

# LGBT EMPLOYEES & TITLE VII



## UNDERSTANDING FEDERAL PROTECTIONS FOR LGBT EMPLOYEES

**A number of cases** brought by lesbian, gay, bisexual and transgender (LGBT) employees who have been discriminated against because of their sexual orientation or gender identity are working their way through federal courts. Title VII is a federal law that prohibits employment discrimination on the basis of sex, among other protected characteristics. The Equal Employment Opportunity Commission (EEOC) and several courts have found that discrimination based on sexual orientation and gender identity violate Title VII's prohibition on discrimination based on sex. These cases are important for LGBT employees across the country because a positive interpretation of Title VII would cover employees even in states with no state nondiscrimination law.

### MANY LGBT EMPLOYEES EXPERIENCE DISCRIMINATION IN THE WORKPLACE

**25%** OF LGBT PEOPLE REPORT EXPERIENCING DISCRIMINATION AT WORK IN THE PAST YEAR BECAUSE OF THEIR SEXUAL ORIENTATION OR GENDER IDENTITY



Source: Singh, S. & Durso, L. E. (2017). Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways. Center for American Progress.

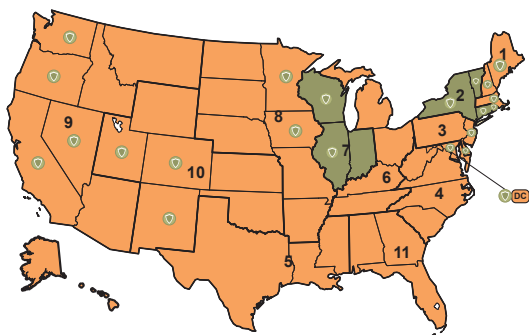
**27%** OF TRANSGENDER WORKERS REPORT BEING FIRED, NOT HIRED, OR DENIED A PROMOTION IN THE PAST YEAR



Source: James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.

### SOME FEDERAL COURTS HAVE RULED THAT TITLE VII PROTECTS LGBT WORKERS

CURRENTLY, THE SECOND AND SEVENTH CIRCUITS HOLD THAT TITLE VII PROTECTIONS EXTEND TO SEXUAL ORIENTATION

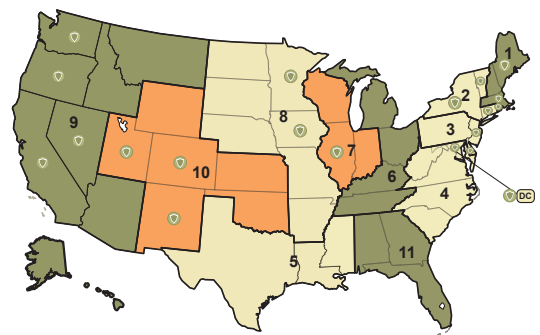


22 states and DC have laws that prohibit employment discrimination based on sexual orientation

- Circuit court decision holding that sex discrimination under Title VII includes discrimination based on sexual orientation
- Circuit court decision holding that sex discrimination under Title VII DOES NOT include discrimination based on sexual orientation
- State has no relevant case law

Source: Movement Advancement Project, Equality Maps.

FOUR CIRCUIT COURTS, COVERING 20 STATES, HOLD THAT DISCRIMINATION BASED ON SEX INCLUDES DISCRIMINATION AGAINST TRANSGENDER PEOPLE



20 states and DC have laws that prohibit employment discrimination based on gender identity

- Circuit court decision holding that sex discrimination under Title VII includes discrimination based on gender identity
- Circuit court decision holding that sex discrimination under Title VII DOES NOT include discrimination based on gender identity
- State has no relevant case law

Source: Movement Advancement Project, Equality Maps.

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## FEDERAL ENFORCEMENT OF TITLE VII IS IN JEOPARDY

### 2012 & 2015

In 2012, the Equal Employment Opportunity Commission (EEOC), a federal agency charged with enforcing Title VII, ruled that transgender discrimination is discrimination on the basis of "sex" under Title VII in *Macy v. Holder*.

In 2015, the EEOC ruled that Title VII prohibits bias based on sexual orientation in *Baldwin v. Fox*.

### 2017

In a brief to the Second Circuit in the *Zarda* case (see below), the Department of Justice (DOJ) argued that sexual orientation is not covered under Title VII.

Later, the DOJ announced that they would no longer protect transgender Americans from workplace discrimination under Title VII. These unprecedented attacks are aimed at systematically eroding the legal equality and even the basic dignity of LGBT Americans.

## HOW ARE DISCRIMINATION BASED ON SEXUAL ORIENTATION AND DISCRIMINATION BASED ON GENDER IDENTITY FORMS OF SEX DISCRIMINATION?

When someone is discriminated against for being LGBT, that discrimination is a form of sex discrimination because "but for" their sex, they would not face such discrimination. Take the example of a lesbian being fired after being seen holding hands with her wife. If she were a man, she would not be fired. "But for" her being a woman, she would not have experienced that discrimination. The same is true for workers who are seen as qualified until they begin a gender transition and then are discriminated against for being transgender. "But for" their gender, they would not have faced such discrimination.

Title VII's prohibition on discrimination based on sex is not only about one's sex, but also about sex stereotypes and whether one adheres to those stereotypes. For example, discrimination based on sexual orientation rests on the stereotype that men are or should be attracted only to women, and that women are or should be attracted only to men.

Similarly, gender identity discrimination is sex discrimination because it is rooted in views that transgender people don't fit the idea of how a man or woman "should" be. Discriminating against a transgender employee who fails to conform to stereotypes in the workplace, including hair style and style of dress, is discrimination based on sex because the discrimination is rooted in stereotypes about how men and women should appear, act, and dress.

## SEVERAL CASES ARE MOVING THROUGH FEDERAL COURTS ACROSS THE COUNTRY

### ZARDA V. ALTITUDE EXPRESS (SEXUAL ORIENTATION)

Donald Zarda, a skydiver, was fired from his job after his employer learned he was gay. A district court rejected his discrimination claim, saying that the Civil Rights Act does not protect him for bias he endured for being a gay man. Tragically, in October 2014, Zarda died unexpectedly, but the case continues on behalf of his estate. In 2017, an appeal on behalf of the estate petitioned the 2nd Circuit to revisit its precedent and hold that sexual orientation discrimination is a form of sex discrimination. A three-judge panel denied Zarda's claim in April 2017, but in February 2018, the full 2nd Circuit ruled that discrimination based on sexual orientation constitutes discrimination based on sex as prohibited under Title VII.

### HORTON V. MIDWEST GERIATRIC MANAGEMENT (SEXUAL ORIENTATION)

Mark Horton, a healthcare sales specialist, had a job offer at St. Louis-based Midwest Geriatric Management withdrawn when the employer learned Horton is gay. A lower court dismissed his case claiming discrimination under Title VII, but in March 2018, the Eighth Circuit Court of Appeals was asked to consider the case.

### EEOC V. R.G. & G.R. HARRIS FUNERAL HOMES (GENDER IDENTITY AND EXPRESSION)

Aimee Stephens worked as a funeral director at R.G. and G.R. Harris Funeral Homes when she informed the funeral home's owner that she is a transgender woman and planned to start dressing in appropriate business attire for a woman. The owner fired her two weeks later, explaining that it would be "unacceptable" for her to present and dress as a woman. The Sixth Circuit Court of Appeals ruled in March 2018 that she was discriminated against in violation of Title VII.

A Positive Ruling Would Protect Workers in These States:

