THE LEGAL LANDSCAPE: PROTECTIONS FOR LGBT WORKERS

Currently only 20 states and D.C. have laws that explicitly prohibit discrimination based on sexual orientation and gender identity. The Equal Employment Opportunity Commission (EEOC) and a growing number of federal courts have extended protections to include sexual orientation and gender identity—specifically through Title VII’s prohibition on discrimination based on sex.

Despite this patchwork of protections, LGBT workers still report high rates of discrimination when looking for work and on the job.

MANY LGBT WORKERS ARE PEOPLE OF COLOR, YOUNGER\(^1\), UNEMPLOYED, UNDOCUMENTED, IN A LOWER INCOME BRACKET, AND EXPERIENCING A LOWER LEVEL OF OVERALL WELL-BEING.\(^4\)

WHO ARE LGBT WORKERS?

In the U.S., 4.5% of the population identifies as lesbian, gay, bisexual, or transgender\(^1\)—an estimated 11 million LGBT people—and 88% are employed.

Race

LGBT people are racially diverse—one-third of LGBT people are people of color; and Black, Hispanic, and Asian people are more likely than white people to identify as LGBT.\(^3\)

Legal Status

There are approximately 1 million LGBT immigrants in the U.S.—and 30% are undocumented.\(^2\)

With harsh immigration policies and lack of nondiscrimination protections, undocumented LGBT workers are at increased risk for discrimination and exploitation.
**DEFINING DISCRIMINATION**

Sex discrimination in Title VII is not only about biological sex. It needs to include legal safeguards that consider gender norms and how they impact everyday work.

*Example:* actions taken against a transgender employee because they fail to conform to gender stereotypes in the workplace—including style of hair or dress—is also sex discrimination.

**BARRIERS FOR LGBT EMPLOYEES**

A recent study suggests that nearly 50% of LGBT workers remain closeted at work and fear being stereotyped or jeopardizing professional connections. Anti-LGBT bias is highly prevalent in the workplace and creates massive hurdles in the day-to-day:

**Hiring/Firing**
- 27% of transgender workers reported being fired, not hired, or denied promotion in 2016-2017.
- Applicants may obscure details about sexual orientation or gender identity.

**Wages**
- Despite comprising 4.5% of adults in the United States, LGBT adults comprise 6.2% of people who earn less than $36,000 a year.
- 22% of LGBT workers were not paid or promoted at the same rate as colleagues.
- Gay men report higher salaries than lesbian women, but both report less income than non-LGBT colleagues.

**Benefits**
- Only 1 out of 5 U.S. companies offer paid family leave for LGBT employees.
- Only 58% of Fortune 500 companies offer transgender-inclusive benefits.

Transgender employees and LGBT workers of color experience disproportionately higher levels of discrimination in the workplace:
- More than 25% of trans employees were fired, not hired or not promoted because of gender identity or expression.
- When applying for jobs, LGBT people of color (POC) report 2x more discrimination based on sexual orientation.

**THE INTERSECTIONAL DIFFERENCE**

1. **Having a Criminal Record**
   - LGBT people, particularly people of color, are overrepresented in the criminal justice system.
   - Among incarcerated adults:
     - 2 of 3 adults are POC
     - 7.8% are LGBT

2. **Reentry issues after conviction:**
   - Inadequate programs
   - Restrictive probation/parole
   - Discriminatory family networks
   - Difficulty finding a job, pursuing education, or obtaining a name change

3. **Sex Work**
   - Trans people face higher risks:
     - 69.3% of transgender sex workers reported a previous negative outcome in the traditional workforce.
     - Respondents who lost their jobs due to transphobia were 3x more likely to engage in sex work.
     - In the U.S., transgender individuals’ risk of poverty is 4x higher than the general population.

**ADDED CHALLENGES FOR LGBT WORKERS**

1. **Changing Economies**
   - **Analyzing the ‘gig’ economy**
     - Although freelance work is increasing in the U.S., most workers do not generate substantial income.
     - Workers often enter the gig economy to supplement ‘main’ jobs, and some may take on multiple gigs to make ends meet.

2. **Tipped workers + gig platforms**
   - In the restaurant industry, women and POC are the lowest paid workers.
   - 23% of restaurant workers experienced verbal abuse related to sexual orientation.
   - Lyft drivers are 2X as likely to be LGBT.

3. **A higher minimum wage can benefit workers.**
   - In the U.S., the minimum wage is $7.25/hour, or $15,080 in annual earnings.
   - Raising the minimum wage to $15/hour could reduce poverty by up to 50% for same-sex couples.
   - POC make up 42% of minimum wage workers in the U.S.
LGBT PEOPLE IN THE WORKPLACE: DEMOGRAPHICS, EXPERIENCES AND PATHWAYS TO EQUITY

A TIMELINE OF IMPORTANT FEDERAL WORKPLACE PROTECTIONS

CLASSES OF PROTECTED WORKERS

- 1938 Fair Labor Standards Act
- 1950 Social Security Act
- 1963 Equal Pay Act
- 1964 Civil Rights Act Title VII
- 1967 Age Discrimination in Employment Act
- 1970 Occupational Safety and Health Act
- 1974 Employee Retirement Income Security Act (ERISA)
- 1978 Pregnancy Discrimination Act
- 1990 Americans with Disabilities Act
- 2008 Genetic Information Nondiscrimination Act

FEDERAL MINIMUM WAGE, OVERTIME
BENEFITS FOR RETIREES, DEPENDENTS, SURVIVORS
SAFE WORK ENVIRONMENTS
RETIREMENT PLANS, HEALTH INSURANCE
HEALTH INSURANCE CONTINUATION
MEDICAL LEAVE

WORKER RIGHTS & BENEFITS

PRIORITIES FOR A POLICY AGENDA

Establishing federal- and state-level LGBT protections is a pathway towards equality, but grassroots campaigns that are led by workers and prioritize workers’ rights can accelerate policy change. LGBT policy work should also center on trans and POC workers to adequately solve the discrimination all LGBT people face.

FEDERAL
- Update federal laws to prohibit discrimination based on sexual orientation and gender identity.
- Amend the Fair Pay Act to include sexual orientation and gender identity.

STATE
- Pass state laws prohibiting employment discrimination.
- Adopt laws that ensure legal documentation for transgender people.

LOCAL
- Foster advocacy that engages with municipal and institutional policy.
- Form worker-led coalitions to establish a grassroots platform for LGBT nondiscrimination.

WHAT IS THE NATIONAL LGBTQ WORKERS CENTER AGENDA?

The goal of the National LGBTQ Workers Center is to create a space where workers can go to stand up to workplace discrimination and fight for economic justice. Through issue-based, grassroots organizing and labor education the organization works toward progressive social change with an emphasis on uplifting queer and transgender people of color.

7 Sejal Singh and Laura E. Durso, Center for American Progress (2017), Widespread Discrimination Continues to Shape LGBT People’s Lives in Both Subtle and Significant Ways.