shown to effectively combat discrimination against women and minorities. Bringing LGBT people within OFCCP's oversight would help many private companies overcome barriers that disadvantage LGBT employees.

Courts are most likely to find that the President has the authority to issue the proposed executive order.

- In general, courts are reluctant to overturn executive orders. Only two executive orders, one by President Truman and one by President Clinton, have ever been overturned by the Supreme Court. Neither of those cases involved anti-discrimination issues.
- Courts have repeatedly upheld executive orders prohibiting discrimination by federal contractors and requiring affirmative action measures, including in instances where the executive order *preceded* a federal statute barring discrimination on the same grounds by all private employers.
- The legal analysis that has developed from cases in which such executive orders have been challenged links the President's powers as authorized under the Federal Property and Administrative Services Act ("FPASA") to the function of executive orders as furthering economy and efficiency

If a contractor were to challenge the proposed executive order, courts would be most likely to use two tests to determine whether the President had authority under the Constitution to issue it:

- The "economy and efficiency" test
 - Generally, the "economy and efficiency" test is applied leniently to executive orders, with courts giving great deference to the President. However, some courts apply the test more strictly, requiring proof of

the link between the terms of an executive order and the goals of economy and efficiency in government procurement.

- Courts may be most likely to find that the “economy and efficiency” requirement has been met when the President expressly includes findings of economy and efficiency in the executive order itself.
- The conflicts test
 - The second core question about the President’s authority to issue the proposed executive order will be to what extent the order conflicts with statutes passed by Congress. Such conflict could be in the form of a direct conflict with another statute, or could be similar to the doctrine of “field preemption,” meaning that the executive order attempts to regulate an area which Congress has addressed so comprehensively that it “has occupied the field,” leaving no room for either state laws or executive orders in the area.

The strongest evidentiary basis for the argument that an anti-discrimination policy promotes economy and efficiency would demonstrate that:

- Employment discrimination against LGBT people continues to be a widespread and persistent problem which imposes real harms on LGBT people;
- There are large gaps in current federal, state, local, and corporate policies prohibiting such discrimination;
- Discrimination against LGBT people harms the economy and efficiency of both the federal government and its contractors because it artificially limits the pool of most productive workers;
- Anti-discrimination protections will address these harms; and
- Discrimination complaints by LGBT people will not overwhelm contractors or the OFCCP.

The strongest evidentiary basis for the argument that a requirement that contractors provide domestic partner benefits promotes economy and efficiency would demonstrate that:

- Members of same-sex and different-sex unmarried couples lack equal access to health insurance and other employer-provided benefits;
- There are large gaps in current federal, state, local laws and corporate policies requiring benefits for domestic partners;
- Providing domestic partnership benefits helps the economy and efficiency of both the federal government and its contractors because such benefits help attract and recruit the most productive workers regardless of sexual orientation or marital status;
- Domestic partnership benefits do not impose significant costs; and
- Complaints about domestic partnership benefits will not overwhelm the OFCCP.

Certain threshold decisions must be made about the scope and form of the executive orders that are requested.

- Whether sexual orientation and gender identity should be included in EO 11246 or whether a separate executive order should be issued. We recommend that policymakers consider the advantages and disadvantages of creating a separate executive order compared to amending EO 11246. One concern is that if sexual orientation and gender identity are added to EO 11246, a challenge to those classifications creates the risk of opening EO 11246 to attack. On the other hand, in terms of consistency, understanding, and compliance, it may be easier to add sexual orientation and gender identity to EO 11246. The amendment could specify parts of EO 11246 that sexual orientation and gender identity would not apply to, and could add definitions and clarifying language as needed.
- Whether the proposed executive order should include affirmative action requirements for LGBT people. We recommend that the proposed executive order require those affirmative steps from EO 11246 that do not involve numerical placement goals. Without the numerical goals, the affirmative action required by EO 11246 does not present significant practical or legal concerns.
- Whether the anti-discrimination and executive orders should require collecting data about employees' sexual orientation and gender identity. We recommend that the proposed executive order not require collection of data. Requiring data collection may be legally difficult because of a conflict with language in ENDA (which the Administration has endorsed) prohibiting the EEOC from collecting such data, may not be necessary if numerical placement goals for affirmative action are not included in the executive order, may raise privacy concerns for employees, and may result in poor data. Existing data collection requirements under Executive Order 11246 exclude religious affiliation, which is often considered to raise comparable privacy concerns. However, the Administration should be aware that sexual orientation and gender identity data are being collected from the public and in the workplace with greater frequency, and research has shown that such data can be collected in ways similar to those used for other demographic characteristics. The Department may want to consider ways to encourage federal contractors to collect such data for the purposes of their own diversity policies, for example by furnishing guides to the best practices for such surveys.
- Whether domestic partner benefits should be required for both same-sex couples and different-sex couples. The decision of whether to extend partner benefits to different-sex as well as same-sex partners should be based on the strength of the evidence on whether extending benefits to different-sex couples also promotes "economy and efficiency." Including different-sex couples will increase the cost of requiring domestic partner benefits. Since the primary legal test for supporting the executive order will be whether it promotes the economy and efficiency of the federal government, this increased cost is a concern, depending on its magnitude. The reasons to

include different-sex couples include broadening the support for the executive order, mirroring a growing practice of private employers, and reflecting a policy position of supporting individual autonomy in fashioning non-marital relationships. The key question for the strength of legal arguments defending the inclusion of different-sex couples is whether research would support the same kind of link between benefits and promotion of economy and efficiency as can be marshaled in support of benefits limited to same-sex couples.

- If domestic partnership benefits are required, potential conflicts with the Defense of Marriage Act (“DOMA”) would have to be addressed. To work around DOMA, we recommend that the proposed executive order or an explanatory regulation contain a definition of “domestic partnership” that individuals can satisfy by either meeting a set of criteria or by registering with a state or local government, and, furthermore, that federal contractors be given the option of using their own definition, as long as it is not more restrictive than the one provided in the proposed executive order or regulation.
- Which legal provisions would be the best mechanisms for extending domestic partnership benefits. In addition to the explicit inclusion of such benefits in a newly amended Executive Order 11246 or an independent executive order addressing sexual orientation and gender identity, the issue could be addressed in regulations. Regulations issued pursuant to the new executive order could define the denial of partner benefits as an example of discrimination based on sexual orientation (assuming that the employer offered benefits to heterosexual married couples). Alternatively, at a later date a separate executive order that addresses only domestic partnership benefits could be issued.

Several issues related to the non-discrimination provisions of the proposed executive order may need further clarification in the order itself, in the regulations, or in other guidance documents. The issues identified here are based on the current version of ENDA and past congressional concerns about ENDA.

- Defining sexual orientation and gender identity. We recommend that ENDA’s definitions be used.
- Including “perceived as” claims. Consistent with ENDA, we recommend that the definition of sexual orientation and gender identity in the proposed executive order or in regulations explicitly include “perceived as” claims.
- Including “associated with” claims. Consistent with ENDA, we recommend that the definitions of “sexual orientation” and “gender identity” in the proposed executive order or in regulations explicitly include “associated with” claims.
- The potential for “double recovery” with gender identity claims and sex discrimination claims. We do not believe that double recovery for gender identity and sex discrimination claims need be explicitly precluded in the

- proposed executive order. Current case law makes clear that “double recovery” is not available under Title VII, and EO 11246 does not create a private right of action.
- Allowing for “disparate impact” claims. While the case for making a disparate impact claim may be legally difficult to prove, we recommend that sexual orientation and gender identity be treated like other protected classes under EO 11246, including providing for disparate impact claims. We recommend that the proposed executive order go further than ENDA in this regard.

Framework for Legal Analysis: *Youngstown Sheet & Tube Co. v. Sawyer*

The legal framework for determining Presidential authority begins with the seminal case addressing the relationship between congressional and executive power, *Youngstown Sheet & Tube Co. v. Sawyer*.¹ In that case, Justice Jackson articulated three scenarios for determining the scope of the President’s executive powers: 1) where the President acts pursuant to a federal statute, or is authorized by Congress to take action, his power is at its greatest; 2) where the President acts in absence of either a congressional grant or denial of authority and relies only on his own independent constitutional powers, there is no presumption either way about the constitutionality of his actions; and 3) where the President’s action conflicts with a federal statute or the clear will of Congress, his power is at its weakest.

In analyzing the President’s authority for EO 11246, courts and legal scholars in the 1970s and 1980s debated whether the President was authorized to issue EO 11246 at all,² whether he was acting based on his inherent or constitutionally granted powers,³ whether he was acting pursuant to Congressional authority based on particular statutes,⁴ and/or whether EO 11246 had been subsequently implicitly or

¹ 343 U.S. 579 (1952).

² *Chrysler Corp. v. Brown*, 441 U.S. 281, 303 (1979) (assuming without deciding that EO 11246 was authorized in light of finding that no authority is “clearly identifiable.” In *Chrysler*, the Supreme Court notes that Executive Order 11246 itself merely states that it is promulgated under and by virtue of the authority vested in the President of the United States by the Constitution and by the statutes of the United States) (citing 40 U.S.C. § 471 *et seq.*).

³ See, e.g., *U.S. v. Miss. Power & Light*, 638 F.2d 899, 905 n. 12 (5th Cir. 1981). *But see Liberty Mutual Ins. v. Friedman*, 639 F.2d 164, 172 n. 13 (4th Cir. 1981) (rejecting argument that EO 11246 is authorized by the “inherent powers” of the President).

⁴ For example, arguments for congressional authorization of EO 11246 have been based on the Federal Property and Administrative Services Act of 1949 (FPASA), the Civil Rights Act of 1964, and the Equal Employment Opportunity Act of 1972. See *Chrysler Corp.*, 441 U.S. at 303-307 (while the Supreme Court explicitly rejects that EO 11246 is authorized by the Civil Rights Act of 1964, it does not raise or resolve the argument that it is based on FPASA or the Equal Employment Opportunity Act of 1972 or has been ratified by Congress. In the end, it decides the case, about the authority for a regulation issued pursuant to EO 11246, without ever determining the authority for EO 11246, finding none “clearly identifiable.”). See also *Liberty Mutual Ins.*, 639 F.2d at 171 (holding the Civil Rights Act of 1964 does not authorize EO 11246); *Miss. Power & Light*, 638 F.2d at 905 n. 12 (5th Cir. Circuit re-affirming its reasoning and holding in *New Orleans Pub. Serv. Inc.*). *But see U.S. v. New*

explicitly ratified by Congress.⁵ Some courts appear to have stepped back from ultimately resolving the question of which statute authorizes the President to issue broad ranging executive orders imposing requirements on federal contractors, and rested their decisions on the fact that Congress had not stopped the President from doing so for several decades. What remained consistent in these early opinions, and in the case law since, is that courts primarily analyze EO 11246 and other executive orders dealing with federal contractors as being authorized by The Federal Property and Administrative Services Act of 1949 (FPASA), which provides and defines the President's procurement powers for the federal government.⁶ Thus, past challenges to EO 11246 and other executive orders dealing with federal contractors have fallen under the first scenario outlined by Justice Jackson, where the President was acting pursuant to explicit Congressional authorization.⁷

This approach, based on the first prong in Justice Jackson's *Youngstown Steel* opinion, focuses the analysis on the following two questions:

- 1) Did the President act within his authority under the FPASA in issuing the Executive Order?
- 2) Does the Executive Order conflict with any other federal law?⁸

Legal Analysis Under the FPASA Economy and Efficiency Test

FPASA addresses the federal government's role in the acquisition of goods and services and the scope of the President's authority to act as the chief executive officer for the federal government.⁹ Its purpose is "to provide for the Government an economical and efficient system for...the procurement and supply of personal property and non-personal services, including related functions such as

Orleans Pub. Serv. Inc., 553 F.2d 459, 465 (5th Cir. 1977) (finding support in all three acts for EO 11246).

⁵ For a full development of the ratification argument, see *New Orleans Pub. Serv. Inc.*, 553 F.2d at 465-468; see also *Miss. Power & Light*, 638 F.2d at 905; *AFL-CIO v. Kahn*, 618 F.2d at 789-792, 796; cf. *Liberty Mutual Ins.*, 639 F.2d at 172 (rejecting the ratification argument as too weak).

⁶ See, e.g., *Farmer v. Philadelphia Elec. Co.*, 326 F.2d 3 (3d Cir. 1964); *Farkas v. Tex. Instrument, Inc.*, 375 F.2d 629, 632 n.1 (5th Cir. 1967); *Contractors Ass'n of E. Penn. v. Schultz*, 442 F.2d 159, 169-71 (3d Cir. 1971); *New Orleans Pub. Serv. Inc.*, 553 F.2d at 464; cf. *Liberty Mutual Ins.*, 639 F.2d 164 (deciding that FPASA authorizes EO 11246); *Chrysler Corp. v. Brown*, 441 U.S. 281, 303 (1979) (assuming without deciding that FPASA authorizes EO 11246).

⁷ See *New Orleans Pub. Serv. Inc.*, 553 F.2d at 468 n.1 (distinguishing a challenge to EO 11246 from *Youngstown* because EO 11246 was "pursuant to Congressional authorization. The application of the Order today before us falls within the first category of executive power - that of maximum power - which Justice Jackson identified.").

⁸ See, e.g., *Contractors Ass'n*, 442 F.2d at 170.

⁹ The portions of the Act relevant to the current discussion are Chapter 10 of Title 40, and Chapter 4 of Title 41.

contracting...”¹⁰ FPASA explicitly gives the President the authority “to prescribe such policies and directives”¹¹ to effectuate the provisions of the FPASA.¹² One of the specific purposes of FPASA was to give the President a “leadership role in setting Government-wide procurement policy.”¹³ It did so by providing the President with a “broad grant of procurement authority”¹⁴ to provide “broad flexibility...to seek the greatest advantage in various situations.”¹⁵

In determining whether the President has acted pursuant to FPASA in issuing an executive order related to federal contracting, courts will determine whether there is “a sufficiently close nexus” between the executive order and the governmental pursuit of “economy and efficiency.”¹⁶ For the most part, courts have applied this test leniently, but at least one circuit applies it more stringently, requiring proof of the link between the terms of an executive order and the goals of economy and efficiency in government procurement.

Third Circuit and D.C. Circuit Approach: Lenient Review under the Economy and Efficiency Test

A line of cases in the Third and D.C. Circuits applying the economy and efficiency test represents the most common approach and its most recent applications. This is a lenient approach, but still requires an argument based on the pursuit of “economy and efficiency.” These cases, which include the most recently decided case in the field,¹⁷ have found that “while FPASA does not give the President a blank check...to fill in at his will,”¹⁸ economy and efficiency “are not narrow terms.”¹⁹ To the contrary, the test is a “lenient standard,”²⁰ such that courts have repeatedly held that FPASA gives the President “broad discretion,” “necessary flexibility,” and “broad ranging authority.”²¹

The nexus with economy and efficiency may be sufficient even when it is “attenuated”—that is, when there is an “obvious case” that the Executive Order may increase procurement costs in the short run, or even when a claim of “opposite

¹⁰ 40 U.S.C. § 471 (2010).

¹¹ *Kahn*, 618 F.2d at 788.

¹² 40 U.S.C. § 486 (2010). Title 41 of Chapter 4 contains detailed procurement procedures. 41 U.S.C. § 201 *et seq.* (2010).

¹³ *Id.*

¹⁴ *Contractors Ass'n*, 442 F.2d at 170.

¹⁵ *Kahn*, 618 F.2d at 789.

¹⁶ *Id.* at 792.

¹⁷ *UAW Labor & Employment Training Corp v. Chao*, 325 F.3d 360 (D.C. Cir. 2003).

¹⁸ *Kahn*, 618 F.2d at 793.

¹⁹ *Id.* at 789. The court also notes that Congress itself included such policies in FPASA, such as a requirement that a “fair portion” of contracts be placed with small businesses. *Id.* at 789 n. 25.

²⁰ *Chao*, 325 F.3d at 367.

²¹ *Id.* at 366. *See also Contractors Ass'n*, 442 F.2d at 170; *U.S. Chamber of Comm. v. Reich*, 74 F.3d 1322, 1330 (D.C. Cir. 1996).

effects or no effect” can be made.²² In short, courts will largely defer to the President’s arguments regarding economy and efficiency even if there are strong countervailing ones: “it is not up to a court to question either the President’s motivation or the quality of his reasoning.”²³ In 1995, an Attorney General Opinion summed up this nexus test as “a reasonableness test”: “the best reading is that a sufficiently close nexus exists when the President’s order is ‘reasonably related’ to the ends of economy and efficiency.”²⁴

Under this application of the test, social and economic programs “beyond any narrow concept”²⁵ of economy and efficiency can be pursued by the President through the procurement policy.²⁶ The pursuit of non-economic goals that are secondary to the economic goals does not undermine the President’s authority under FPASA.²⁷ In certain circumstances, non-economic goals may require the government “to prefer a high bid to a low one, where the low bidder was not in compliance with the government’s policies or may not result in savings for the government for a long-time.”²⁸

For example, the D.C. Circuit determined in *AFL-CIO v. Kahn*²⁹ that FPASA granted the President the power to issue an executive order prohibiting the federal government from contracting with bidders who did not meet certain wage and price controls.³⁰ The court reviewed the history of executive orders relating to federal contractors issued pursuant to FPASA, and concluded that it was clear that the President had pursued such “social and economic programs” through the procurement process and that these had not been reversed, and sometimes were even subsequently and repeatedly funded, by Congress.³¹ The court found that the economy and efficiency standard was met, pointing to a likely reduced need for business and labor to seek wage and price increases if controls were in place that slowed inflation, which would save the government money in the long run.³² In addition, courts have specifically held that the President’s authority under FPASA supports “such broad ranging executive orders”³³ as those providing equal

²² *Chao*, 325 F.3d at 366-367.

²³ *Reich*, 74 F.3d at 1335.

²⁴ Exec. Order No. 12954, 60 C.F.R. 13023 (1995).

²⁵ *Reich*, 74 F.3d at 1333.

²⁶ *Kahn*, 618 F.2d at 793.

²⁷ Exec. Order No. 12,954, 60 C.F.R. 13023 (1995). *See also Reich* 74 F. 3d at 1336; *Am. Fed'n of Gov't Employees v. Carmen*, 669 F.2d 815, 821 (D.C. Cir. 1986) (holding that an exercise of section 486(a) authority is not illegitimate "if, in design and operation, the President's prescription, in addition to promoting economy and efficiency, serves other, not impermissible, ends as well"); *Rainbow Navigation Inc. v. Dep't of the Navy*, 783 F.2d 1072 (D.C. Cir. 1986).

²⁸ *Chao*, 325 F. 3d at 366; *Kahn*, 618 F.2d at 783.

²⁹ *Kahn*, 618 F.2d at 784.

³⁰ *Id.* at 796-97.

³¹ *Id.* at 791-792.

³² *Id.* at 792-93.

³³ *Reich*, 74 F.3d at 1333.

employment opportunities for racial minorities,³⁴ affirmative action,³⁵ wage and price controls,³⁶ and the posting of notices informing employees of their right to not join a union.³⁷

Although the “economy and efficiency test” is a lenient one, one way an executive order can be strengthened to meet the test is for the President to explicitly address economy and efficiency in findings in the executive order.³⁸ For example, in 2003, although skeptical of the President’s reasoning, the D.C. Circuit upheld an executive order requiring federal contractors to post notices that employees could not lawfully be compelled to join a union or forced to pay union dues unrelated to union representation.³⁹ The court found that the executive order’s own expression of the nexus between the action taken and governmental “efficiency” and “economy” sufficient to meet the standard for authority under the FPASA.⁴⁰ Similarly, in an Attorney General Opinion in support Executive Order 12954, the Attorney General based support for meeting the economy and efficiency test on the facts and argument presented in the preamble of the Executive Order.⁴¹

³⁴ *Farmer*, 326 F.2d at 3; *Farkas*, 375 F.2d at 631.

³⁵ *Contractors Ass’n*, 442 F.2d 159.

³⁶ *Kahn*, 618 F.2d at 792-93.

³⁷ *Chao*, 325 F. 3d at 366-367.

³⁸ *See Reich*, 74 F.3d at 1332 (appellants arguing that President did not act pursuant to FSAPA or within his constitutional powers because he “neglected to make findings tying the Order to savings in government procurement costs”; Executive Order struck down on other grounds).

³⁹ *Chao*, 325 F.3d at 362.

⁴⁰ *Id.* at 366-67. The statement in the Executive Order read: “When workers are better informed of their rights, including their rights under the Federal labor laws, their productivity is enhanced. The availability of such a workforce from which the United States may draw, facilitates the efficient and economical completion of its procurement contracts.”

⁴¹ Exec. Order No. 12,954, 60 C.F.R. 13023 (1995). The Attorney General opinion also argues that the Executive Order was authorized because Presidents have issued executive orders under this lenient test for a number of years and Congress has not sought to limit the President’s authority under FPASA. Notably, the Opinion also presents an argument that the President’s determination that an Executive Order meets the economy and efficiency test may be beyond judicial review based on the Supreme Courts’ decision in *Dalton v. Specter*, 511 U.S. 462 (1994) (arguing “[t]he Supreme Court has recently ‘distinguished between claims of constitutional violations and claims that an official has acted in excess of his statutory authority.’ *Dalton*, 511 U.S. at 472. The Court held that where a claim ‘concerns not a want of [presidential] power, but a mere excess or abuse of discretion in exerting a power given, it is clear that it involves considerations which are beyond the reach of judicial power. This must be since, as this court has often pointed out, the judicial may not invade the legislative or executive departments so as to correct alleged mistakes or wrongs arising from asserted abuse of discretion.’ *Id.* at 1727 ... Judicial review is unavailable for claims that the President had erred in his judgment that the program established in the order is unlikely to promote economy and efficiency. The FPASA entrusts this determination to the President’s discretion and, under *Dalton*, courts may not second-guess his conclusion.”).

The Fifth and Seventh Circuits: No Tie to Economy and Efficiency Needed

The Fifth and Seventh Circuits have extended the leniency of the economy and efficiency standard to its outer bounds, stating that it is not necessary for EO 11246 to be based on procurement considerations: “Decisions involving Executive Order 11246 have candidly acknowledged the validity of the use by the President or Congress of the procurement process to achieve social and economic objectives. Those cases stand for the proposition that equal employment goals themselves, reflecting important national policies, validate the use of the procurement power in the context of the Order.”⁴² Thus, the Fifth Circuit has twice upheld EO 11246, and its implementing regulations, without ever referring to the economy and efficiency standard.⁴³

The Fourth Circuit: Each Application of the Executive Order Must Meet the Economy and Efficiency Test

The Fourth Circuit, on the other hand, has applied the economy and efficiency test more strictly, and expressed some skepticism about whether FPASA authorized the President’s issuance of EO 11246.⁴⁴ In *Liberty Mutual Insurance v. Friedman*, the Fourth Circuit assumed without deciding that EO 11246 itself was authorized by FPASA, but it specifically rejected the approach of the Fifth and Seventh Circuits.⁴⁵ Rather than deferring to the President, it held that each application of EO 11246, as well as each regulation promulgated to enforce it, must also meet the economy and efficiency test.⁴⁶ The court in *Liberty Mutual* interpreted both *Contractors Ass’n and Kahn*, discussed above, to be applying the test to each application of EO 11246 and stepping away from the more lenient application of the test in other cases.⁴⁷

⁴² See *New Orleans Pub. Serv. Inc.*, 553 F.2d at 466; *Miss. Power & Light*, 638 F.2d at 904-905; *Rossetti Contracting Co. v. Brennan*, 508 F.2d 1039, 1045 n. 18 (7th Cir. 1975) (In discussing EO 11246: “It is well established that the procurement process, once exclusively concerned with price and quality of goods and services, has been increasingly utilized to achieve social and economic objectives indirectly related to conventional procurement considerations. The attenuated relationship to price, quantity, or quality, however, does not necessarily limit the power of congress or the President to condition award of a contract on full and proper compliance.”). See also *NorthEast Constr. Co. v. Romney*, 485 F.2d 752, 760-61 (D.C. Cir. 1973) (In discussing EO 11246, “Congress and the President have increasingly had recourse to the procurement power for non-procurement objectives as a ‘device for the accomplishment, implementation, or even formulation of important national policies and goals... conditioning the award or the terms of the...contracts...to promote national social and economic standards or goals that in themselves had no immediate relevance to supplying the particular procurement need.’”).

⁴³ See *New Orleans Pub. Serv. Inc.*, 553 F.2d at 466; *Miss. Power & Light*, 638 F.2d at 904-905.

⁴⁴ See *Liberty Mutual Ins.*, 639 F.2d 164.

⁴⁵ *Id.* at 171 n. 11 (stating that if the facts of those three cases had been subjected to more exacting analysis under the economy and efficiency test, the test may have been met; or at least were stronger than in the case it was considering).

⁴⁶ *Id.* at 169-171.

⁴⁷ *Id.* at 169 (holding that “[t]he key point in *Contractors Association* is its recognition that any application of the Order must be reasonably related to the Procurement’s Act purpose of ensuring

Although not decided in the context of applying the economy and efficiency test, the Supreme Court's opinion in *Chrysler Corp.* provides some support for the Fourth Circuit approach that each regulation pursuant to EO 11246 must meet a more exacting economy and efficiency test.⁴⁸ In *Chrysler Corp.*, the Court considered the validity of a Department of Labor regulation issued under EO 11246 that allowed public disclosure of information reported to it by federal contractors. The Court ruled that the disclosure regulation was not sufficiently linked to the anti-discrimination purposes behind EO 11246 and that there was no showing that Congress, when it enacted FPASA, intended to delegate authority to DoL to regulate as to the confidentiality of certain business information.

At issue in *Liberty Mutual*, decided two years after *Chrysler Corp.*, was the validity of a Department of Labor determination letter.⁴⁹ In overturning the letter as it applied to the plaintiffs, the Fourth Circuit distinguished *Contractors Ass'n* on several grounds. The court noted that "there were factual findings in the record [of *Contractors Association*] which tended to show a demonstrable relationship" between the application of the Executive Order in that case and FPASA. This record included several public hearings and administrative findings documenting underrepresentation of minorities in the trades subjected to the affirmative action plan imposed by OFCCP, and that the underrepresentation was due to exclusionary plans of trade unions.⁵⁰ The Fourth Circuit found such a record lacking in the case before it. Specifically, it noted the lack of findings that the price of the product at issue impacted "the total price of federal contracts" and "that the subcontractor had discriminated against minorities."⁵¹ The court then concluded that "the connection between the cost of [the product]...and any increase in the cost of federal contracts that could be attributed to discrimination by these [plaintiffs] is simply too attenuated to allow a reviewing court to find the requisite connection between procurement costs and social objectives."⁵²

In sum, if the proposed executive order discussed in this memorandum is issued and then challenged by contractors that object to it, the courts reviewing the executive order will find alternative approaches in existing case law for a number of questions that may arise, including:

efficiency and economy in government procurement (whether assisted or directed) in order to lie within the statutory grant").

⁴⁸ *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979); *Miss. Power & Light*, 368 F.2d at 903-904 (discussing the Court's analysis of regulations under EO 11246 in *Chrysler Corp.*).

⁴⁹ The determination letter found that a company which provided blanket workers' compensation insurance to employers that held federal contracts was a subcontractor subject to EO 11246. *Liberty Mutual Ins.*, 639 F.2d at 164.

⁵⁰ *Id.* at 170.

⁵¹ *Id.* at 171.

⁵² *Id.*

- The degree of deference to be given to the President to determine whether an anti-discrimination policy promotes economy and efficiency;
- The legitimacy of social and economic goals other than economy and efficiency as valid purposes of Presidential action pursuant to FPASA;
- The degree to which economy and efficiency can properly be achieved over the long-term, specifically including the recognition that not awarding contracts to the lowest bidders may best effectuate governmental interests in some situations; and
- The importance of evidence that LGBT people are under-represented in the relevant workforce because of discrimination.

One lesson from *Liberty Mutual* is that to meet the stricter application of the economy and efficiency test, research supporting the provisions of the proposed executive order should be reflected in the findings and purpose sections.

Legal Analysis Under the Conflicts Test

Assuming that a court would rule that the proposed executive order is authorized by FPASA, it would then consider whether it conflicts with any other federal statute. In other words, courts will analyze the tension, if any, between the authority vested in the President by one federal statute, FPASA, and the will of Congress evidenced in another statute.⁵³

Such conflict could be in the form of a direct conflict with the text of a statute or could be similar to the doctrine of “field preemption,” meaning that the executive order attempts to regulate an area which Congress has addressed so comprehensively that it “has occupied the field,” leaving no room for either state laws or executive orders in the area. [NEED CITE]

Possible Conflict with ENDA

Prior to enactment of ENDA, the issuance of an executive order requiring the federal government to contract only with those who agree not to discriminate on the basis of sexual orientation and gender identity does not conflict with any other federal law. No federal statute expressly forbids the President from issuing such an order, nor limits states from passing similar statutes. To the contrary, 21 states and D.C. currently prohibit sexual orientation and/or gender identity employment discrimination by all private entities.⁵⁴ However, the Administration has endorsed ENDA in its current form, and thus there is strong reason to draft the Executive Order so that it harmonizes with ENDA.

⁵³ *Kahn*, 618 F.2d at 787.

⁵⁴ BRAD SEARS, NAN D. HUNTER, AND CHRISTY MALLORY, DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT 15-2, 11-10 (2009).

Nor would a congressional defeat of ENDA create a conflicts problem with the proposed executive order. Executive orders have directed federal contractors to follow certain rules prior to enactment of federal statutes applying those rules to all private companies. These examples include executive orders imposing a prohibition against age discrimination, a buy-American policy, a limitation on hiring state prisoners, and prohibiting race discrimination, some issued as early as 1953.⁵⁵

In general, ENDA's provisions track the anti-discrimination requirements currently in EO 11246. Thus, when ENDA passes, there should be no concern that it could be the basis for a field preemption argument against the proposed executive order. Section 15 of ENDA states that "this Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or regulation..." Courts have rejected a field preemption argument against EO 11246 based on Title VII, in part, because Title VII remedies are not exclusive.⁵⁶

However, a more plausible question as to conflicts could arise as to disparate impact claims. Disparate impact claims are viable under EO 11246⁵⁷ but prohibited by ENDA.⁵⁸ (Because we do not recommend that the proposed executive order mandate numerical affirmative action goals or the collection of data on sexual orientation and gender identity, we do not discuss the potential conflicts that would arise with ENDA as to those points.)

Despite this divergence in language, it is unlikely that the proposed executive would be vulnerable to legal attack. When considering challenges to executive orders dealing with federal contractors based on statutes that had "nothing in this act" language similar to that in ENDA regarding disparate impact, courts have found that the statutory language did not bar an executive order on the same issue. In *Contractors Ass'n*, the Third Circuit found no conflict between EO 11246's affirmative action requirements and the section of Title VII barring preferential treatment and quotas.⁵⁹ The court construed the clause "Nothing contained in this

⁵⁵ *Kahn*, 618 F.2d at 790-92.

⁵⁶ *Contractors Ass'n*, 442 F.2d at 169.

⁵⁷ See 41 C.F.R. § 60-3.3 *et seq.*

⁵⁸ Employment Non-Discrimination Act, H.R. 3017, 111th Cong. [hereinafter *ENDA*] § 4(g) (2009) (under the heading "Disparate Impact", the act states that "[o]nly disparate treatment claims may be brought under this Act." See also *Id.* at § 8 ("Nothing in this Act shall be construed to prohibit a covered entity from enforcing rules and policies that do not intentionally circumvent the purposes of this Act, if the rules or policies are designed for, and uniformly applied to, all individuals regardless of actual or perceived sexual orientation or gender identity.").

⁵⁹ *Contractors Ass'n*, 442 F.2d at 171-76; Title VII, 42 U.S.C. § 2002-2j(j)

Preferential treatment not to be granted on account of existing number or percentage imbalance Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group

subchapter shall be interpreted” in the Title VII preferential treatment provision to impose “a limitation only upon Title VII, not upon any other remedies, state or federal.”⁶⁰ Thus, the court held that Congress had not limited the President’s powers under FPASA to require affirmative action programs.⁶¹ This reasoning is similar to that in *Kahn* where the D.C. Circuit held that the prohibition of mandatory price and wage controls was a prohibition only on the COWPSA, and not on the President, based on similar “Nothing in this Act” language.⁶²

A number of other early cases also upheld the affirmative action requirements of EO 11246 in the face of challenges that it conflicted with Title VII and/or violated the Equal Protection Clause of the United States Constitution.⁶³ Several of these cases state that EO 11246 and Title VII “have a common objective and are in no way conflicting.”⁶⁴ Further, Section 15 of ENDA, quoted above, states that it does not limit rights available “under any other Federal law or regulation.”

Possible Conflict with DOMA

The Defense of Marriage Act (DOMA)⁶⁵ precludes the federal government from treating a marriage between same-sex partners, even though valid in their state, as a marriage for purposes of federal rights and benefits.⁶⁶ The DOMA provision commonly referred to as Section 3 provides that for federal law, “In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife,

because of the race, account of an imbalance persons of any race, color, referred or classified for to membership or apprenticeship or other persons of such race, other area, or in the	color, religion, sex, or national origin of such individual or group on which may exist with respect to the total number or percentage of religion, sex, or national origin employed by any employer, employment by any employment agency or labor organization, admitted classified by any labor organization, or admitted to, or employed in, any training program, in comparison with the total number or percentage of color, religion, sex, or national origin in any community, State, section, or available work force in any community, State, section, or other area.
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⁶⁰ *Contractors Ass’n*, 442 F.2d at 172-73.

⁶¹ *Id.*

⁶² *Kahn*, 618 F.2d at 794-795.

⁶³ See, e.g., *Associated Contractors of Mass. v. Altshuler*, 490 F.2d 9, 14-17 (1st Cir. 1973); *U.S. v. Local 189, Papermakers & Paperworkers*, 282 F. Supp. 39, 42 (E.D. La. 1968) *aff’d*, 416 F.2d 980 (5th Cir. 1969) *cert. denied*, 397 U.S. 919, (1980); *Contractors Ass’n*, 442 F.2d at 159; *Weiner v. Cuyahoga Cmty. Coll. Dist.*, 249 N.E.2d 907, 908 (1969), *cert. denied*, 396 U.S. 1004 (1970); *Joyce v. McCrane*, 320 F.Supp. 1284 (D. N.J. 1970); *S. Ill. Builders Ass’n v. Ogilvie*, 327 F.Supp. 1154, 1164 (S.D. Ill. 1971), *aff’d*, 471 F.2d 680 (7th Cir. 1972).

⁶⁴ *Joyce*, 320 F. Supp. at 1290.

⁶⁵ 1 U.S.C.A. §7; 28 U.S.C.A. § 1738(c).

⁶⁶ H.R. Rep. No. 104-664 at 1-18 (1996); 1996 U.S.C.C.A.N. 2905, 2906.

and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.”⁶⁷

However, DOMA is silent as the federal government recognizing non-marital relationships, such as domestic partnerships, between same-sex couples. Thus, DOMA would not prevent an executive order requiring federal contractors to provide domestic partner benefits to same-sex couples, as long as the requirement is not based on the same-sex couples being married.

Possible Conflict with ERISA

The Employee Retirement Income Security Act of 1974 (ERISA) was enacted to protect the interests of employee benefit plan participants and their beneficiaries by requiring the disclosure to participants of financial and other information concerning the plan; by establishing standards of conduct for plan fiduciaries; and by providing for appropriate remedies and access to federal courts. ERISA also establishes minimum standards for pension plans in private industry and provides for extensive rules on the federal income tax effects of transactions associated with employee benefit plans.⁶⁸ ERISA broadly and explicitly preempts “any and all State laws insofar as they...relate to any employee benefit plan covered by ERISA.”⁶⁹ Three lower courts have found that ERISA preempts state and local law requirements that government contractors provide domestic partner benefits.⁷⁰

The key legal question to determine whether ERISA preemption would apply to an executive order requiring federal contractors to offer domestic partner benefits will be whether ERISA applies to *federal* law. For the reasons stated below, this is an unlikely outcome. However, if ERISA preemption is found to apply to executive orders, then ERISA most likely will preempt an executive order requiring federal contractors to offer domestic partner benefits. If ERISA preempts the proposed executive order, it will only do so for ERISA covered plans and benefits, leaving some limited force to the executive order.

ERISA Preemption of Executive Orders Is Unlikely

ERISA has an explicit exemption provision that limits the scope of its preemption only to the states,⁷¹ and it explicitly states that it does not preempt other federal

⁶⁷ 1 U.S.C.A. § 7 (emphasis added).

⁶⁸ ERISA, 29 U.S.C. § 1010(b).

⁶⁹ *Id.* at § 1144.

⁷⁰ *City of New York v. Bloomberg*, 6 N.Y.3d 380, 394 (NY Ct. App. 2006); *Catholic Charities of Me., Inc. v. City of Portland*, 304 F.Supp. 2d 77, 84-93 (D. Me. 2004); *Air Transport Ass’n*, 992 F. Supp. 1149 (N.D. Cal. 1998).

⁷¹ 29 U.S.C. § 1144 (“any and all State laws insofar as they...relate to any employee benefit plan covered by ERISA.”) ERISA defines “state” as “a state, any political subdivision thereof, or any agency or instrumentality of either which purports to regulate, directly or indirectly the terms and conditions of employee benefit plans covered by ERISA.”

laws: "Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States ... or any *rule or regulation issued under any such law*."⁷² No body of case law either within, or outside of, the executive order context has been found extending ERISA to federal law. In fact, quite the opposite has occurred. Courts have applied the ERISA "federal savings" clause to hold, for example, that ERISA does not preempt the ADEA (Age Discrimination in Employment Act), the RLA (Railway Labor Act), the NLRA, and federal common law of labor relations.⁷³

ERISA does not preempt even state laws to the extent they are needed to implement federal legislation.⁷⁴ For example, in *Mitchell Energy Development Corp. v. Fain*, the Fifth Circuit held that ERISA's "federal savings" clause not only failed to preempt a policy issued by the Department of Labor, but also a Texas state law passed to conform with that policy.⁷⁵ In *Mitchell Energy*, at issue was a Texas state law that prohibited waivers of unemployment insurance claims. The law, like laws in all 50 states, was passed pursuant to a policy issued by the Secretary of Labor under a broad grant of authority in the Social Security Act (SSA). The SSA authorizes the Secretary to require states to enact laws containing "[s]uch methods of administration...reasonably calculated to insure full payment of unemployment compensation when due...."⁷⁶ Under the Social Security Act, states without such laws cannot receive certain federal grants and their employers may not receive certain federal tax credits.⁷⁷ Pursuant to this authority, the Secretary of Labor issued an "Unemployment Insurance Program Letter" requiring states to have laws prohibiting waivers of claims to unemployment compensation in order to qualify for

⁷² *Id.* at §1444(d) (emphasis added).

⁷³ See, e.g., *Murphy v. Heppenstall Co.*, 635 F.2d 233 (3d Cir. 1980), *cert. denied*, 454 U.S. 1142 (1982) (NLRA and federal common law of labor relations not preempted); *Airline Pilots Ass'n Int'l v. Northwest Airlines*, 627 F.2d 272 (D.C. Cir. 1980) (mandatory arbitration provision of the RLA not preempted); *Nemeth v. Clark*, 677 F.Supp. 899 (W.D. Mich. 1987) (ADEA not preempted).

⁷⁴ See *Joint Apprenticeship & Training Council of Local 363 v. N.Y. State Dep't of Labor*, 984 F.2d 589 (2d Cir. 1993) (holding that deregistration of apprenticeship training system not preempted by ERISA because state authority to deregister came from federal Fitzgerald Act); *Devlin v. Transp. Communications Int'l Union*, 173 F.3d 94 (2d Cir. 1999) (holding that New York age discrimination claim alleging requirement that retirees pay for medical benefits was not preempted; state law was part of a "joint state/federal enforcement program" saved from preemption under § 514(d)); *Ralph v. Lucent Techs.*, 135 F.3d 166, 171 (1st Cir. 1998) (holding that state law disability discrimination claim not preempted because of relationship to Americans with Disabilities Act); *Rokohl v. Texaco*, 77 F.3d 126 (5th Cir. 1996) (holding state law claim of wrongful discharge on the basis of disability not preempted by ERISA, even though termination was accomplished by granting benefits under employer's long-term disability plan); *Muller v. First Unum Life Ins. Co.*, 23 F. Supp.2d 231, 235 (N.D. N.Y. 1998) (holding that state Human Rights law under which a claim was made that a plan illegally discriminated in offering disparate benefits for mental and physical disabilities was not preempted as the state law tracked the Americans with Disabilities Act); *Aurora Med. Group v. Dep't of Workforce Dev.*, 602 N.W.2d 111, 113-14 (Wis. Ct. App. 1999) (holding that FMLA insulates state family leave statutes from ERISA preemption).

⁷⁵ 311 F.3d 685 (5th Cir 2002).

⁷⁶ 42 U.S.C. § 503(a)(1).

⁷⁷ U.S. DEP'T OF LABOR, UNINSURANCE EMPLOYMENT PROGRAM LETTER NO. 12-09, *available at* <http://wdr.doleta.gov/directives/attach/UIPL/UIPL12-09acc.pdf>.

the federal grants and tax credits. In *Mitchell Energy*, the court held that the Department of Labor policy of prohibiting waivers fell within ERISA's federal savings clause, rejecting the argument that because states have the option whether to participate in the federal/state unemployment compensation system, the Program Letter was not "a rule or regulation" but merely a "policy or a requirement."⁷⁸

Applying similar reasoning, a court should hold that an executive order requiring domestic partner benefits for federal contractors should fall within ERISA's federal savings clause. It would be a policy of the President issued pursuant to FPASA, and the fact that it was "voluntary" in the sense that contractors need not bid for federal projects, should not mean that it is not a federal "rule or regulation."⁷⁹

Second, while ERISA does have a policy of promoting national uniformity with respect to state regulation of employee benefit plans,⁸⁰ it does not preempt federal laws that have incorporated local variation in fringe benefits for federal contractors. For example, the Davis Bacon Act requires that federal construction contractors and most contracts for federally assisted construction over \$2,000 include provisions for paying workers on-site no less than the locally prevailing wages *and fringe benefits* paid on similar projects.⁸¹ Similarly, the McNamara-O'Hara Services Contract Act

⁷⁸ The court instead adopted the definition of "rule" under the Administrative Procedure Act (APA): "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." *Mitchell Energy*, 311 F.3d 685, 688 (5th Cir. 2002). It is also worth noting that a federal antidiscrimination law such as ENDA—if it allowed for employee benefits—or another federal law that required the provision of domestic partner benefits would have the effect of "saving" state and local ordinances requiring contractors to have domestic partner benefits. The Supreme Court has repeatedly held that state law claims of employment discrimination may not be preempted if they have a basis independent of the plan in question. Even if they directly implicate plans, such claims may not be preempted if the portion of the state statute at issue tracks a federal employment discrimination statute. *See Shaw v. Delta Air Lines*, 463 U.S. 85, 97 (1983) (holding that ERISA preempts state laws barring pregnancy discrimination because Title VII has not yet been amended to bar such discrimination; state laws play a "significant role" in the enforcement of Title VII and "to the extent that the Human Rights Law provides a means of enforcing Title VII's commands," ERISA preemption would impair Title VII. Consequently, such state laws would not be preempted because of ERISA § 514(d)); *see also Warner v. Ford Motor Co.*, 46 F.3d 531 (6th Cir. 1995) (holding that a state age discrimination law not preempted by ERISA); *Clark v. Coats & Clark, Inc.*, 865 F.2d 1237 (11th Cir. 1989) (also holding that a state age discrimination law could not be preempted by ERISA); *Le v. Applied Biosystems*, 886 F.Supp. 717 (N.D. Cal. 1995) (holding that a state disability discrimination claim could not be preempted by ERISA).

⁷⁹ Moreover, the executive order would not require any conforming state law or involvement, making the case much clearer than that in *Mitchell Energy*. *See also Applied Biosystems*, 886 F. Supp. at 719 (finding on behalf of the EEOC's Technical Assistance Manual, interpreting provision of the ADA as exempt from ERISA preemption); *Visiting Nurse Association v. Thompson*, 447 F.3d 68 (1st Cir. 2006) (finding that interpretative rules in the Medicare Provider Reimbursement Manual, even though they do not have the force and effect of law, are not preempted by ERISA as federal law, as long as otherwise validly promulgated and consistent with federal law and regulations).

⁸⁰ *See N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656 (1995).

⁸¹ Davis-Bacon Act. 40 U.S.C. § 3141 (1931).

requires federal contractors performing services on contracts in excess of \$2,500 to pay service employees in various classes locally prevailing wages and *fringe benefits*.⁸² Under both acts “fringe benefits” are defined broadly, including “medical or hospital care.”⁸³ Under both acts, the locally prevailing wages and fringe benefits are determined using surveys that voluntarily filled out by contractors and others and data from the Bureau of Labor Statistics.⁸⁴ The contractors’ obligations under these Acts can be met by providing the locally prevailing benefits as determined by the Secretary of Labor, an equivalent combination of benefits, or an equivalent cash payment as determined by the Secretary of Labor.⁸⁵ Thus, while Congress has expressed a desire for uniformity for the regulation of employee benefits plans through ERISA, these laws diverge from such uniformity in three ways. First, by requiring a minimum set of fringe benefits for federal contractors but not other employers; second, by imposing this requirement on only some federal contractors but not all; and third, by defining the minimum set of benefits on a local level instead of creating a national standard. Thus, it could be argued that Congress has not expressed the need for national uniformity in setting benefit standards for federal contractors.

ERISA Preemption

If, however, ERISA preemption is held to apply to the proposed executive order requiring domestic partnership benefits, the EO most likely would be preempted as to partner benefits. Since 1998, three courts have held that ordinances requiring state and local contractors to offer domestic partner benefits are preempted by ERISA.⁸⁶ Similarly, in an unreported decision, a district court in Hawaii struck a provision of Hawaii’s Reciprocal Beneficiaries law requiring that private employers offer domestic partnership benefits on the same terms they are offered to spouses as preempted by ERISA.⁸⁷

⁸² 41 U.S.C. §351 (1965).

⁸³ 41 U.S.C. §351 (a)(2). Other benefits include “compensation on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, cost of apprenticeship or other similar programs...” *Id.* Payments required by federal, state or local law are not fringe benefit contributions; such payments required to fund Social Security, unemployment compensation and workers’ compensation programs, as required by law, do not count as fringe benefits. *Id.*

⁸⁴ See 40 U.S.C. § 3141 For the wage determinations formulated under both Acts, see U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FREQUENTLY ASKED QUESTIONS PERTAINING TO THE ISSUANCE OF WAGE DETERMINATIONS UNDER THE MCNAMARA-O’HARA SERVICE CONTRACT ACT (SCA) OF 1965, AS AMENDED, available at http://www.dol.gov/whd/regs/compliance/web/SCA_FAQ.htm.

⁸⁵ 41 U.S.C. § 351 (a)(2); 40 U.S.C. § 3141.

⁸⁶ *Bloomberg*, 6 N.Y.3d at 394; *Catholic Charities of Me., Inc. v. City of Portland*, 304 F.Supp 2d at 84-93; *Air Transport Ass’n*, 992 F. Supp. at 1149. Despite these cases, several cities and one state, California, currently require government contractors to extend benefits to domestic partners on the same terms they are offered to spouses.

⁸⁷ Susan Essoyan, *Hawaii Finds Slow Response to Domestic Partners Law*, DALLAS MORNING NEWS, Dec. 28, 1997, at 5A.

All of these cases note that while recent Supreme Court cases have curtailed the initial far-reaching breadth of ERISA pre-emption cases,⁸⁸ they have left intact the decision in *Shaw v. Delta Air Lines, Inc.*⁸⁹ and its central holding that state laws cannot mandate ERISA-covered plans to have specific types of benefits.⁹⁰

In these three cases, courts rejected the argument of state and local governments that they were acting as marketplace participants and not as regulators, and therefore that the ordinances should not be subject to ERISA preemption. The courts found the ordinances to be regulatory because they “set[] policy,” and applied across the board, as opposed to being limited to a single contract or set of contracts.⁹¹

Benefits Outside the Scope of ERISA’s Preemption

Even if ERISA was found to preempt an executive order requiring domestic partner benefits, its effect would be somewhat limited because not all employer-sponsored benefits are covered by ERISA. Federal contractors could be required to extend a limited set of benefits primarily including those not provided as part of ERISA plans, such as moving expenses, memberships and membership discounts and travel benefits.⁹²

Conclusion

The President’s authority to issue the proposed Executive Order can be successfully defended against both challenges based on the economy and efficiency test and those based on the conflicts test.

⁸⁸ See, e.g., *D.C. v. Greater Washington Board of Trade*, 506 U.S. 125 (1992); *Shaw*, 463 U.S. at 85; *Ingersoll-Rand v. McClendon*, 498 U.S. 133 (1990); *Mackey v. Lanier Collection Agency*, 486 U.S. 825 (1988); *Travelers*, 514 U.S. 645; *California Div. of Labor Standards Enforcement v. Dillingham Constr.*, 519 U.S. 316 (1997).

⁸⁹ *Shaw*, 463 U.S. 85 (holding that ERISA preempted a New York State law forbidding discrimination on the basis of pregnancy in the provision of employee benefits, and requiring that pregnancy leave be offered on the same basis as disability leave). See generally Jeffrey A. Brauch, *Municipal Activism v. Federal Law: Why ERISA Preempts San Francisco-Style Domestic Partner Ordinances*, 28 SETON HALL L. REV. 925 (1998). See also *Travelers*, 514 U.S. at 657-58 (Supreme Court itself has stating that the *Shaw* holding is not disturbed by more recent decisions).

⁹⁰ See, e.g., *Catholic Charities*, 304 F.Supp 2d. at 84-93 (citing *Shaw* to hold that “a state law requiring employers to pay employees specific benefits relates to an ERISA plan and is therefore pre-empted). See generally, *Shaw*, 463 U.S. 85 (required provision of pregnancy benefits is preempted); *Metropolitan Life Ins. v. Massachusetts*, 471 U.S. 724 (1985) (state “mandated benefit” statute requiring ERISA plans to provide mental health benefits is related to ERISA plans); *Greater Washington Board of Trade*, 506 U.S. at 125 (workers’ compensation law prohibiting termination of health benefits of workers receiving workers’ compensation benefits is preempted).

⁹¹ *Bloomberg*, 6 N.Y.3d at 395; *Air Transport Ass’n*, 992 F. Supp. at 1178-1180. There may be an exception where the government is not “exercising more economic power than an ordinary consumer could exercise.” *Id.* at 1180.

⁹² *Air Transport Ass’n*, 992 F. Supp. at 1180.

Miscellaneous

Center for American Progress



A One-Two Punch for Worker Protection

Both Federal Law and Executive Order Are Necessary



SOURCE: AP/Jose Luis Magana

Teacher Rodney Brown speak to students during the Project Empowerment workshop at Department of Employment Services in Washington. Washington's program is one of several transgender-oriented career development classes, workshops, or job fairs that have popped up around the country.

By **Jeff Krehely** , **Crosby Burns** | April 4, 2012

At a time when many families are struggling economically, recent **research and data** show that gay and transgender Americans are far too often forced out of a job and into the ranks of the unemployed due to workplace discrimination. To help solve this problem and put gay and transgender workers on equal footing with others in the workforce, federal policymakers should take two different steps.[1]

First, Congress could pass the **Employment Non-Discrimination Act**, or ENDA, into law. ENDA would prohibit most public and private employers from discriminating on the basis of sexual orientation and gender identity. It is mirrored to some extent on the protections and recourses that Title VII of the Civil Rights Act of 1964 provides to workers on the basis of race, color, religion, sex, and national origin.

Second, President Barack Obama could use his executive authority to require federal contractors to not discriminate on the basis of sexual orientation and gender identity. Currently, **Executive Order 11246**, or EO 11246, prohibits federal contractors from discriminating on the basis of race, color, religion, sex, and national origin.

Beginning with Franklin Roosevelt, presidents from both political parties have issued executive orders barring federal contractors from discriminating against their employees. The premise of these orders is simple: The federal government should not pay taxpayer dollars to companies that discriminate. Discrimination is **bad for employees** and it's **bad for employers**, and the federal government should only be investing in the most economically efficient contractors in the market.

And if history is any guide, an executive order prohibiting discrimination based on sexual orientation and gender identity would lay the groundwork for congressional passage of ENDA. Following executive orders that Presidents Eisenhower and Kennedy issued requiring contractors to not discriminate based on race and color, for example, Congress subsequently passed the Civil Rights Act, which continues to serve as the bedrock of legal protections afforded to the American workforce today.

ENDA's hopes for passage in the near term look bleak given the political climate in Congress. But even if Congress were to defy the political odds and pass ENDA today, an executive order for federal contractors would still be needed to level the workplace playing field for gay and transgender workers.

First, ENDA (as currently introduced in Congress) **applies** to employers with 15 or more employees, which is the same threshold that applies to Title VII. The existing contractor executive order, EO 11246, however, applies to businesses of any size that **receive a government contract** in

excess of \$10,000. So a federal contractor executive order that includes sexual orientation and gender identity would extend workplace protections for gay and transgender workers in smaller companies that are doing business with the federal government who would otherwise not be covered under ENDA. A [CAP-commissioned poll](#) from late last year showed that a majority of small business owners said that they support these types of policies and that they would not be a financial burden to implement or maintain.

Second, a contractor executive order would ensure that gay and transgender people have the same type of protections currently afforded to women, people of color, and others under EO 11246. Under the proposed ENDA, individuals and groups of individuals must come forward to file discrimination complaints with the Equal Employment Opportunity Commission (which people can do now thanks to Title VII for discrimination based on race, color, religion, sex, and national origin). But people discriminated against by federal contractors based on those five characteristics can also file complaints through the Office of Federal Contract Compliance Programs, or OFCCP, which enforces EO 11246.

EO 11246 provides an additional level of protection because OFCCP conducts routine, proactive [compliance evaluations](#)—which are not prompted by individual complaints—to ensure federal contractors are not discriminating against their employees. These compliance evaluations are an important part of combating employment discrimination. [Statistics from OFCCP](#) show that EO 11246 has helped minimize discrimination for women and people of color in particular, even with Title VII in place. Likewise, an executive order prohibiting discrimination on the basis of sexual orientation and gender identity would likely help combat discrimination in ways that ENDA would not.

Importantly, these compliance evaluations [are not burdensome](#) on federal contractors considering that more than 99 percent of contractors met EO 11246's requirements in fiscal year 2010. In that year (the year for which we have most recent data) OFCCP conducted compliance evaluations on 4,960 contractors based on potential evidence of discrimination. Of those contractors, they found only 1,071 contractors in violation of EO 11246. So out of 303,667 total federal contractors that year, only 0.35 percent were found to be in violation of OFCCP.

Congress should pass ENDA now. But even if it did, there would still be a need for an executive order that extends existing workplace protections at federal contractors to gay and transgender workers. These two steps are needed for gay and transgender people to be on truly equal footing with all others in the American workforce.

Jeff Krehely is Vice President of the LGBT Research and Communications Project and Crosby Burns is a Research Associate for LGBT Progress at the Center for American Progress.

See also:

- [The Costly Business of Discrimination](#) by Crosby Burns
- [Workplace Fairness for Gay and Transgender Workers](#) by Crosby Burns and Jeff Krehely
- [Polls Show Huge Support for Gay and Transgender Workplace Protections](#) by Jeff Krehely

Endnote

1. In this column, “gay” is an umbrella term used to describe individuals that identify as lesbian, gay, or bisexual.

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Center for American Progress



FAQ: The Employment Non-Discrimination Act

What You Need to Know



SOURCE: AP/Roberto Gonzalez

Gina Duncan, a transgender employee, sits at her Wells Fargo office in Maitland, Florida. Transgender workers face especially high rates of employment discrimination and harassment on the job. In a recent national survey, an astonishing 90 percent of transgender people reported some form of harassment or mistreatment on the job.

By Seth Althaus, Sarah Greenberg | July 19, 2011

The Center for American Progress has shown that gay and transgender individuals face alarmingly high rates of employment discrimination. The recently introduced Employment Non-Discrimination Act, or ENDA, would outlaw employment discrimination on the basis of sexual orientation and gender identity. ENDA, if passed, would ensure gay and transgender employees are judged on the quality of their work and not on personal characteristics irrelevant to job performance such as sexual orientation and gender identity.

Below we answer frequently asked questions about ENDA, the scope of gay and transgender employment discrimination in the United States, and why ENDA's passage would represent a significant step toward eliminating workplace discrimination for gay and transgender Americans.

Jump to questions:

- [History and background of the Employment Non-Discrimination Act](#)
- [Current employment nondiscrimination protections](#)
- [Impact of discrimination against gay and transgender individuals](#)
- [Implementation and enforcement of ENDA](#)

History and background of the Employment Non-Discrimination Act

Q. What is the Employment Non-Discrimination Act?

The proposed Employment Non-Discrimination Act ([H.R. 1397](#) and [S. 811](#)) would protect private and public employees from employment discrimination on the basis of perceived or actual sexual orientation and gender identity. ENDA is similar to Title VII of the Civil Rights Act of 1964, which already protects workers on the basis of race, color, religion, sex, and national origin, as well as the [Americans with Disabilities Act of 1990](#), which protects against employment discrimination on the basis of disability.

Q. Has ENDA been introduced before? Did the House or Senate ever pass ENDA?

ENDA was first introduced in 1994 in the 103rd Congress as H.R. 4636 and S. 2238. A version of the bill has been introduced in every session of

Congress since then except for the 109th Congress, which ran from January 2005 to January 2007. The original version only prohibited discrimination on the basis of an employee's actual or perceived sexual orientation. But after 2007 the proposed bill contained gender identity discrimination language as well.

The bill has been voted on once in the Senate in 1995 when it narrowly failed by a vote of 49-50. A 2007 version passed the House 235-184 but did not come up for a vote in the Senate. Both of these bills included sexual orientation but not gender identity.

Q. Why is a federal law needed to combat discrimination based on sexual orientation and gender identity?

Local ordinances, state laws, and corporate policies are certainly helpful. But they only offer a patchwork of protections for gay and transgender Americans. Millions of workers continue to face the prospect of being fired or otherwise discriminated against based on their sexual orientation or gender identity. A federal law such as ENDA is needed to bring uniform protections to all American workers, gay or straight, transgender or not. ENDA would also allow victims of sexual orientation and gender identity-based discrimination to file complaints with the Equal Employment Opportunity Commission.

Q. Is the American public supportive of workplace protections for gay and transgender people?

Nearly three-fourths (73 percent) of the public **support** protecting gay and transgender people from workplace discrimination. This support cuts across political party affiliation, with 81 percent of Democrats, 74 percent of independents, and 66 percent of Republicans supporting workplace nondiscrimination laws for gay and transgender people.

Looking at key demographic groups, Catholics (74 percent support) and seniors (61 percent support) solidly favor employment protections for gay and transgender people. Even among people who identify themselves as feeling generally unfavorable toward gay people, a full 50 percent support workplace nondiscrimination protections for the gay and transgender population.

Q. How is ENDA different from previous pieces of civil rights legislation?

The Americans with Disabilities Act of 1990 has no exemptions with regard to small businesses, religious entities, and disparate impact claims. The Civil Rights Act of 1964 exempts businesses with 15 or fewer employees. ENDA provides exemptions for religious entities, small businesses, and does not allow for disparate impact claims (more on these below).

Current employment nondiscrimination protections

Q. What legal protections currently exist for gay and transgender workers?

Twenty-one states and the District of Columbia prohibit public and private employment discrimination on the basis of sexual orientation, and 15 of those states and the District of Columbia also prohibit employment discrimination on the basis of gender identity. These states have actually gone further than ENDA by outlawing discrimination in housing, health care, and public accommodations.

Further, at least **240 municipalities** enacted local ordinances prohibiting employment discrimination on the basis of sexual orientation, with about 60 of these ordinances also prohibiting employment discrimination on the basis of gender identity.

Q. What steps has corporate America taken to eliminate gay and transgender employment discrimination?

America's largest businesses have adopted nondiscrimination and equal employment opportunity policies that protect gay and transgender workers from discrimination at all levels of employment. Ninety-four percent of Fortune 100 companies and 87 percent of Fortune 500 companies have policies that prohibit discrimination on the basis of sexual orientation. Sixty-nine percent of Fortune 100 companies and 46 percent of Fortune 500 companies prohibit discrimination on the basis of gender identity.

Impact of discrimination against gay and transgender individuals

Q. How common is discrimination against gay individuals in the workplace?

Studies show that anywhere from 15 percent to 43 percent of gay people have experienced some form of discrimination and harassment in the workplace. Further, 8 percent to 17 percent of gay workers report being passed over for a job or fired because of their sexual orientation. Ten percent to 28 percent received a negative performance evaluation or were passed over for a promotion because they were gay. And 7 percent to 41 percent of gay workers encountered harassment, abuse, or antigay vandalism on the job.

Q. How common is discrimination against transgender individuals in the workplace?

Transgender workers face especially high rates of employment discrimination and harassment on the job. In a recent national survey, an astonishing 90 percent of transgender people **reported** some form of harassment or mistreatment on the job. Nearly half of transgender people also report experiencing an adverse job outcome because of their gender identity. This includes being passed over for a job (44 percent), getting fired (26 percent), and being denied a promotion (23 percent).

Q. How does workplace discrimination affect the lives of gay and transgender Americans?

Gay and transgender individuals suffer from socioeconomic inequalities in large part due to pervasive discrimination in the workplace. Discrimination leads to job instability, greater unemployment rates, and higher poverty rates for many gay and transgender people.

Transgender individuals, for example, **are** twice as likely to be unemployed and four times as likely to live in poverty, and nearly 20 percent

have been or are currently homeless. What's more, older gay and lesbian adults **experience** higher poverty rates than their heterosexual counterparts after a lifetime of workplace discrimination and its effects.

Q. How does workplace discrimination against gay and transgender individuals affect businesses?

Discriminatory practices create inefficiencies and higher costs for businesses. More than 2 million professionals and managers leave their jobs each year due to unfairness in the workplace, and replacing these professionals costs U.S. employers approximately **\$64 billion annually**. Gay workers report that workplace unfairness was the only reason they left their employer twice as often as heterosexual white men. Alternatively, adopting policies that prohibit discrimination against LGBT workers is associated with short-term increases in an **industry's stock value**, suggesting that preventing discrimination in the workplace is a boon to business's bottom line.

Implementation and enforcement of ENDA

Q. How does ENDA affect small businesses?

ENDA only applies to employers with 15 or more employees.

Q. Can disparate impact claims be made under ENDA?

No. The scope of ENDA is similar to Title VII of the Civil Rights Act of 1964, but employees cannot make a "**disparate impact**" claim. Under Title VII if an employee can demonstrate that a policy, though **neutral on the surface, has an adverse effect** on a specific population, then they can file a "disparate impact" claim. ENDA does not cover disparate impact claims, and it only applies if an individual can prove intent to discriminate.

Q. Does ENDA apply to religious organizations?

No. The law completely exempts any "**corporation, association, educational institution, or society that is exempt from the religious discrimination provisions of Title VII of the Civil Rights Acts of 1964,**" including houses of worship, parochial schools, and missions.

Q. Are preferential quotas or treatment on the basis of sexual orientation or gender identity included in ENDA?

No. In fact, preferential quotas or treatment for gay and transgender individuals are explicitly precluded in ENDA.

Q. What does ENDA require of employers in terms of facilities and access?

Under ENDA, employees would only be required to provide employees with "reasonable access" to adequate shower and dressing facilities consistent with an employee's gender identity. Employers who deny employees access to a shared facility would not be in violation of ENDA as long as they provide a viable alternative. Nothing in the proposed bill requires employers to construct new or additional facilities.

Q. How would ENDA be enforced?

ENDA would be enforced in a manner akin to Title VII. The Department of Justice would enforce ENDA in state and local governments and the Equal Employment Opportunity Commission, or EEOC, would enforce ENDA within private employment. Both the EEOC and federal courts would have the same powers to investigate and remedy claims as they do under Title VII.

Q. What remedies would be available to gay and transgender victims of employment discrimination under ENDA?

As with Title VII, private employees who are discriminated against may file for compensatory awards, which cover the tangible and intangible losses inflicted upon the victim of employment discrimination, and punitive awards, which are intended to punish the offender and to prevent future cases of discrimination. Government employees at the federal, state, and local levels may file for compensatory awards but not punitive awards.

Caps would be placed on the size of damage awards relative to the size of the company. Companies with 15 to 100 employees would have a cap of \$50,000, companies with 101 to 200 employees would have a cap of \$100,000, companies with 201 to 500 employees would have a cap of \$200,000, and companies with more than 500 employees would have a cap of \$300,000.

Seth Althaus and Sarah Greenberg are interns with LGBT Progress.

See also:

- [A History of the Employment Non-Discrimination Act](#) by Jerome Hunt

Endnotes

[1]. In this FAQ, the term "gay" is used as an umbrella term that includes gay, lesbian, and bisexual individuals.

[2]. This includes Nevada and Connecticut, which both passed gender identity employment protection laws earlier this year. Govs. Brian Sandoval (R-NV) and Dannel Malloy (D-CT) recently signed the bills, and both pieces of legislation will go into effect October 1, 2011.

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Working in the Shadows

Ending Employment Discrimination For LGBT Americans



Working in the Shadows: Ending Employment Discrimination for LGBT Americans

Published September 2007

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THE AMERICAN CIVIL LIBERTIES UNION is the nation's premier guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution and the laws of the United States.

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Foreword



My father - who worked for 39 years at the Warwick Hotel, graciously and skillfully serving thousands of people - always impressed upon me that the American dream was within reach as long as you were willing to work hard. But as *Working in the Shadows: Ending Employment Discrimination for LGBT Americans* makes clear, that's not always true for many hardworking lesbian, gay, bisexual and transgender Americans who continue to be fired and refused jobs and promotions because of their sexual orientation and gender identity.

Take the story of Diane Schroer. Before transitioning from male to female, Schroer was a U.S. Army Special Forces officer who logged 450 parachute jumps into some of the world's most dangerous places during her 25 years of service. She received numerous decorations including the Defense Superior Service Medal and was handpicked to head up a classified

national security operation. After retiring from the military, Schroer applied for a job with a large federal agency library as a senior terrorism research analyst. She received an offer shortly after the interview and accepted the position. Prior to starting work, Schroer invited her new boss to lunch to explain that she was transgender and would like to begin the job as a woman. The next day, the director called Diane and rescinded the offer because she wasn't a "good fit."

It's hard to imagine a more clear-cut example of discrimination or a more compelling reason why Congress should pass the Employment Non-Discrimination Act (ENDA) - legislation that would make it illegal to discriminate in the workplace based on sexual orientation and gender identity. In Diane's case, our own government passed up the most qualified person for a position to help combat terrorism - a person who spent 25 years in the trenches fighting terrorists - just because that person happened to be transgender.

Diane's story is just one of the many stories you will read about in *Working in the Shadows*. Janice Dye was dismissed from the training program at an oil change service center after being forced to complete the impossible test of completing an oil change in 10 minutes without any help. Co-workers later told her they had overheard management say, "we won't let that lesbo-bitch get that job." Jacinda Meyer was given a raise after only nine months on the job as an insurance agent, but soon after her supervisor learned that she was a lesbian, she was fired. Alex Gorinsky worked for a finance leasing company in the railroad industry and received good reviews and raises for five years. Three weeks after bringing his part-



ner to the company Christmas party, he was shown the door. And the list goes on and on, affecting people from all walks of life in jobs ranging from fast food workers to healthcare workers to lawyers.

Right now, it's legal in 30 states to fire or refuse to hire someone because of his or her sexual orientation, and in 38 states to do so based on one's gender identity. Yet according to a recent poll, 89% of Americans believe that gay men and lesbians should have equal rights in the workplace. With the passage of other civil rights statutes, Congress has seen fit to stop

arbitrary discrimination in the workplace. It's now time for Congress to help bring LGBT employees out of the shadows at work and pass ENDA. All Americans should have an equal shot at achieving the American dream.

ANTHONY D. ROMERO
Executive Director
American Civil Liberties Union

Executive Summary


Hardworking Americans should not be kept from supporting their families and making a positive contribution to the economic life of our nation because of characteristics that have no bearing on their ability to do their job. Many workers have to make a choice of hiding who they are at work in order to support their families at home. It remains legal in 30 states to fire or refuse to hire someone simply because of his or her sexual orientation, and in 38 states to do so solely based on an individual's gender identity.¹ Recently introduced federal legislation, the Employment Non-Discrimination Act of 2007 (ENDA), prohibits discrimination based on sexual orientation and gender identity in most workplaces.²

If enacted, ENDA would ban discrimination based on sexual orientation and gender identity in all aspects of employment, including hiring, termination, promotion, compensation, and most terms and conditions of employment. The bill would also protect workers from retaliation. ENDA would take its place among the other similar federal civil rights statutes that ensure civic equality for American workers, such as Title VII of the Civil Rights Act of 1964,³ the Age Discrimination in Employment Act (ADEA),⁴ and the Americans with Disabilities Act (ADA),⁵ by including sexual orientation and gender identity among the federal employment discrimination protections currently provided to Americans based on race, color, religion, sex, national origin, age and disability. ENDA is an important step toward ensuring fairness on the job for lesbians, gay men, bisexuals and transgender employees (LGBT),⁶ and it is critical that

Congress pass this legislation in order to expand the protection of anti-discrimination laws to more Americans.

Banning workplace discrimination enjoys strong support in the country. In 1996, ENDA came within one vote of passage in the Senate.⁷ In 2002, a bipartisan majority of the Senate Health, Education, Labor and Pension Committee voted to send the measure to the floor.⁸ Since then, year after year, support for ENDA's simple message of workplace equality has grown. A May 2007 poll conducted by Gallup found that 89% of Americans believe that gay men and lesbians should have equal rights in the workplace.⁹ Some of corporate America's most successful businesses have seen the wisdom in preventing arbitrary discrimination within their ranks. Eighty-eight percent of Fortune 500 companies have included sexual orientation in their workplace nondiscrimination policies and a quarter of them also prohibit discrimination based on gender identity.¹⁰ In addition, currently, 20 states and the District of Columbia prohibit workplace discrimination based on sexual orientation,¹¹ and 12 states and the District of Columbia prohibit workplace discrimination based on gender identity.¹² According to a 2002 U.S. General Accountability Office (GAO) report, these important protections have not led to a flood of litigation, but rather have provided appropriate remedies to a modest number of discrimination cases.¹³

ENDA represents a measured and pragmatic response to prejudice and discrimination. The time has long since come for Congress to end this injustice for gay, lesbian, bisexual and transgender Americans and pass ENDA.



It remains legal in 30 states to fire or refuse to hire someone simply because of his or her sexual orientation, and in 38 states to do so solely based on an individual's gender identity.



Without ENDA, many hard-working men and women do not have basic protections against discrimination.

Workplace Protections and Federal Civil Rights Legislation

During the last fifty years, when Congress has found that some Americans were being denied employment for reasons unrelated to their skills in the workplace, it responded by passing laws aimed at creating a system truly based on employee-merit and ensuring that arbitrary considerations do not govern access to employment. The principle federal antidiscrimination law is Title VII of the Civil Rights Act of 1964, which prohibits employers from discrimination in employment on the basis of race, color, religion, sex or national origin.¹⁴ By its terms, Title VII bans discrimination with respect to hiring, termination, compensation, promotion, and

other terms and conditions of employment. In finding similar protections necessary for additional classes of American workers, Congress extended this nondiscrimination principle in two subsequent acts. Under the Age Discrimination in Employment Act, enacted in 1967, employees over the age of forty are protected from discrimination in hiring, termination and mandatory retirement.¹⁵ By 1990, Congress passed the Americans with Disabilities Act, which prohibits employers from discrimination against an otherwise qualified disabled person, who, with or without a reasonable accommodation, is capable of performing the essential functions of the job at issue.¹⁶ Those laws have been - and continue to be - an essential part of making the Fourteenth Amendment's promise of



ENDA offers Congress and American employers the opportunity to ensure workplace equality for everyone by protecting lesbian, gay, bisexual, and transgender employees and their co-workers from discrimination in employment.

equal protection of the law a reality. ENDA offers Congress and American employers the opportunity to ensure workplace equality for everyone by protecting lesbian, gay, bisexual, and transgender employees and their co-workers from discrimination in employment.

Like other civil rights statutes, in its basic structure, ENDA is patterned after Title VII of the Civil Rights Act of 1964. Like Title VII, ENDA forbids employers from discriminating with regard to hiring, termination, compensation, promotion, and most terms and conditions of employment, as well as retaliatory conduct. ENDA is necessary because although some states, the federal civilian workforce, several local governments, and numerous corporations, schools, and universities ban discrimination based on sexual orientation, most people in this country have no protection against such workplace discrimination. Moreover, the majority of courts have consistently ruled that sexual orientation is not covered under Title VII.¹⁷ While a few federal courts have interpreted Title VII to provide transgender people some protection from workplace discrimination,¹⁸ in the majority of jurisdictions, there remains no clear protection against employment discrimination based on gender identity under federal law.¹⁹ ENDA would, for the first time, provide a federal remedy for discrimination against LGBT workers in most places of employment with 15 or more employees.

Without ENDA, many hard-working men and women do not have basic protections against discrimination. As the Supreme Court observed in *Romer v. Evans*, anti-discrimination laws are not "special rights,"²⁰ and ENDA does not grant any. The right to have and keep a job, as the Supreme Court observed, is often taken for granted, either because employees are already protected against discrimination or because many employees do not face discrimination.²¹

But for those who do face discrimination, there is no "special" right about a law aimed at preserving one's ability to work - one of the most essential aspects of day-to-day life in America. ENDA merely puts LGBT Americans on the same footing as everyone else.

In order to put to rest the unfounded criticism that LGBT employees would receive any special rights under ENDA, the bill narrows the scope of the anti-discrimination provisions that are available to other employees in Title VII. For example, ENDA expressly rejects the possibility that its implementation will lead to affirmative action for LGBT employees - relief that is sometimes available to address race and gender discrimination. In addition, it includes a provision that precludes the use of the "disparate impact"²² theory of discrimination, as recognized under Title VII, which prohibits employer actions that are neutral on their face, but disproportionately affect a protected class of employees. Finally, as discussed further below, ENDA has explicit and broad religious and military exemptions. So while modeled after civil rights statutes that have been in place for decades, ENDA is a modest step forward, allowing employees who work side-by-side with each other to be afforded the same basic protections they need to keep their jobs.

The Major Provisions of ENDA

ENDA is modest - it applies only to discrimination in employment and only to employers with 15 or more employees. It does not require that employers provide benefits to same-sex partners, and it expressly forbids the use of quotas or preferential treatment. It does not apply to the armed forces or to religious organizations or religious schools.

By adding sexual orientation and gender identity to the federal employment discrimination protections currently provided to Americans

ENDA includes a broad exemption for religious organizations, which balances respect for religious liberty and respect for workplace equality.

based on race, color, religion, sex, national origin, age and disability, ENDA is an important step towards ensuring fairness in the workplace, and continues our nation's ideal of judging employees by their ability and performance.

- ENDA prohibits employers from using an individual's sexual orientation and gender identity in almost all aspects of employment, including hiring, termination, promotion, compensation, and most terms and conditions of employment.
- ENDA's ban on workplace discrimination protects heterosexuals as well as LGBT employees. It protects workers who are discriminated against because they associate with lesbian, gay, bisexual and transgender co-workers, or those who are perceived to be LGBT. It also shields workers who oppose LGBT discrimination from retaliation.
- With a few exceptions, several of which are noted below, ENDA provides for the same protections as existing civil rights laws barring discrimination in the workplace do, including those involving enforcement, remedies and notification procedures.
- "Disparate impact" claims cannot be made under ENDA. Under Title VII of the Civil Rights Act of 1964, disparate impact claims can be made if an individual can demonstrate how an employment policy negatively disadvantages a protected group - even if the terms of the policy do not explicitly discriminate, and there is no proof of an intent

to discriminate. Therefore, neutral policies that may disproportionately impact LGBT workers are not covered by ENDA.

- ENDA forbids the use of quotas and preferential treatment of any kind based on sexual orientation or gender identity.
- ENDA includes a broad exemption for religious organizations.
- ENDA has no effect on the armed services. It does not apply to current military policies concerning lesbian and gay service members, nor does it apply to special veterans benefits.
- ENDA does not require employers to provide benefits to the partners of employees. It does not require or forbid "domestic partnership" plans that provide such benefits.
- ENDA exempts smaller businesses with fewer than 15 employees, as do existing civil rights protections.
- ENDA applies only to discrimination in employment, not to discrimination in housing or public accommodations.
- ENDA does not apply retroactively.

Congress has had the vision and courage to enact laws that ban discrimination based on other protected classes. We now have the historic opportunity to expand the law a little further to ensure that everyone can enter and succeed in the workplace without regard to sexual orientation and gender identity.

ENDA and Religious Organizations

ENDA includes a broad exemption for religious organizations, which balances respect for religious liberty and respect for workplace equality.²³ This exemption recognizes that the Constitution protects certain employment decisions of religious organizations, understanding that some religious organizations have significant reasons to make employment decisions, even those that take an individual's sexual orientation or gender identity into account. Thus, under those circumstances, LGBT employees of religious organizations will not have protection from sexual orientation or gender identity discrimination. Specifically, as currently drafted, ENDA outlines three categories of protections for religious organizations.

- ENDA provides a complete exemption for houses of worship, parochial and similar religious schools, and missions.²⁴

This subsection provides a blanket exemption for these institutions, and is directed at those religious organizations that have an inherently religious purpose, and where the religious organization cannot segregate the religious function from any secular function of its employees.

- ENDA also exempts positions at religious organizations that involve the teaching or spreading of religion, religious governance, or the supervision of individuals engaged in these activities.²⁵

This subsection closely tracks the "ministerial exception" applied by courts in determining whether the Free Exercise Clause of the First Amendment protects religious organizations from certain employment discrimination claims. Although the Supreme Court has not decided any claims related to the ministerial exception,

the federal courts of appeal have widely accepted the ministerial exception as extending to a religious organization's employment of persons "whose 'primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship.'"²⁶

- ENDA also allows religious organizations to require, for classes of jobs, employees and applicants to conform to a declared set of significant religious tenets, including one that would bar LGBT people from holding the position.²⁷

This subsection provides that, for similar job positions, the religious employer may require employees and applicants to conform to those of its religious tenets that it declares significant. This means that ENDA will apply to some positions, but not others at these employers. For example, a religiously-affiliated hospital could choose to require all social workers to follow a declared set of significant religious tenets, including avoiding same-sex sexual activity, and fire a female social worker who they learn is in a relationship with a woman. But the organization could also choose not, for example, to impose the same requirements on its janitors or other classes of employees. This provision was modeled on the religious organization provision in the ADA, but specifies conformity with the religious employer's "significant" tenets, instead of all tenets.²⁸ It also makes the organization's declaration of its significant religious tenets immune from judicial or administrative review.

The Impact on Workers' Lives

Although all arbitrary discrimination is wrong, workplace discrimination is especially egregious because it threatens the well-being and economic survival of American workers and



There is no question that arbitrary discrimination undermines a labor market appropriately focused on skill and talent. And this is no less true for LGBT employees.

their families. Often LGBT employees attempt to protect themselves against discrimination by hiding their identity. This requires carefully policing even the most casual conversations, and banishing almost any acknowledgment of family and friends from the workplace. In addition to being difficult to do, hiding one's identity takes a terrible psychological toll, and often results in co-workers building walls between each other.

As we have learned from the adoption of other civil rights laws, employment discrimination harms the emotional and economic well-being of workers, the functioning of the workplace, and the greater economy.²⁹ For example, in passing the ADA, Congress found that "the continuing

existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billion of dollars in unnecessary expenses resulting from . . . nonproductivity."³⁰ Similarly, in a 1965 report, which was the impetus for the ADEA, Secretary of Labor Willard Wirtz reported that arbitrary age discrimination had dire consequences for older workers, such as higher unemployment rates, deterioration of motivation and skills, and an increased likelihood of poverty.³¹ Moreover, Secretary Wirtz documented that this arbitrary discrimination "had a negative impact on an even larger scale as the American econ-

omy suffered from lower productivity - because of the waste of valuable human resources - and from higher unemployment rates."³² It also has been very well established that discrimination against women and minorities has resulted in a loss of a great talent pool and has had a direct, negative effect on the economy.³³ There is no question that arbitrary discrimination undermines a labor market appropriately focused on skill and talent. And this is no less true for LGBT employees.

The threat of sexual orientation and gender identity discrimination has a very real presence in American workplaces. As documented in the personal stories at the end of this report, LGBT employees are harassed, fired, not hired, and passed over for advancement without regard to their merit. That treatment would not be permissible if ENDA were law. A 2007 report of over 50 studies compiled by the Williams Institute indicates that when surveyed, 16% to 68% of LGBT people reported experiencing employment discrimination.³⁴ When surveyed separately, 15% to 57% of transgender individuals reported experiencing employment discrimination.³⁵ And many heterosexual co-workers reported witnessing sexual orientation discrimination in the workplace.³⁶ In another 2007 nationwide survey, 28% of LGBT workers reported that they have experienced discrimination or unfair treatment in the workplace.³⁷ One in four said they experience it on a weekly basis.³⁸

Studies also show that discrimination robs gay men and lesbians of the ability to make equal income with their heterosexual counterparts. The 2007 Williams Institute report documented that gay men earn 10% to 32% less than similarly qualified heterosexual men.³⁹ A 2002 study showed that gay men earn from 11% to 27%



The threat of sexual orientation and gender identity discrimination has a very real presence in American workplaces.

less and lesbians earn 5% to 14% less than the national average.⁴⁰ And while no detailed wage and income analyses of transgender employees have been conducted to date, the Williams study documented that transgender people report high rates of unemployment and very low earnings.⁴¹

These wage studies confirm that LGBT discrimination is not benign. Lower incomes and difficulty in getting and keeping a job create direct and immediate financial disadvantages for LGBT employees, just as they do for other

American workers who are now lucky enough to be protected by federal law. The National Commission on Employment Policies calculated that discrimination against gay and lesbian employees translated into a \$47 million loss in profits attributable to training expenditures and unemployment benefits alone.⁴² Not including outright terminations, it has been proposed that hostile work environments cost companies \$1.4 billion in lost output each year because of a reduction in gay and lesbian workers' productivity.⁴³

Support from the Business Community, the States, and the Public

In addition to employee fairness, the pure economic losses due to discrimination mean it makes good business sense for companies to put these protections in place. Recognizing this, America's corporate leaders support ENDA's fair-minded approach and our country's most

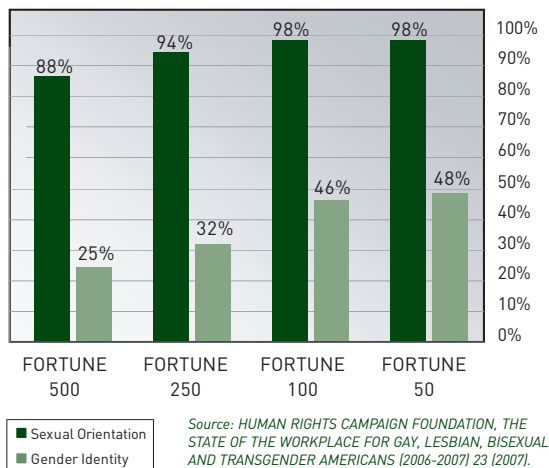
successful businesses have been the quickest to adopt inclusive policies. In fact, a trend of support has emerged. Employers understand that arbitrarily discriminating against a segment of the workforce ultimately hurts business. Eighty-eight percent of Fortune 500 companies have included sexual orientation in their workplace policies and a quarter of them also prohibit discrimination based on gender identity.⁴⁴ Compare this to 2000, when only 1% of Fortune 500 companies prohibited discrimination against transgender employees and applicants.⁴⁵ Moreover, 98% of the Fortune 50 prohibit discrimination based on sexual orientation, and nearly 50% prohibit discrimination based on gender identity.⁴⁶

Recently, the Business Coalition for Workplace Fairness, made up of some of the largest corporations in America, has endorsed ENDA. Some of those companies include: The Coca-Cola Company, General Motors Corporation, Dow Chemicals, General Mills Inc., J.P. Morgan Chase & Co., Marriott International, Microsoft Corporation, Morgan Stanley, and Nike Inc.⁴⁷

More than 30 major U.S. businesses joined this coalition during the first five months of 2007.⁴⁸

Moreover, 20 states and the District of Columbia⁴⁹ and at least 171 cities and towns ban employment discrimination based on sexual orientation.⁵⁰ Twelve states and the District of Columbia,⁵¹ and 88 cities and counties prohibit workplace discrimination based on gender identity.⁵² Without ENDA, employers are able to discriminate against a segment of their workforce with impunity, unless those workers are lucky enough to live in

Prohibition of Discrimination Based on Sexual Orientation and Gender Identity in Fortune-Ranked Corporate America





Not only is federal law lagging behind corporate America and state and local policies, but it is also lagging behind public support for ENDA.

one of the few states or municipalities that make such behavior illegal. Even with those state and local laws, however, only a small percentage of workers are protected against workplace discrimination based on sexual orientation and gender identity.

Not only is federal law lagging behind corporate America and state and local policies, but it is also lagging behind public support for ENDA. A May 2007 poll conducted by Gallup found that 89% of Americans believe that gay men and lesbians should have equal rights in the workplace.⁵³ A 2007 Peter D. Hart Research Associates survey indicated that 58% of respondents believe workplace protections should also extend to transgender employees.⁵⁴

And it must be noted that any arguments that extending workplace protections on a federal level will cause a flood of litigation are just not

supported by the facts. In 2002, the GAO reviewed the states' experiences with state statutory prohibitions on sexual orientation-based employment discrimination.⁵⁵ The GAO collected the number of complaints filed in states that prohibit sexual orientation discrimination, and found that relatively few complaints of such discrimination were made, whether measured in absolute numbers or measured as a percentage of all employment discrimination complaints under state law.⁵⁶ Another 2001 study showed that the raw number of complaints filed under the state laws was small, and that complaint rates of sexual orientation discrimination were similar to those of sex or race discrimination.⁵⁷ Therefore, although the need for this protection is real, there is no indication that a torrent of litigation will ensue.


The Need for ENDA: Documenting the Human Cost

Employment is necessary for people to lead a decent life and can be essential to survival. The ACLU receives many calls and emails from men and women who have lost or been denied jobs, or failed to receive promotions, because of discrimination based on sexual orientation or gender identity.⁵⁸ There is often little legally that can be done for most of these people. As discussed above, in some states and cities, they are fully protected by civil rights laws that prohibit discrimination based on sexual orientation and in some instances, gender identity. If they work for the government, sometimes they can claim limited protection under the Constitution or under civil service laws. But if like many Americans, they work for private businesses in states without nondiscrimination laws, they have no recourse and must continue to work in the shadows, hiding who they are.

For most LGBT Americans, economic survival comes down to separating the two most important parts of most individuals' lives - work and family. Imagine a workplace in which you must make certain there is no trace of the most important person in your life because you may risk your career and possibly your economic well-being if you slip and mention his or her name.

ENDA provides what simple justice demands - that no one should lose a job because of who they are or whom they love. Most people accept that our laws are above all, a statement about what we believe as a people. A federal civil rights law banning employment discrimination based on sexual orientation or gender identity does not say that we endorse being gay, or being heterosexual, any more than our federal civil rights laws against race discrimination endorse any particular race or national origin, or that our laws against religious discrimination endorse being a member of any particular religion or none at all. What passing ENDA does say, is that we, as a country, believe in fundamental fairness for hard-working people.

To provide real-life examples of why ENDA is so critically important, we have included stories from LGBT employees from all over the country, showing diverse Americans engaged in all different kinds of work. The sad reality is that their lives and their livelihoods would be different today if ENDA were the law of the land. While some instances of discrimination occurred in states that have laws protecting LGBT employees, these stories highlight that discrimination on the basis of sexual orientation and gender identity is a real threat and that Congress must pass a federal law to ensure that LGBT employees stand on the same legal footing with their coworkers.



To provide real-life examples of why ENDA is so critically important, we have included stories from LGBT employees from all over the country, showing diverse Americans engaged in all different kinds of work.



Janice Dye
Born in 1953

Janice worked as a mechanic in an oil change service center in San Diego. She had quit her job as a security guard and bus driver in Detroit to move to California to be with her partner. She had taken auto repair classes in high school, so working at a service center seemed like a good fit for her. Janice got along well with the other mechanics at the service center, who were excited to have a female mechanic working with them. Janice was out at work and her girlfriend occasionally brought her lunch at work.

The service center's management, however, was not supportive of Janice. Janice was the only female mechanic in the shop, as well as the only African American and lesbian. In 1997, Janice applied for a 3-month training program to become an assistant manager. At the end of the training program, she had to take timed tests. Janice was fired because she could not complete an oil change in less than ten minutes. However, management made her do the oil change alone, even though the usual procedure was to use two workers to complete an oil change (one in the ground pit below the car, and one on the ground floor at the car's hood). Janice's co-workers told her that they heard

managers in the break room saying: "we won't let that lesbo-bitch get that job."

After being fired, Janice left the service center and started to work at another location owned by the same company. She hoped she would not be discriminated against at the new location, but the managers treated her the same. She had to take the same test of completing an oil change in ten minutes and, again, she had to do the oil change alone (taking time to run up and down the stairs to the pit below the car). Management did not even let her finish the oil change because she had gone over the 10-minute limit. After 10 minutes, the manager yelled: "time's up" and "you're fired." Janice was coming up from the pit to put oil in the car. The manager told Janice to leave and he would finish the job. But he forgot to put oil in the car, the customer drove away and the engine burned out. The company had to buy the customer a new engine. After Janice was not offered an assistant manager position, she left the service center.

When her mother died, Janice moved back to her hometown of Detroit, Michigan to care for her elderly father who has Alzheimer's disease. She currently works as a dishwasher at a football stadium. She has three children. Janice's dream is to open her own auto repair garage with female technicians.





*Ronald Fanelle
Born in 1966*

Ronald Fanelle taught seventh and eighth-graders at a California middle school. The other faculty and the

principal knew that Ronald was gay, but his students did not. A month after Ronald and his partner, Randy, were married in February 2004, his co-workers congratulated him at a staff meeting. Then a teacher told his students that Ronald had gotten married over the weekend to a man in San Francisco and the news spread around the school. Ronald's students asked if it was true that he married a man. Ronald told them it was true. After one of his students made a few negative comments, Ronald read the sexual harassment code from the student handbook aloud.

In the following weeks, one parent, a personal friend of the school board president, vocalized his opposition to a gay man teaching in the school and arbitrarily accused him of bringing "his homosexual agenda into the classroom." The school hired a private investigator to investigate the situation and Ronald's background. Nothing damaging emerged, and for the most part, opposition to Ronald's position died down for the rest of the school year. Ronald, however, received hate mail on his school email account and dozens of

viruses were sent to the district, which shut down its system. Ronald was instructed in writing to open a private email account in order for parents and students to communicate with him.

In the following year, a few students created an anti-gay MySpace webpage that made fun of Ronald. Offensive stickers relating to Ronald's sexual orientation were posted all over the school. The principal called a meeting prior to the new 2006-07 school year. In the meeting, the principal made disparaging comments to Ronald in front of another principal, the union president, and the district's superintendent of personnel. His principal went on to tell Ronald: "Your problem is you're angry because no one will accept your gay marriage!"

Two weeks into the 2006-07 school year, a meeting was held and Ronald was disciplined for talking about his personal life. After the meeting, the principal and the assistant principal interrogated children for over two weeks, asking them if they knew Ronald was gay, or if he spoke about his personal life, and if the students liked him. The students reported that Ronald did not talk about his personal life and he was well liked. A week later, the superintendent of personnel formally disciplined Ronald for "inappropriate email communication" with students and parents because Ronald was sending email from a private email account instead of his school account. Ronald was only using a private account because the school had shut down his school account, due to the amount of hate mail and viruses.

Over three years, four students were removed from Ronald's classroom because their parents disapproved of his sexual orientation. The district's response to Ronald was simply stated as: "It's a conflict of family values." In February 2007, due to the principal's and the district's harassment, Ronald took an extended sick leave.



Jacinda Meyer
Born in 1975

Jacinda is Latina and a licensed life and health insurance agent in California. She worked for a company that administers employee benefits to client companies. After she worked at the company for nine months, she received positive feedback about her job performance and was given a raise. Her supervisors even gave

her handwritten cards to thank her for her good service, teamwork and positive attitude.

Throughout her tenure at the company, Jacinda's supervisors made several derogatory comments about lesbians. One of Jacinda's supervisors "warned" her before a meeting that the client was a lesbian and said: "I'm telling you now so you don't freak out when you see the pictures of two women on her desk." Jacinda did not respond to this comment, but later told another of her supervisors about the conversation. That supervisor asked: "Do you swing that way?" Jacinda replied: "If you are asking if I'm gay, yes - but I don't swing." The supervisor said: "Well, I'm fine with it as long as you don't kiss or hold hands in public."

Soon after Jacinda came out to her supervisor, the owner of the company approached her and told her about a book, *The Road Less Traveled*, which helped his son, who was a recovering drug addict. Jacinda interpreted the owner's comment as comparing being gay to being a drug addict. Her supervisor gave Jacinda the assignment of reading the book and writing a one-page essay about how it could improve her life.

Jacinda was offended by the book's characteri-

zation of homosexuality as immoral behavior. She was also offended by other passages that mentioned masturbation. Additionally, the book's perspective on spiritual growth made her uncomfortable. Jacinda wrote a letter to her supervisor saying she was uncomfortable with the assignment because the book's message violated her beliefs and she requested that her assignment be changed to read another book.

After she requested a different assignment, Jacinda's co-workers stopped talking to her and stopped asking her to join them at lunch. Shortly after that, Jacinda was fired on March 23, 2007. The company claimed that she was fired because the company's revenue was too low, but the company hired other people for the same job after they fired Jacinda.

The company offered Jacinda a severance of one month's salary if she signed a document saying she would not sue the company. Jacinda is a single mom with an eight-year-old daughter who had recently been hospitalized for asthma at the time Jacinda was fired. Jacinda was concerned about providing for her daughter so she signed the document promising not to sue the company and took the month's pay.

Shortly after being laid off, Jacinda interviewed with a "sister company" to the one she had left. After a series of interviews, personality and placement testing, they proceeded to make her a verbal offer. Twenty-four hours later, the director of human resources called to tell Jacinda that she would not be getting an offer letter because they had made "a business decision to go in another direction."

Jacinda is now working for another company doing similar work, although she is not out at her new job. She is also taking college classes at Saddleback Community College in the hopes of helping her to advance her career.

CALIFORNIA

Juan Moreno
Born in 1987

Juan is a Latino community college student studying nursing, who also works to help support his single mom and teenage sister. Juan applied for a part-time job at a local fast food restaurant where his friend worked. He interviewed with a shift manager in February 2007.

He had a successful interview with the shift manager who told Juan's friend that Juan would work out. The shift manager recommended to the store manager that Juan be hired. The store manager knew Juan was friends with a current employee and had seen Juan come into the store to visit his friend. The store manager asked Juan's friend: "Is he into men or women?" Juan's friend informed the store manager that Juan was gay, but then asked, "what does that have to do with hiring him?" The store manager replied: "I'm the head manager and I can do what I want to do." Juan was not hired.

Currently, Juan is a part-time program leader of a youth organization and an after school tutor for 5th and 6th grade students.

DELAWARE



Douglas Marshall-Steele
Born in 1954

Douglas, a registered nurse, went to his hospital's administration to complain about anti-gay statements and behavior of a doctor with whom he worked. The hospital investigated, but found that there was more than anti-gay issues; the hospital learned the male doctor was sexually harassing female nurses. The hospital told the doctor to stop the behavior and to apologize to Douglas. The doctor apologized and Douglas accepted. But a few weeks later, Douglas was fired under the pretext that he checked off his "rounds" boxes in advance of actually doing the rounds. This is a common practice by nurses with whom he worked - all the rounds still got completed.

Douglas sued, saying that the hospital's rationale was pretext for retaliation against him for reporting the doctor's anti-gay comments. Douglas filed a complaint with the Delaware Department of Labor, which determined that there was reasonable cause for Douglas to believe that the hospital retaliated against him for reporting the doctor's sexual harassment of the female nurses. After the Equal Employment Opportunity Commission reviewed Douglas' case and decided to pursue

his claim, the hospital finally agreed to settle with Douglas out of court.

Unfortunately, without legislation like ENDA, Douglas and other gay employees in Delaware have no protections. If the doctor or the hospital had limited their abuse to homophobic treatment, Douglas would have had no recourse. But because the doctor went on to sexually harass women (sex being a protected class both in Delaware and nationally), retaliation against reporting it was illegal.

Currently, the doctor continues to practice at the hospital and the hospital's nondiscrimination policy still does not include sexual orientation. Despite the settlement, Douglas has lost his professional position and emotionally has suffered very deeply.

Douglas quit nursing and devotes his time to LGBT work, setting up his own web site and advocacy group - Towardsequality.org. Douglas is an Army veteran, and continues to live with his partner in Delaware.

DISTRICT OF COLUMBIA



*Diane Schroer
Born in 1956*

As an Airborne Ranger and Special Forces officer, Diane Schroer completed 450 parachute jumps, received the Defense Superior Service Medal, and was hand-picked to lead a classified national security operation. But when she retired as a Colonel after 25 years of distinguished service in the Army, she faced one of her biggest challenges yet: coming out to her friends, family and employer as a transgender woman.

Diane had kept her gender identity a secret while she was in the Army, but she decided that she no longer wanted to keep the secret after she retired. After a stint at a private homeland security consulting firm, during which she was living as a woman while not at work and undergoing hormone therapy, Diane began searching for a new career. She interviewed for a job as the senior terrorism research analyst at a large federal agency library, a job for which she thought she was the perfect fit. She had a military background and was interested in military history and international relations. In fact she has a

16,000-volume home library collection on military history, the art of war, international relations, and political philosophy. Diane was thrilled to get an offer shortly after the interview and accepted the position right away.

Diane, who at the time was still using the name David professionally, asked her soon-to-be boss to lunch to talk with her about her transition. On their way to the restaurant, the division director was chatty and friendly, excited to have her start at the library and insisted that Diane was going to love working

there. When Diane explained that she is transgender and would like to begin the job as a woman, the only question the director asked her was which name should go on the hiring paperwork.

The next day, however, the director called Diane to rescind the job offer because "she wouldn't be a good fit" for the library. Diane was stunned. Twenty-four hours before the director rescinded the offer, the director had told her that she was the strongest candidate for the position. Diane was hurt and insulted. She had served her country for twenty-five years and now, according to Diane, "was being

told that I was no longer good enough to work for the federal government."

Diane began working with the ACLU to challenge the library's decision to withdrawal of her job offer. The District of Columbia has an employment nondiscrimination law that prohibits discrimination on the basis of gender identity, but it does not apply to federal employees. She is working as an independent consultant and now lives full time as a woman. In her free time, Diane sails, rides her two Harley-Davidsons, and spends time with her many friends and her three dogs.

FLORIDA



Robert Jernigan
Born in 1984

Robert worked at a retail music store in Florida. He needed the income from his job because Hur-

ricane Ivan destroyed his apartment and his car in 2004. After the hurricane wiped everything out, Robert had to move back home with his parents, who have conservative religious beliefs and do not approve of his sexual orientation.

Robert was openly gay at work, which presented a problem because his boss constantly asked Robert if he was HIV positive

and refused to believe Robert when he said he was not. Robert even offered to show the boss his HIV test results, but the boss continued to ask him if he was HIV positive. The boss also told offensive anti-gay jokes and made disparaging comments to Robert when gay customers came into the store. The work environment became even more uncomfortable for Robert when the store began to sell the soundtrack to the movie "Brokeback Mountain," a gay-themed movie.

After the movie was released, a gay couple came to the store and purchased the soundtrack. Robert's boss said the couple looked "sick" and HIV positive. He made a big deal about having to go wash his hands and told Robert: "If I found out anyone working here was HIV positive, I'd have to fire them. I can't handle that."

His boss had become increasing uncomfortable working with Robert and began to invent ways to accuse Robert of stealing in order to have him fired. Robert worked diligently for three years, but quit under the overwhelming pressure of the harassment.

FLORIDA



Susan Stanton
Born in 1958

Susan Stanton had been the city manager in Largo, Florida for 14 years and had received excellent job evaluations. In February 2007, Susan was fired as city manager just six days after an news article said that she was transgender and was going to transition from a man to a woman. The city commissioners voted 5-2 at a public meeting to fire Stanton. In the end, the commissioners said it was Stanton's judgment and honesty, not her

impending sex change that prompted their decision. Her appeal in March 2007 was unsuccessful and she was not reinstated.

Two months later, Susan applied for the position of city manager of Sarasota, Florida, 50 miles south of Largo. At an open meeting, Susan spoke personally and said that having a transgender city manager would not be as disruptive as they might think, and she hoped she had fully addressed all their concerns. The city commissioners interviewed Susan as one of five other candidates, but, unfortunately, Susan was not hired.

If ENDA were law, Susan might still have the job at which she excelled, in the city she lived in for many years.

INDIANA



Thomas Bryant
Born in 1969
(pictured on left)

Thomas worked for a temporary staffing agency in a cell phone supplies warehouse. Temporary workers had to prove themselves before the company offered them a staff position at the

warehouse by completing 1750 hours before being considered for full employment. Thomas' supervisors viewed him as a good employee. He was asked to train 50 new workers and trusted to use the RF Scan Gun, which would cost the company \$5,000 to replace.

Thomas was openly gay at work. When co-workers asked if he was married, Thomas said he had a life partner of more than five years. One co-worker repeatedly made comments about "fags" in front of Thomas. Thomas asked the co-worker to stop using that word because it offended him. The co-worker did not stop and continued to use the word. Each time Thomas told him to stop. The fourth time that the co-worker made a comment about "fags," Thomas told the co-worker that he had enough and he would have to go to human resources to report the co-worker. Thomas was leaving his station to go to human resources, when his supervisor said Thomas needed to drop the issue and get back to work. Thomas protested, saying he had put up with his co-worker's anti-gay comments for too long already. Then the supervisor told Thomas that the co-worker was exercising his "freedom of speech and he can say that to you if he wants."

Thomas went to human resources anyway, which brought the co-worker into the office with Thomas. The co-worker admitted using the word "fag." The human resources employee told him to stop saying it and then asked Thomas if that resolution was satisfactory. Thomas said it was and he thought the matter was concluded.

The next day, the company manager fired Thomas. The manager told Thomas that he was being fired because he slammed his RF Scan Gun down in anger the previous day before going to speak to Human Resources. Thomas denied slamming the gun and told his manager that the company's security cameras, as well as witnesses, would show that he did not slam down the gun. The manager fired Thomas anyway. The manager listed "discharged for attitude" and "provided misleading or inaccurate statements during investigation of harassment claim" on the written discharge notice. When he was fired, Thomas had worked for eight months and two days and was only 200 hours away from being eligible for a permanent employee position.

Thomas tried to find a lawyer who would represent him, but the lawyer told him that there is no law in Indiana against employment discrimination based on sexual orientation. Thomas is having a hard time finding new work because he does not have a high school diploma. He had dropped out of high school because his fellow students constantly harassed him and beat him up for being gay.

INDIANA



Susan Bresson
Born in 1963

Susan Bresson holds a masters degree, and in 2000, was hired and trained to provide accounting work as an assistant controller at a company that provides job placement services. Susan did not tell her supervisors

called her at the office every day. Six weeks into her training, Susan filled out her life insurance paperwork and listed her female partner as her beneficiary. Three days after she listed her female partner as her beneficiary, Susan was fired. She was told she was not working out even though her supervisors told her days earlier that her training was going well and they were making future plans for her.

or co-workers that she was a lesbian, although Susan had a rainbow sticker on the car that she drove to work and her partner

Now, Susan does accounting for a company that deals with troubled kids, where she is able to be out at work.

IOWA



Kathleen Culhane
Born in 1965

Kathleen was a research assistant doing chemical and biological analysis in an orthopedic surgeon's lab at a state university in Iowa. She had been working in the university for

three years when she told her supervisor and her co-workers that she was trans-

gender and would be transitioning from male to female. After this conversation, the surgeon stopped coming into the lab, and within weeks Kathleen was told she was being fired. The department administrator told Kathleen that they were firing her because they thought she could no longer give sufficient effort to the department because of her "condition."

When Kathleen found out that she was being fired, she notified the university's affirmative action office, which ordered the lab not to terminate her as long as she agreed to find work in another department. Kathleen had a few interviews in other departments, but no one wanted to hire her. She ultimately quit and left Iowa in 2002. "It caused me to leave a city I had lived in for 16 years," Kathleen said. "At the time it was overwhelming and terrible." Iowa's employment nondiscrimination law that protects LGBT employees did not come into effect until 2007, five years after Kathleen was forced to leave her job.

Kathleen now lives in St. Paul, Minnesota, is engaged to be married and has regained custody of her 12-year-old daughter. She sings in a chorus and is active in the Unitarian Universalist Church. Kathleen is also a veteran; she served in the Iowa Army National Guard.

MAINE



Brad Nadeau
Born in 1978

In April 2002, an insurance company in Bangor, Maine employed Brad in the area of reception

and public service. After about a month, Brad was called into a meeting for his performance review. All of his work was rated satisfactory

- he was not told that any areas of performance needed improvement. In fact, Brad trained a new employee who was hired a couple weeks after he was hired. Brad was not out at work because he was concerned that if he was honest about his sexual orientation, he might lose his job.

On June 2, 2002, Brad's partner picked him up at work and they went out for lunch together. When his partner brought him back to the office, they kissed goodbye in the parking lot. Brad noticed that an agency executive saw their kiss. The very same day, Brad saw that his supervisor and the executive were meeting behind closed doors. Brad was then called into a meeting with his supervisor and the executive. His supervisor told Brad that he was being fired

because his work was not satisfactory, despite his positive performance evaluation and the fact that he had over four years of office and administrative work experience.

Brad's termination seemed to violate company policy. The company policy states that the company is "committed to providing a work environment that is free of discrimination." The company also has a policy of progressive discipline, which the company states is "intended to give employees advance notice, whenever possible, of problems with their conduct or per-

formance in order to provide them an opportunity to correct any problems. Normally progressive discipline involves verbal counseling and one or more written warnings before an employee is terminated." Regardless, the company did not give Brad any warning before they fired him.

Maine currently has an employment nondiscrimination law that covers discrimination on the basis of sexual orientation and gender identity, however, the law was not in effect when Brad was fired in 2002.

MICHIGAN

John Schumacher
Born in 1949

John worked the overnight shift as stocker and "four star" cashier at a large retail store in

Michigan's remote Upper Peninsula. In three years on the job, he was named "Associate of the Month" four times. John is a Marine veteran with a high school diploma. He is the primary breadwinner because his partner is disabled.

He and the cashier supervisor carpooled to work everyday. At the time, the cashier supervisor was not John's supervisor, however, because John worked in the stockroom. After three months of carpooling, John told the cashier supervisor he was gay. She reacted with indifference and silence on the rest of the ride to work. Normally, John and the cashier supervisor would eat lunch together in the break room with other co-workers, but the night that John came out to her, she ignored John. The next night, he waited for her to pick him up, but she never came. He waited for an hour and then called a cab. When he arrived at work, the cashier supervisor was already there and did not say anything to him.

For several months, John was ignored by the cashier supervisor and he went about his busi-

ness. But when John was promoted to cashier, the cashier supervisor became his direct supervisor. "It was hell, starting off the bat," John said. The cashier supervisor treated John differently than the other cashiers. She assigned John stocking tasks in the shelves around the check-out lanes, but then yelled at him for leaving his register. She would not bring John change when he needed it, forcing him to go to the cash office to get change, but then he would get in trouble for leaving his register. Once, the cashier supervisor kept John and a customer waiting for 27 minutes before she came to his register to authorize a customer return, even though the store was not busy. Understandably, the customer was angry. John complained to the head manager five times but to no avail; each night the cashier supervisor would find a new way to make it more difficult for John to do his job.

On February 5, 2007, John came to work and realized he forgot to bring lunch and did not



have any cash to buy something at the store deli. John called home and asked his partner to bring something for lunch. His partner brought him a TV dinner from home. John ate the dinner in the break room in view of other workers and the cashier supervisor. Two weeks later, John was accused of stealing a frozen dinner from the store's grocery section. He was not able to produce a receipt for the TV dinner because he and his partner had bought it weeks before and did not save the receipt. He was fired on the spot.

While he worked at the retail store, John also volunteered at the local homeless shelter, cleaning and cooking meals. He also took "dis-

aster relief" classes at the local nonprofit organization so he could volunteer to assist in cases of a disaster like Katrina or 9/11. But the manager of the retail store from which John was fired sits on the board of the nonprofit organization, which owns the homeless shelter. Neither the shelter nor the nonprofit call John anymore to volunteer or take advance classes.

John is having a hard time finding a new job other than intermittent work, such as conducting telemarketing phone surveys. Word has spread around the area about his firing from the retail store and he is having trouble finding someone to hire him.

MISSISSIPPI



Ashley Thomas
Born in 1984

Ashley is a Native American woman living in Jackson, Mississippi. After she

graduated from high school, Ashley began working as a waitress in a restaurant. All of her co-workers knew that she had a girlfriend and her girlfriend would come to the restaurant to eat. When Ashley's boss discovered that Ashley was dating a woman, he began to harass her. Every day, he told Ashley she would go to hell for what she was doing and that she needed to find Jesus. Her boss' comments upset her to the point that she was in tears. Ashley's boss tried to get her to quit by making her do more work than other employees and being harder on her than anyone else. Her boss also made offensive comments like: "You just haven't found the right man; a man who knows what he is doing."

Ultimately, Ashley quit her job. She said that because of her experience, she is "less confident in telling coworkers who I am. I'm always in fear for my job because of my sexual identity." Ashley hopes that there will be a day when she can be out at work without being fearful of losing her job. She works with a LGBT community group, "trying to put a positive face on the gay community out there."



*Jessica Craig
Born in 1987*

Jessica works at a BBQ restaurant in San Antonio and is a student at a local community college.

Jessica had gone to high school with the restaurant owner's niece, who told the owner that Jessica is lesbian.

After the niece outed Jessica to the owner, Jessica's co-workers started to make a lot of anti-gay jokes. When Jessica asked her co-workers for help in lifting a heavy box, she was told: "you want to be a man, so lift that box yourself." When Jessica's girlfriend came to the restaurant to visit, Jessica's co-workers called her girlfriend

"Dumbo." Her co-workers repeatedly asked Jessica if she was still with "Dumbo." To get them to stop asking her, Jessica once said "no," to which a co-worker said: "Good, my prayers have been answered." Her co-workers often told her they were praying for her to "change."

Jessica complained about her co-workers' discriminatory comments to Human Resources, but Human Resources told Jessica to "stop making assumptions." Jessica asked Human Resources if there was anyone else she could talk to and the Human Resources employee said no. Fearing she would lose her job, Jessica contacted a member of the San Antonio city council who is sympathetic to LGBT issues, and explained her situation. The city councilmember contacted the restaurant owner to ask the owner to stop Jessica's co-workers from harassing her.

After the call to the city councilmember, the management on the job was very careful about not making harassing comments, but they began to look for any reason to write her up and fire her. They tried to send her home once by telling her she was suspended for a day, without giving her a reason or any written documentation. A co-worker told her that management was "setting her up" in order for them to be able to fire her for not being at work. To avoid that, she asked for documentation. Despite all of Jessica's efforts to keep a job she was good at, however, she ultimately got fired for not putting condiments out in a timely manner.

*J. C.
Born in 1971*

J.C. holds a masters degree and was the senior director of marketing for an online travel agency.

In more than three years on the job, J.C. distinguished himself as a top-performer. He got two

promotions and scored top performance ratings. In January 2006, his supervisor gave J.C. a rare perfect performance rating.

J.C. was openly gay at work and, as a result, he faced some instances of harassment. When J.C. was featured in the company newsletter, a vice

president of IT was overheard saying: "Great, we have a fag running our advertising." In 2006, J.C.'s boss left the company and the company hired a replacement who contributed to the harassment and seemed to treat him differently than other employees because J.C. was gay. J.C.'s new boss visited J.C.'s office and saw a picture of J.C. with another man on the desk. The boss asked who was in the picture. After J.C. said it was his partner, J.C.'s new boss started to treat him poorly.

First, the new boss questioned J.C. why the company was a sponsor of a Human Rights Campaign dinner. J.C. replied that the company had done this the past four years. The boss wanted documentation that the dinner was a worthy event in which the company should invest marketing resources. J.C. provided all the data on why advertising to the LGBT market was lucrative, but this was not sufficient for the boss. He wanted more proof this was a worthy market. Soon, the benchmark for marketing to the LGBT audience was much higher than marketing campaigns to any other group. In referring to the LGBT market, the boss would always use terms like "why are we doing *this type* of event" and "why are we marketing to *these people*." Once, J.C. pointedly asked, "What do you mean

by 'these people'?" The boss did not reply, but gave J.C. a look that clearly indicated that he did not want to start that conversation. Soon after he first starting raising questions about sponsoring LGBT events, the boss announced that, in the future, the company was not going to specifically target the LGBT market.

At J.C.'s next performance review, the boss gave him a zero, the lowest score possible. The boss' negative feedback in the review only mentioned nebulous comments like "doesn't have executive presence," giving J.C. nothing concrete. J.C.'s boss did not provide real examples to justify his negative comments and the low performance review score. The boss told J.C. to attend a leadership training class. In the class, J.C.'s peers all gave J.C. constantly high feedback scores, as opposed to the low scores his boss gave him. In January 2007, J.C. was fired. J.C. was told that he was fired due to "departmental restructuring."

J.C. is now employed as the chief marketing officer for an on-line lending company. He is out at work and has not encountered any problems from his supervisors or co-workers. J.C. lives with his partner of nine years in Dallas. They have two dogs.

TEXAS



Alex Gorinsky
Born in 1973
(pictured on left)

Alex was an account manager for a finance leasing company in the railroad industry.

He describes the industry as a "good old boy network" of very traditional clients. Alex worked for the company for five years, during which time he was promoted, received consistently positive reviews, and received merit pay raises. After three years with his partner, Alex felt like he needed to open up more and not hide his life, so he decided to bring his partner to the 2006 company Christmas party. His coworkers were very welcoming of his partner, Jon, but the introduction with his manager was awkward.

Three weeks later, Alex was laid off. His manager gave no specific reason for his termina-

tion, but the Human Resources Director said that he was fired for "performance related" reasons, while at the same time acknowledging that Alex's sales quota numbers were "solid." When Alex raised the possibility he was being fired because he had come out to his boss at the Christmas party, the human resources director said she did not know Alex was gay. However, she later mentioned the name of

Alex's partner Jon, whom Alex has not previously named, even though she had just claimed that she did not know that Alex was gay.

Alex found a new job in purchasing management with an airline. He and his partner were recently married in Canada, where Alex was raised. Alex and Jon live with their one-year-old puppy, Baxter.

TEXAS

James Quinn
Born in 1977

James has a high school GED and taught himself how to provide computer support. He worked at

the IT computer help desk at a multi-national corporation that provides products and services to oil and natural gas companies.

James received positive feedback from his supervisors. He was praised by his boss for being a vital piece in "building his bench" of solid team players. After working at the company for six months as a consultant, James was being considered for a promotion to full staff; one of the three consultants being considered out of the eight consultants who worked on the help desk.

James was out to a few people in the office, including a lesbian co-worker and three straight co-workers. James attended Houston's gay pride parade with these four co-workers. He also socialized with his lesbian co-worker outside of work, including going to lesbian bars with her. James and his lesbian co-worker had conversations at work in which their time at the bars came up, but they would not have graphic conversations because they knew they could be overheard by people in adjoining cubicles. If they had something to say that was more private, they would go outside onto the patio so that none of their co-workers would hear them. Other employees on the

same floor conducted prayer sessions in their cubicles during the workday that could be heard throughout the room.

In November 2006, someone in the office complained to Human Resources that James' conversation about his activities at gay bars and the gay pride parade constituted sexual harassment. A Human Resources employee asked James if he had ever talked in the office about attending gay bars or the pride parade. James replied that the only conversations of that kind that he had had were with his co-workers who had also attended the activities with him. The Human Resources employee said that talking about these activities constituted sexual harassment, and because James admitted having conversations about those topics, he was fired.

The lesbian co-worker and the straight co-workers who attended the activities with James were not fired. James' former lesbian co-worker continues to work at the company, but is not out at work because she fears for her job.

After being fired, James had to move back in with his parents. He now has a contracting job at a hospital helping with computer upgrades, but he had to take a \$20,000 pay cut from \$50,000 a year to \$30,000 a year. Because his new job does not provide health insurance, James has to pay for medical care out-of-pocket, which is a financial burden for James who is living with HIV.

TEXAS

*Brooke Waits
Born in 1981*

Brooke worked as the inventory control manager for a cell phone vendor. In the four months Brooke worked for the company, she implemented a control system that allowed the vendor to manage inventory. Her supervisor continually praised her for her work.

Brooke was not out to her co-workers at the store. She was quiet and kept to herself because she did not fit in with the other women who worked at the store and her male coworkers told a lot of lesbian jokes. She did not want to create problems, so Brooke did not say anything when her co-workers made anti-gay jokes and derogatory comments.

In May 2006, Brooke's manager approached Brooke's desk to ask her a question. Brooke was on the other side of the room sending a fax. Brooke's manager picked up Brooke's cell phone off of her desk, opened it, and then exclaimed "Oh my goodness!"

Brooke's manager had seen the screen saver inside Brooke's cell phone, which was a picture of Brooke and her partner sharing a New Year's Eve kiss. Brooke's manager immediately left the room and did not speak to Brooke at all for the rest of the day. Later in the day, Brooke overheard the manager tell another co-worker, "I knew there was something off about her."

The next day, Brooke arrived at work and, as soon as she walked in the door, her manager asked to speak with her. The manager told Brooke that she was fired. When Brooke asked why, the manager told her that they needed someone more "dependable." Brooke told the manager that she was dependable and, in fact, had been coming to work an hour early every day to work on implementing the new inventory system. The manager replied: "I'm sorry, we just need to let you go."

Until recently, Brooke worked part-time doing bookkeeping and taxes for her father's small business.

VIRGINIA



*Linda Czyzyk
Born in 1962*

(pictured on right)

Linda is an attorney and her partner is a college professor who teaches biology and genetics. The couple lived in North Carolina and Linda worked at a law firm where she was openly gay. When Linda's partner accepted a faculty position at a university in Virginia, the couple needed to relocate to Virginia.

In August of 2000, Linda had a phone interview with a law firm in Virginia and was invited for a second interview at the firm's office. During the interview, the firm repeatedly asked her why she was moving to Virginia. Linda replied that her spouse had taken a position at a local

university, making sure that she avoided using pronouns. The law firm asked Linda to come back for a third interview, but this time she was told to bring her spouse because the interview would include a dinner with all the partners and their spouses "to make sure we all got along."

Linda told the only female partner at the law firm that her spouse was a woman. The female partner said that was fine by her, but she would have to inform the other two partners at the firm. After talking to the male partners, the female partner called Linda back to tell her that the male partners said the firm would not hire

a lesbian and Linda should not bother coming to the third interview.

Since moving to Virginia, Linda started working in the public defenders' office. She often sees the partners in the firm that refused to hire her. While at the time, the firm had less than 15 employees and would not have been covered by ENDA as presently drafted, this story shows that without protection, even those who are trained to know better, can explicitly discriminate on characteristics other than skill or talent.

Linda and her partner enjoy hiking, camping and music. They care for six cats and a dog.



Conclusion

Sadly, these stories show that many workers have to work in the shadows - hiding themselves to protect their jobs. When discovered or when they took the bold step of coming out as LGBT, their livelihoods were put in jeopardy. By passing ENDA, Congress can help ensure that everyone can enter and succeed in the workplace without regard to sexual orientation or gender identity. ENDA will allow all American workers who stand side-by-side at the workplace, to also stand on the same footing in the eyes of the law.

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ENDNOTES

¹ HUMAN RIGHTS CAMPAIGN FOUNDATION, THE STATE OF THE WORKPLACE FOR GAY, LESBIAN, BISEXUAL AND TRANSGENDER AMERICANS (2006-2007) 12 (2007), available at http://www.hrc.org/Template.cfm?Section=Get_Informed2&CONTENTID=32948&TEMPLATE=/ContentManagement/ContentDisplay.cfm [hereinafter STATE OF THE WORKPLACE 2006-2007].

² Employment Non-Discrimination Act of 2007, H.R. 2015, 110th Cong. (2007). The bill defines “sexual orientation” as meaning “homosexuality, heterosexuality, or bisexuality.” *Id.* § 3(a)(9). The bill defines “gender identity” as meaning “gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual’s designated sex at birth.” *Id.* § 3(a)(6). As of this writing, the Senate version of the ENDA bill has not been introduced.

³ 42 U.S.C.A. §§ 2000e to e-17 (West 2005).

⁴ 29 U.S.C.A. §§ 621-634 (West 2005).

⁵ 42 U.S.C.A. §§ 12111-12117 (West 2005).

⁶ Transgender is an umbrella term for people whose gender identity, expression or behavior is different from that typically associated with their assigned sex at birth. M.V. LEE BADGETT ET AL., THE WILLIAMS INSTITUTE, BIAS IN THE WORKPLACE: CONSISTENT EVIDENCE OF SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION 9 (2007) [hereinafter BIAS IN THE WORKPLACE].

⁷ Employment Nondiscrimination Act, S. 2056, 104th Cong. (1996) (failing by a vote of 49-50 (roll call vote no. 281)).

⁸ STAFF OF S. COMM. ON HEALTH, EDUCATION, LABOR, AND PENSIONS, 107TH CONG., REPORT ON THE EMPLOYMENT NON-DISCRIMINATION ACT OF 2001, S. REP. No. 107-341, at 1 (2002); see Employment Nondiscrimination Act, S. 1284, 107th Cong. (2001).

⁹ Press Release, Gallup Poll News Service, Tolerance for Gay Rights at High Water Mark (May 29, 2007) [hereinafter Press Release, Gallup Poll News Service].

¹⁰ STATE OF THE WORKPLACE 2006-2007, *supra* note 1, at 23.

¹¹ American Civil Liberties Union’s Lesbian Gay Bisexual Transgender Project, Non-Discrimination Laws: State by State Information, http://www.aclu.org/lgbt/discrim/disc_map.html#maine [hereinafter ACLU, State Laws].

¹² *Id.*

¹³ U.S. GEN. ACCOUNTING OFFICE, GAO-02-878R, SEXUAL ORIENTATION-BASED EMPLOYMENT DISCRIMINATION: STATES’ EXPERIENCE WITH STATUTORY PROHIBITIONS, 1 (2002) [hereinafter GAO REPORT].

¹⁴ 42 U.S.C.A. § 2000e-2 (West 2005).

¹⁵ 29 U.S.C.A. § 623, 631 (West 2005).

¹⁶ 42 U.S.C.A. § 12111 (West 2005).

¹⁷ Courts have traditionally been unwilling to allow LGBT employees to use Title VII to sue for sexual orientation discrimination. See *Simonton v. Runyon*, 232 F.3d 33, 36 (2nd Cir. 2000); *Williamson v. A.G. Edwards & Sons, Inc.*, 876 F.2d 69, 70 (8th Cir. 1989); *DeSantis v. Pacific Tel. & Tel. Co., Inc.*, 608 F.2d 327, 329-30 (9th Cir. 1979), *overruled on other grounds by Nichols v. Azteca Rest. Enters.*, 256 F.3d 864, 875 (9th Cir. 2001). See generally, Toni Lester, *Queering the Office: Can Sexual Orientation Employment Discrimination Laws Transform Work Place Norms for LGBT Employees?*, 73 UMKC L. REV. 643, 646-648 (2005).

¹⁸ See *Smith v. City of Salem, Ohio*, 378 F.3d 566, 575 (6th Cir. 2004) [stating that “[s]ex stereotyping based on a person’s gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior; a label, such as “transsexual,” is not fatal to a sex discrimination claim where the victim has suffered discrimination because of his or her gender non-conformity.”]; see also NAT’L CTR. FOR LESBIAN RIGHTS, FEDERAL CASES RECOGNIZING THAT DISCRIMINATION ON THE BASIS OF GENDER NON-CONFORMITY AND/OR TRANSGENDER STATUS IS A FORM OF DISCRIMINATION ON THE BASIS OF SEX (2006), *available at*

www.nclrights.org/publications/nonconform.htm [citing mostly cases dealing with sexual harassment of employees who do not conform to gender stereotypes]; Ilona M. Turner, Comment, *Sex Stereotyping Per Se: Transgender Employees and Title VII*, 95 CAL. L. REV. 561, 561-62 (2007).

¹⁹ STATE OF THE WORKPLACE 2006-2007, *supra* note 1, at 12.

²⁰ *Romer v. Evans*, 517 U.S. 620, 631 (1996) [stating that “we cannot accept the view that Amendment 2’s prohibition on specific legal protections does no more than deprive homosexuals of special rights. To the contrary, the amendment imposes a special disability upon those persons alone.”].

²¹ *Id.*

²² See, e.g., Deborah J. Vagins, *Occupational Segregation and the Male-Worker-Norm: Challenging Objective Work Requirements Under Title VII*, 18 WOMEN’S RTS. L. REP. 79, 86-91 (1996) [explaining disparate impact theory in Title VII claims].

²³ Employment Non-Discrimination Act, H.R. 2015, 110th Cong. § 6 (2007).

²⁴ *Id.* § 6(a).

²⁵ *Id.* § 6(b).

²⁶ *E.E.O.C. v. Catholic Univ. of America*, 83 F.3d 455, 461 (D.C. Cir. 1996) [quoting *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985)].

²⁷ H.R. 2015, § 6(c).

²⁸ 42 U.S.C.A. § 12113(c)(2) (West 2005).

²⁹ See Michael C. Falk, *Lost in the Language: The Conflict Between the Congressional Purpose and Statutory Language of Federal Employment Discrimination Legislation*, 35 RUTGERS L. J. 1179, 1199 (2004) [citing U.S. Dep’t of Labor, *The Older American Worker: Age Discrimination in Employment: Report of the Secretary of Labor to the Congress Under Section 715 of the Civil Rights Act of 1964* (1965)]; see Rebecca E. Zietlow, *To Secure These Rights: Congress, Courts and the 1964 Civil Rights Act*, 57 RUTGERS L. REV. 945, 976 (2005) [citing ROBERT D. LOEY, *TO END ALL SEGREGATION: THE POLITICS OF THE PASSAGE OF THE CIVIL RIGHTS ACT OF 1964* 49 (1990)]; 42 U.S.C.A. § 12101(a)(9) (West 2005).

³⁰ 42 U.S.C.A. § 12101(a)(9).

³¹ Falk, *supra* note 29, at 1199 [citing Report of the Secretary of Labor to the Congress, at 5].

³² *Id.* [citing Report of the Secretary of Labor to the Congress, at 18-19].

³³ See STAFF OF H.R. COMM. ON EDUCATION AND LABOR, 102ND CONG., *REPORT ON THE CIVIL RIGHTS AND WOMEN’S EQUALITY IN EMPLOYMENT ACT OF 1991*, H.R. REP. No. 102-40, at 19 (1991); Zietlow, *supra* note 29, at 976; see, e.g., Mark J. Wolff, *Sex, Race, and Age: Double Discrimination in Torts and Taxes*, 78 WASH. U. L. Q. 1341, 1456, 1459-60 (2000).

³⁴ BIAS IN THE WORKPLACE, *supra* note 6, at i. A 2002 poll reported that 40% of gay employees have been discriminated against at work, showing the need for protection is very real. See Press Release, CBS Market Watch Survey: 40% of Gays Report Bias in the Workplace (Sept. 12, 2002). The survey reported that 2 out of 5 gay and lesbian employees say they have been discriminated at work. Of these, 23% said they experienced harassment on the job, 12% claimed they were denied a promotion, and 9% said their employment was terminated unfairly. *Id.*

³⁵ BIAS IN THE WORKPLACE, *supra* note 6, at i.

³⁶ *Id.*

³⁷ See Press Release, Careerbuilder.com, *Twenty-eight Percent of Gay/Lesbian/Transgender Workers Have Experienced Discrimination or Unfair Treatment at Work*, CareerBuilder.com and Kelly Services Survey Shows (June 19, 2007), <http://www.careerbuilder.com/share/aboutus>.

³⁸ *Id.*

³⁹ BIAS IN THE WORKPLACE, *supra* note 6, at ii. Although the findings on the impact of lesbians’ wages are less clear, the studies do show that lesbians consistently earn less than men, regardless of sexual orientation. *Id.* at ii.

⁴⁰ Julie A. Baird, *Playing it Straight: An Analysis of Current Legal Protections to Combat Homophobia and Sexual Orientation Discrimination in Intercollegiate Athletics*, 17 BERKELEY WOMEN'S L.J. 31, 65 (2002) (citing Dr. Lee Badgett, University of Massachusetts at Amherst, Employment Discrimination on the Basis of Sexual Orientation, Religious Tolerance, http://www.religioustolerance.org/hom_empl1.htm).

⁴¹ BIAS IN THE WORKPLACE, *supra* note 6, at ii.

⁴² See Kenneth A. Kovach and Peter E. Millsbaugh, *Employment Non Discrimination Act: On the Cutting Edge of Public Policy*, 39 BUS. HORIZON 65, 70 (1996) (citing a study that states that an estimated 42,000 gay employees are dismissed each year due to their sexual orientation).

⁴³ *Id.*; see also Jeremy S. Barber, Comment, *Re-Orienting Sexual Harassment: Why Federal Legislation is Needed to Cure Same-Sex Sexual Harassment Law*, 52 AM. U. L. REV. 493, 531 & n. 238 (2002).

⁴⁴ STATE OF THE WORKPLACE 2006-2007, *supra* note 1, at 23.

⁴⁵ *Id.* at 1.

⁴⁶ *Id.* at 23; Human Rights Campaign Foundation, Business Coalition for Workplace Fairness, www.hrc.org/workplace/support [hereinafter HRC, Business Coalition].

⁴⁷ HRC, Business Coalition, *supra* note 46. As of August 3, 2007, other members of the coalition include: Alberto-Culver Co., Bausch & Lomb, Inc, BP America, Inc., Bristol-Myers Squibb Co., Capital One Financial Corp., Charles Schwab & Co., Chevron Corp., Chubb Corp., Cisco Systems Inc., Citigroup, Clear Channel Communications, Inc., Coors Brewing Co., Corning Inc., Deutsche Bank, Ernst & Young LLP, Gap Inc., GlaxoSmithKline, Goldman Sachs Group Inc., Google Inc., Harrah's Entertainment Inc., Hewlett-Packard Co., HSBC -North America, Kaiser Permanente, Lehman Brothers, Levi Strauss & Co., Merrill Lynch & Co., Inc., Nationwide, NCR Corp., QUALCOMM Inc., Replacements Ltd., Robins, Kaplan, Miller & Ciresi LLP, Sun Microsystems Inc., Time Warner Inc., Travelers Companies Inc., and Washington Mutual Inc. *Id.*

⁴⁸ STATE OF THE WORKPLACE 2006-2007, *supra* note 1, at 1.

⁴⁹ ACLU, State Laws, *supra* note 11. Those states are California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon (effective Jan. 1, 2008), Rhode Island, Vermont, Washington, Wisconsin, and the District of Columbia. *Id.*

⁵⁰ STATE OF THE WORKPLACE 2006-2007, *supra* note 1, at 13.

⁵¹ ACLU, State Laws, *supra* note 11. These states are California, Colorado, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon (effective Jan. 1, 2008), Rhode Island, Vermont, Washington, and the District of Columbia. *Id.*

⁵² STATE OF THE WORKPLACE 2006-2007, *supra* note 1, at 12, 13. It should also be noted that some state courts and state and local governmental bodies have interpreted their existing state laws to include some protection against transgender individuals in Connecticut, Florida, Hawaii, Massachusetts, New Jersey and New York. *Id.*

⁵³ Press Release, Gallup Poll News Service, *supra* note 9.

⁵⁴ Memorandum from Peter D. Hart Research Associates, Results of Survey on Employment Non-discrimination (Feb. 26, 2007).

⁵⁵ GAO REPORT, *supra* note 13, at 1.

⁵⁶ *Id.* at 1, 7, 10.

⁵⁷ BIAS IN THE WORKPLACE, *supra* note 6, at 11 (citing William B. Rubenstein, *Do Gay Rights Laws Matter?: An Empirical Assessment*, 75 S. CAL. L. REV. 65, 101 (2001)).

⁵⁸ See *Employment Non-Discrimination Act: Hearing on S. 1284 Before the S. Comm. on Health, Education, Labor, and Pensions*, 107th Cong. 20 (2002) (testimony of Matthew Coles Director, Lesbian & Gay Rights Project, American Civil Liberties Union).

Hardworking Americans should not be kept from supporting their families and making a positive contribution to the economic life of our nation because of characteristics that have no bearing on their ability to do their job. Many workers have to make a choice of hiding who they are at work in order to support their families at home.

Recently introduced federal legislation, the Employment Non-Discrimination Act of 2007 (ENDA), would prohibit discrimination based on sexual orientation and gender identity in most workplaces. ENDA offers Congress and American employers the opportunity to ensure workplace equality for everyone by protecting LGBT employees and their co-workers from discrimination in employment. ENDA will allow all American workers who stand side-by-side at the workplace, to also stand on the same footing in the eyes of the law.

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“There’s a lot that the president can do using his executive authority without waiting for congressional action, and I think we’ll see the president do that ... He feels like he has a real mandate for change. We need to get off the course that the Bush administration has set.”

—**John Podesta, transition chief, President-elect Barack Obama**

For the lesbian, gay, bisexual and transgender (LGBT) community, the election of a fair-minded president provides vast opportunities to advance equality in material ways on an accelerated timetable. This results not only from new leadership and vision in the White House itself, but from new management of the entire executive branch as well. These agencies recommend and implement policies related to violence, health education and research funding, family benefits and other areas that are critical to the well-being of LGBT people.

Through the power that our Constitution provides the president and executive branch, the incoming Obama/Biden administration can institute much-needed changes in federal policy without congressional action. The president has the power to appoint officials who are receptive to civil rights, and judges who respect fundamental constitutional principles and enforce legal protections for all Americans. The president is also empowered to direct administrative actions that will improve the lives of millions of LGBT people.

For example:

- **Federal Workplace Non-Discrimination:** As leader of our nation’s largest civilian work force, the president may institute non-discrimination, healthcare access and other policies to establish the equal rights of federal LGBT employees.
- **HIV and Health:** The administration, and its secretary of Health and Human Services can promote honest, accurate information about LGBT people in its public information on HIV/AIDS and other health issues and support a national, comprehensive strategy to fight HIV/AIDS in the United States.
- **Hate Crimes and Civil Rights:** As head of the nation’s largest law- and civil rights-enforcement entities, the president can appoint an attorney general committed to fighting bias-motivated violence against LGBT Americans, as well as to rigorously enforcing all civil rights protections.
- **Federal Fundee Non-Discrimination:** The president can ensure that no social service program uses federal funding to discriminate against LGBT Americans. And although the LGBT community celebrates America’s tradition of religious liberty, the president can oppose the use of religious liberty as a proxy for anti-LGBT discrimination.
- **Judicial Appointments:** A fair-minded judiciary is critical to the civil rights of all Americans. LGBT Americans rely upon the president to appoint judges with a robust understanding of fundamental rights and equal protection, and who respect Congress’ power to enact civil rights legislation.

Jump to sections

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(j)The Federal Government as Employer

Non-Discrimination in the Federal Workplace

According to seasonally adjusted numbers from the Bureau of Labor Statistics, the federal government employed some 2,745,000 individuals in June 2008 — 2 percent of the nation's non-farm labor force. It has the duty and power to set an example for all public and private employers by providing equal opportunity for its LGBT employees.

President Clinton's 1998 Executive Order 13,087 sent a clear message that discrimination based on sexual orientation would not be tolerated in federal employment. It clearly resonated throughout the private sector. Such discrimination was banned by 86.6 percent of Fortune 500 companies, 26 state governments and 281 local governments as of January 2008.

Although Clinton's executive order was a step forward, today's federal work force lags well behind other leading employers in banning workplace discrimination based on gender identity. Gender identity protections are provided by 30.6 percent of Fortune 500 companies, 12 state and 93 local governments. The president should issue a new executive order protecting transgender workers and act quickly to restore full enforcement of civil service law with regard to discrimination based on sexual orientation.

Benefits and Protections for Families

The majority of Fortune 500 companies provide domestic partner benefits to their employees. These include the "Big Three" automakers, most major airlines, IBM, Microsoft, Shell Oil, Walt Disney, Fannie Mae, Citigroup and Time Warner. In addition, 16 states and 201 local governments offer domestic partnership benefits to their public employees.

In contrast, the federal civilian work force not only lacks health benefits for same-sex partners, but gay and lesbian Americans serving our government abroad are denied such basic family services as language training, evacuation assistance and access to State Department medical facilities (Recently, former Ambassador to Romania Michael Guest cited the lack of family benefits as his reason for retiring from the Foreign Service.)

The denial of these basic family services causes gay and lesbian Foreign Service officers to fear for the health and safety of their families and experience much greater financial hardship. The administration can provide these protections by acknowledging that the gay and lesbian partners of Foreign Service officers are, in fact, members of their family.

Although including same-sex partners in the Federal Employee Health Benefit Plan (FEHBP) would require legislation, the administration can extend benefits to the children that federal employees and their same-sex partners are raising.

Non-Discrimination by Employers and Service Providers Who Use Federal Dollars

When the federal government hires private companies to perform government functions with public funds, it can and should expect the contractors to adhere to the same civil rights standards as the government would if it were doing the work itself.

Executive Order 11,246 already ensures strict conformity to these

standards by providing recourse to act when a federal contractor or subcontractor discriminates on the basis of race, color, religion, sex or national origin. The president should amend Executive Order 11,246 to prohibit discrimination on the basis of sexual orientation and gender identity by federal contractors and subcontractors as a term of contract. No longer should a corporation be allowed to reap the rewards of receiving federal contracts while ignoring basic workplace protections for its employees.

Non-Discrimination in Faith-Based Initiatives

In recent years, the federal government has increasingly turned to religious organizations to provide vital services to vulnerable populations. These include substance abuse treatment, early childhood education, food and nutrition assistance, job training and homeless shelters. Faith-based groups often have expertise in these areas as well as strong ties to the communities they serve. Making use of their skills and commitment can have remarkable benefits.

Yet in order to ensure that federal dollars do not finance discrimination, the administration must issue clarifying regulations that ensure that the government does not discriminate on the basis of religion, religious affiliation, or lack of religious affiliation in making government grants or contracts and that grants and contracts continue to be issued based solely on merit. The administration should also affirmatively clarify that the statutes containing charitable choice provisions in no way preempt federal, state or local laws preventing discrimination on the basis of sexual orientation or gender identity.

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(I)The Executive Branch’s Role in Promoting Public Health

Public health is a national priority, and the administration plays a key role in providing funding for research, education and programs to address the special needs of minority communities. Yet while the LGBT community faces urgent and particular challenges, not all employers offer health benefits to their employees’ same-sex partners, and where those benefits are provided they are subject to unfair taxation. Health insurance is also less accessible to LGBT people. Most insurers fail to cover procedures and treatments related to gender transition, and due to a recent IRS ruling, such costs are not reimbursable under flexible spending accounts.

Aside from facing a lack of access to health coverage and potential discrimination by health care providers, LGBT people also face increased risks of HIV/AIDS and certain cancers. Recent focus on scientifically-inaccurate, ideologically-focused “abstinence-only” sexuality education has disadvantaged LGBT youth even more greatly than other communities, because the message of waiting until marriage is not relevant to people who are still legally denied the right to marry.

The Human Rights Campaign has studied the following areas of public health and crafted recommendations to address inequities in federal policy.

Improved Response to HIV/AIDS

Although HIV/AIDS affects people from all walks of life, the epidemic continues to disproportionately impact the LGBT community — especially young gay and bisexual men of color. Our government has made tremendous strides toward effective prevention and treatment, but there is much more to be done. The administration should promote a national plan to reduce AIDS infections, provide treatment and fund research for a cure.

Addressing the Specific Needs of LGBT People as a Community

Federal legislation and administrative policies allocate funding for health initiatives aimed at minority and disadvantaged populations. Current designated groups include women, persons with disabilities

and rural populations. LGBT people also face significant challenges in gaining access to quality healthcare, due to discrimination by providers and insurers and/or a lack of understanding of the health issues that disproportionately impact them.

The administration should designate LGBT Americans as a health disparity group as a means of expanding research on LGBT healthcare needs and increasing access to treatment.

Educating the Public About Disease Prevention

Preventing the spread of HIV/AIDS and other communicable diseases is a critical priority for the LGBT community. Effective, scientifically-accurate prevention education can save lives. Unfortunately, the Bush administration's policy of funding "abstinence-only" programs has left LGBT youth and adults without adequate information.

Realistic information about our community is also sorely lacking in other administration materials addressing youth and sexual activity; for example, in a section about discussing abstinence with offspring, an HHS web-based resource for parents only briefly notes that some youth may identify as gay or lesbian and gives no guidance as to how to actually speak to an LGBT young person about sexual activity other than to "address this issue in an age-appropriate manner."

The administration must provide discussion of the realities of sexual activity for LGBT youth, or it will continue to increase their risk of contracting HIV or other sexually-transmitted diseases.

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(j)Protecting Families

According to the 2000 Census, gay and lesbian couples live in 99.3 percent of U.S. counties, and in 96 percent of those counties gay and lesbian couples are raising children. Of the more than 780,000 same-sex couples estimated in 2006, approximately 27 percent are raising children under 18 in the home. As of 2000, 22.3 percent of gay couples and 34.3 percent of lesbian couples are raising children.

Although different-sex couples have access to hundreds of protections for themselves and their children in every state, and more than 1,100 protections and benefits at the federal level, families headed by gay and lesbian couples suffer legal disadvantages in inheritance rights, taxation, retirement planning, family and medical leave, access to healthcare, and often even the opportunity to visit one another in the hospital.

In 48 states, gay and lesbian couples are denied the right to marry. In addition to full marriage equality in Massachusetts and Connecticut, an additional nine states and the District of Columbia provide legal protections to gay and lesbian couples through domestic partnerships or civil unions.

Yet because of the so-called Defense of Marriage Act (DOMA), even couples whose states recognize them as married or parties to a civil union are denied more than 1,100 federal benefits and protections that other families take for granted. For example, gay and lesbian workers pay equally into the Social Security system, but same-sex partners and their children are denied most of the family benefits that Social Security provides.

Although gay and lesbian couples are explicitly excluded by statute from most of the protections that other families receive under federal law, the administration has the power to implement some changes that will benefit same-sex couples themselves as well as their children.

Clarifying the Family and Medical Leave Act (FMLA) to Protect LGBT Couples and their Children

Sixty percent of children raised by same-sex couples live in jurisdictions

that do not permit second-parent adoption. Consequently, for these children, it is impossible to secure a permanent, legal relationship to both parents and the guarantee of legal protections that such a relationship provides. Although the definition of “spouse” under federal law explicitly excludes same-sex couples, the administration can and must clarify the FMLA definition of “child” to ensure that all children of same-sex couples are covered.

Assessing the Failed Policy of Discharging Essential Service Members Due to Sexual Orientation

There is growing consensus among the American public as well as veterans and active duty service members that the military’s “Don’t Ask, Don’t Tell” (DADT) policy must be eliminated.

Since DADT was implemented in 1993, more than 10,000 qualified members of the U.S. Armed Forces have been discharged under the law. A Government Accountability Office report found that by 2005, discharges of service members with mission-critical skills were nearing 800.

DADT also deters many qualified lesbian, gay and bisexual (LGB) people from enlisting in the military. Studies have estimated the military loses more than 4,000 LGB military personnel each year whom it would otherwise have retained had they been able to be open about their sexual orientation.

Although this discriminatory policy is statutory and requires congressional action to eliminate, the administration should establish a plan for eliminating DADT to guide Congress in repealing the policy in its entirety.

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(I)Community Safety

Improving Response to Hate Crimes

According to FBI data, a bias-motivated violent crime occurs every hour. Although the FBI stated that 7,722 hate crimes occurred in 2006, the Bureau of Justice Statistics — the research arm of the Department of Justice — estimates that approximately 191,000 bias-motivated incidents, affecting 210,000 victims, occur annually. Although there may be any number of reasons for this disparity, it is indisputable that hate crimes are vastly under-reported in this country.

While LGBT people constitute a small percentage of the population, anti-LGBT attacks are among the most common hate crimes. Federal hate crimes law does not cover crimes motivated by anti-LGBT bias, even though a federal sentence-enhancing statute does apply to anti-gay crimes, and the Hate Crimes Statistics Act (HCSA) authorizes the collection of data on anti-gay violent crimes.

The Department of Justice should prioritize investigating and prosecuting all types of hate crimes. Additionally, the administration should review the Hate Crimes Statistics Act and make recommendations for legislative or regulatory changes to encourage reporting by law enforcement agencies in under- or non-reporting jurisdictions.

Protecting LGBT People from Domestic Violence

Like all communities, the LGBT community faces the problem of domestic violence. Although the Department of Justice (DOJ) has recognized both heterosexual and same-sex domestic violence as a national problem, prosecutions under the Violence Against Women Act (VAWA) have historically been nonexistent in cases where both the victim and the offender are members of the same gender.

In 2006, Congress passed legislation that expanded the breadth of the criminal provisions of VAWA to protect “intimate partners” and “dating partners.” The language could not be any clearer in its gender

neutrality in broadly extending protection to individuals in any “social relationship of a romantic or intimate nature.” Yet even with such an expansive definition clearly protecting LGBT victims, DOJ has not sufficiently informed prosecutors that VAWA can apply when both the victim and offender are members of the same gender.

To solve this problem, DOJ should issue a ruling in which it clarifies that the interstate domestic violence and stalking provisions of VAWA apply in situations where the offender and the victim are of the same gender.

Ease Unfair Burdens on Transgender People in Securing Identity Documents

The current federal method for determining whether a transgender person may change his or her gender marker on identity documents does not accurately reflect the decisions that such people make in their transition process, nor the financial burdens that inhibit access to medical treatments.

Transgender individuals experience higher levels of discrimination, harassment and emotional trauma as a consequence of being denied the right to have the gender markers on identity documents match their gender presentation. Given that the current policy causes such harm, the administration should revisit the current standards regarding gender marker changes in Social Security records, passports and other federal identity documents in order to reduce the burdens on transgender people.

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(j) Travel and Immigration

In an age of heightened security concerns, the executive branch has a strong interest in ensuring the safety of citizens traveling to and from the United States, as well as foreign nationals visiting or seeking asylum. For LGBT people, new security regulations and immigration policies have created extra burdens, including invasions of privacy. The administration should revisit travel and immigration policies in order to remove unfair barriers to LGBT people traveling or visiting.

Alleviate Burdens on Transgender Travelers

New screening measures instituted by the government to ensure the security of airline travel are not equally experienced by all groups. Current Transportation Security Administration (TSA) regulations require transgender passengers to sacrifice a certain level of privacy in order to travel freely. Although TSA has sought to avoid time-consuming and privacy-invasive security measures through the adoption of new technologies, these efforts have failed to address the privacy concerns of the transgender community. The administration should make sure that security procedures accommodate the privacy of transgender travelers and treat them in a respectful and non-discriminatory way.

Eliminating Discrimination in Providing Visas to LGBT and HIV-Positive Travelers

The Immigration and Nationality Act (INA) renders any individual with a “communicable disease of public health significance” inadmissible to the United States and directs the secretary of Health and Human Services to create and maintain the list of those diseases.

Although Congress lifted the statutory HIV travel ban in July 2008, as long as HIV remains on the secretary’s list of communicable diseases, HIV-positive individuals are precluded from entering the United States on either a permanent or temporary basis unless they qualify for one of a handful of narrowly defined waivers.

The current regulatory bar to entry for HIV-positive foreign nationals divides families, deprives American businesses and universities of

talented workers and students, and keeps away researchers and scientists working against the HIV/AIDS epidemic. For these reasons, the administration should remove HIV from the list of “communicable disease[s] of public health significance” in federal regulations.

Providing Asylum to Individuals Persecuted Because of Their HIV Status or Gender Identity

When deciding whether to grant asylum, the Board of Immigration Appeals (BIA) considers whether a foreign national can demonstrate a “well-founded fear” of persecution in his or her home country on account of his or her “membership in a particular social group.” BIA has defined social group membership as “that [which] the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.”

In general, what constitutes “membership in a particular social group” is determined by precedent established by the BIA and reviewed by the attorney general. BIA should recognize HIV-positive and transgender petitioners as members of a “particular social group” because they meet the BIA definition of being unable to change their HIV status or gender identity.

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(J)Judicial and Executive Appointments

A president's power to appoint judges and officials has far-reaching consequences. Judges' decisions can affect our lives for generations. Executive branch officials shape the policies that have been discussed elsewhere in this paper, ranging from civil rights enforcement to public health to protections for families. The Administration should ensure that only fair-minded individuals, committed to impartial judgments and policies based upon fact rather than ideology, serve our nation in these key posts.

Appointing Fair-Minded Justices and Judges

Appointments to the federal judiciary are a president's most enduring legacies. Because Supreme Court justices and lower-court judges serve life terms, and because the courts seldom reverse their own precedents, each new justice shapes decisions that will be felt by generations to come.

In recent years, we have seen important legal victories in cases such as *Romer v. Evans*, which held that a state could not make it more difficult for LGB people to secure protections through the legislative process, and *Lawrence v. Texas*, in which the Court concluded that a state could not impose criminal penalties for private, adult, noncommercial, consensual sexual relations. These cases signal that the federal courts are increasingly willing to enforce the constitutional rights of lesbian, gay, bisexual and transgender Americans.

The LGBT community is making great strides in securing legal protections through the legislative process, especially in the states, but protections for LGBT people are still sparse, and increasingly, are challenged by anti-LGBT litigation groups. In order to ensure that legal protections survive these challenges, that the courts do not erode civil rights laws that will pass in the future (as has recently happened with other civil rights laws such as Title VII), and to guarantee that the courts recognize LGBT people's fundamental rights and basic equality, the president should nominate only justices and judges who possess exceptional intellectual ability, distinguished experience in law, and a temperament that would enable them to make decisions fairly and with an open mind should they be confirmed for lifetime appointments to the bench.

HRC believes that an assessment of temperament worthy of lifetime appointments should include the following:

- Demonstrated commitment to full equality under law for lesbian, gay, bisexual and transgender Americans; individuals living with HIV and AIDS; women; people with disabilities; and racial, ethnic and religious minorities;
- Demonstrated commitment to the constitutional right to privacy and individual liberty, including the right of two consenting adults to enter into consensual intimate relationships;
- Respect for the constitutional authority of Congress to promote equality and civil rights and provide statutory remedies for discrimination and violence;
- Sophisticated understanding of and commitment to the separation of church and state and the protection of those citizens with minority religious views;
- Respect for state legislatures' attempts to address discrimination and violence based on sexual orientation, gender identity, disability, race, ethnicity and other factors through carefully crafted legislation that meets the requirements of the Constitution.

Executive-Branch Appointments

Although executive branch officials serve only during the president's term and at the president's pleasure, their decisions and priorities drive the administration's policies in many areas, including those of particular interest to LGBT Americans. As the breadth of topics covered in this summary indicates, the president's appointments to every branch of government can have a material impact on the well-being of LGBT people.

Two positions in the Bush administration—attorney general and surgeon general—provide case studies in ways that an appointment can influence policy and an administration's oversight can hamper progress.

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Conclusion

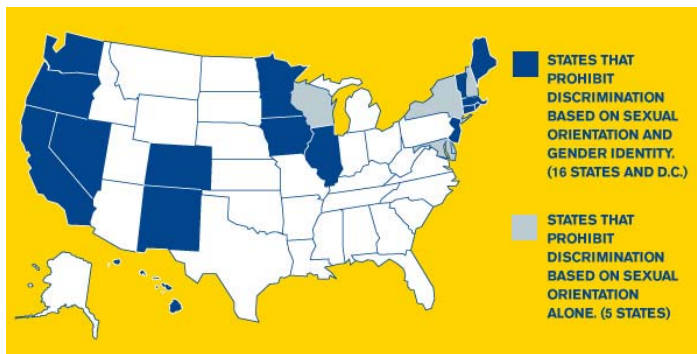
The next administration has an opportunity to implement policies that improve access to medical care, workplace equality, family protections, public health, and community safety for the LGBT community. By appointing fair-minded judges and LGBT-friendly executive branch officials, the administration can ensure that the next eight years not only reverse the damage of the most recent eight, but that the government serves this community as it never has before.

President-elect Obama, through executive actions and appointments throughout the executive branch, can and should act to alleviate the challenges faced by LGBT Americans. Such action is consistent with his long-standing commitment to pro-LGBT legislation in the U.S. Senate and the Illinois Legislature. We encourage President-elect Obama to continue this work in his role as the head of the executive branch.

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An Important Step toward Workplace Equality: An Executive Order on Federal Contractors

Employment discrimination continues to be a critical problem facing the lesbian, gay, bisexual and transgender (LGBT) community. It remains legal to fire or refuse to hire someone based on his or her sexual orientation in more than half the country – 29 states – and to base those same employment decisions on someone’s gender identity in 34 states. Far too many LGBT people cannot be honestly themselves without fear of losing their livelihoods.



The Employment Non-Discrimination Act (ENDA), federal legislation that would prohibit anti-LGBT workplace discrimination, remains critically needed to address this enormous inequality. Unfortunately, the current climate in Washington, D.C. makes passage of ENDA in the short term unlikely. There is another option, however, that could protect millions more American workers from unjust discrimination – an executive order on federal contractors. By issuing such an order, the President would not only create fairer workplaces across the country, he would demonstrate to Congress that adopting federal employment protections for LGBT people is good policy and good for business.

Protecting Millions More Workers

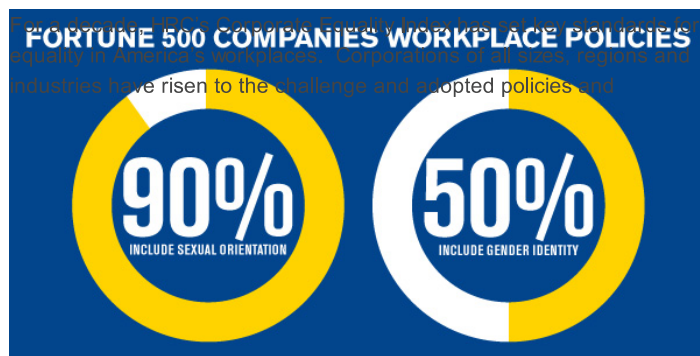
An executive order would prohibit companies that contract with the federal government from discriminating in employment based on sexual orientation and gender identity. Federal contractors employ more than 20 percent of the American workforce and earn around \$500 billion from federal taxpayers every year. According to [the Williams Institute](http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-EOImpact-Feb-201211.pdf) (<http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-EOImpact-Feb-201211.pdf>), an executive order would extend LGBT-inclusive employment protections to 16 million more workers.





Following Best Practices in Corporate America Today

Every day, more and more American companies are realizing that in order to stay competitive in an evolving global economy, every employee's contribution must be valued. These companies recognize that inclusive nondiscrimination policies are not just the right thing to do, they are good for business. Businesses contracting with the federal government are no different. Many federal contractors— including the five largest, all defense contractors— have adopted LGBT-inclusive equal employment opportunity policies.



practices that treat LGBT workers fairly and equally. For example:

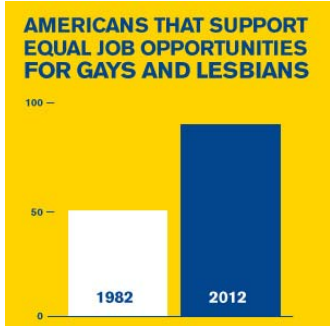
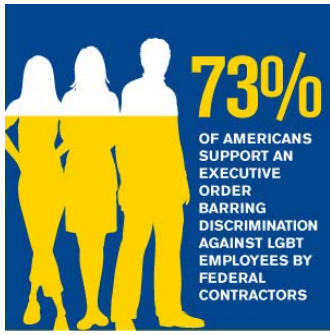
- Nearly 90% of Fortune 500 companies include sexual orientation in their workplace policies and 50% include gender identity.
- More than 300 major companies require their suppliers to adhere to their own LGBT-inclusive workplace policies, including more than half of the 100 largest corporations in America. These companies span 35 distinct industries and employ nearly 10 million people

Expanding Longstanding Requirements for Contractors

Under Executive Order 11246, first issued by President Johnson, companies contracting with the federal government for \$10,000 or more in a single year are prohibited from discriminating against employees based on race, color, religion, national origin, or sex. His order built on prohibitions on race discrimination in various federal contracts issued by prior presidents, as far back as Franklin Delano Roosevelt, that predated broader civil rights protections.

Putting Core American Values into Practice

Americans believe that everyone should get a fair shot in the workplace, and should be judged on qualifications and performance. Even thirty years ago, [public polling \(http://www.gallup.com/poll/1651/Gay-Lesbian-Rights.aspx\)](http://www.gallup.com/poll/1651/Gay-Lesbian-Rights.aspx) showed that a majority of Americans have supported equal job opportunities for gays and lesbians; today nearly 90% do.



In order to make a strong case to the administration for this executive order, HRC commissioned a poll in November 2011 which showed that 73% of Americans support an executive order barring discrimination against LGBT employees by federal contractors. The poll demonstrated not only that there is strong support for the order across the ideological spectrum, but also that issuing the order would make voters more favorable towards the president.

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