A Broken Bargain: UNCHECKED DISCRIMINATION AGAINST LGBT WORKERS

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INTRODUCTION

The basic American bargain is that those who work hard and meet their responsibilities should have the opportunity to get ahead. It is founded on the principle that workers will be judged based solely on their performance and qualifications—no matter who they are, what they look like, or where they are from. This basic bargain is not just an idea—it is embedded in laws that promote equal access to jobs and protect workers from discrimination.

But these laws do not protect everyone.

U.S. workers who are lesbian, gay, bisexual, and transgender (LGBT) continue to face inequality, unfairness, harassment, and discrimination in the workplace, and they often have nowhere to turn for help. No federal law provides explicit legal protections for LGBT workers,¹ and fewer than half of states have laws that protect workers based on sexual orientation and gender identity/expression.²

LGBT workers face discrimination that makes it harder for them to find and keep good jobs, earn a living, and provide for themselves and their families. This discrimination includes:

• Bias and Discrimination in Recruitment and Hiring. LGBT workers can put their job prospects at risk if they disclose that they are LGBT while looking for work.

• On-the-Job Inequality and Unfairness. An LGBT employee may be in a workplace that is blatantly hostile, one that condones anti-gay jokes and slurs, and/or one where employers look the other way and allow a discriminatory climate to flourish. In such a work environment, workers may choose not to be open about being LGBT or risk being stigmatized, discriminated against, or unfairly fired.

• Wage Gaps and Penalties. In addition to job and workplace discrimination, LGBT employees face wage disparities that make it harder for them to provide for themselves and their families.

The discrimination experienced by LGBT workers not only impacts them. Discrimination against LGBT people also harms businesses and communities. Without nondiscrimination laws protecting LGBT workers, employers may have higher recruitment and retention costs, lose out on innovation, and have a harder time staying competitive.

Discrimination Faced By LGBT Workers

Hiring Bias

LGBT workers often find it harder than non-LGBT workers to secure a good job (see Figure 1). For example, studies show that people who have LGBT-related work or volunteer experience on their résumé are less likely to be invited to job interviews than individuals with otherwise identical résumé, as are similarly qualified transgender applicants.³

LGBT applicants often face a dilemma during job interviews, as asking basic questions about earned benefits like domestic partner or spousal health insurance coverage could put their chances of getting a successful offer at risk. LGBT candidates who decide to keep quiet about their sexual orientation or gender identity/expression cannot ask about important benefits like domestic partner health coverage. Similarly, a transgender applicant may be unable to ask whether he will be fully covered under the company healthcare plan.

Like other job seekers, some LGBT job applicants are also women, people of color, people with disabilities, and older adults. Workers with multiple identities, such as those who are LGBT and Black, may experience additional discrimination.

Figure 1: Denied Employment or Unfairly Fired

Lesbian, gay and bisexual people who were unfairly fired or denied employment 8-17%

Transgender people who were unfairly fired or denied employment 13-47%

Source: Endnote 4.

Figure 2: LGBT Workers Who Are Out to Everyone at Work By Race

White Workers 29%

Black Workers 25%

Latino Workers 18%

Source: Endnote 5.
**LGBT Workers Lack Legal Protections**

Only 21 states and the District of Columbia have laws prohibiting discrimination in employment based on sexual orientation. Transgender workers facing workplace discrimination may seek recourse under federal law by filing a complaint with the Equal Employment Opportunity Commission (EEOC), but the EEOC’s decisions are not binding on private employers (though most private employers voluntarily comply with EEOC rulings). Only 18 states and the District of Columbia explicitly prohibit discrimination based on gender identity/expression (see *Figure 3*).

In the absence of LGBT-inclusive federal and state workplace laws, many cities and counties have passed their own local nondiscrimination ordinances (see *Figure 4*). Local ordinances often provide the sole source of legal protection for LGBT municipal employees, LGBT employees of municipal contractors, and/or LGBT employees of local private employers. Unfortunately, some ordinances are poorly framed and fail to provide effective legal remedies for individual workers who experience discrimination.

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**Figure 3: State-Level Employment Nondiscrimination Laws**

- Employment nondiscrimination law covers sexual orientation and gender identity (18 states + D.C.)
- Employment nondiscrimination law covers only sexual orientation (3 states)
- No employment nondiscrimination law covering sexual orientation or gender identity (29 states)

**Figure 4: Local Employment Nondiscrimination Ordinances**

- 100% of state population is protected from employment discrimination based on gender identity (18 states + D.C.)
- 50-59% of state population is protected from employment discrimination based on gender identity through local ordinances (2 states)
- 25-49% of state population is protected from employment discrimination based on gender identity through local ordinances (6 states)
- 1-24% of state population is protected from employment discrimination based on gender identity through local ordinances (12 states)
- 0% of state population is protected from employment discrimination based on gender identity through local ordinances (12 states)

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*When a person is fired* from a job because of their sexual orientation, it’s not just the job that they are losing. They lose their income, their ability to feed their family, their health care coverage, a sense of self-worth and the dignity of having a job. When a gay father or lesbian mother lose their job because of their sexual orientation, what is taken from them is also taken from their children—the security of a home and an ability to provide for those basic needs.

—S. Milligan, Testimony from Jackson, Michigan.

as a black lesbian or a Latino gay man, may face “double discrimination” if they come out at work. Not surprisingly, a recent study found that black and Latino/a LGBT workers were less likely to be out than other LGBT workers (see Figure 2 on page 1).9

On-the-Job Discrimination

When LGBT candidates secure a job, they may face uncomfortable workplaces where anti-gay slurs, jokes, and verbal harassment are commonplace (see Figure 5).

Discrimination against LGBT workers can also result in unfair negative performance evaluations, denied promotions, and unfair firing, as shown in Figures 6 and 7. Without basic workplace protections, LGBT employees in hostile work environments face a difficult decision: Either leave a job that is a good match for their skills and experience, or return to work each day and experience emotional trauma or even the risk of physical harm.

Wage Gaps and Penalties

Studies consistently find that sexual orientation and gender identity/expression do play a role in workplace wages.11 Gay and bisexual men experience a “wage penalty” relative to heterosexual men.12 Polls also show that individuals who self-identify as LGBT are more likely to report incomes of less than $24,000 per year, and less likely to report incomes of more than $90,000 per year, compared to their non-LGBT peers.13 This is consistent with research that shows that LGBT people are at higher risk of poverty than non-LGBT people.14

Women in same-sex couples actually fare better than women in married different-sex couples, but still experience the gender-based wage gap relative to all men (see Figure 8 on the next page).15 Household income for lesbian couples is considerably lower than it is for both opposite-sex households and households headed by gay men.16 Two lesbian women—even if they individually earn...
more than comparable heterosexual women—may still have a combined household income that is lower than that of a married opposite-sex couple because both earners’ wages are affected by the gender wage gap. Studies find that lesbians and bisexual women are more likely to live in poverty than are heterosexual women.17

Transgender workers also face particularly large income disparities compared to the general population. According to the largest survey of transgender people in the U.S. to date, 15% of transgender respondents have household incomes under $10,000 per year, compared to just 4% of the population as a whole, as shown in Figure 9.20

Discrimination Harms LGBT Workers, Businesses, and Communities

The lack of legal protections for LGBT workers, combined with the unequal treatment they receive in areas from wages and hiring, is not just a problem for LGBT workers; it also harms their coworkers, their employers, and America’s economy. A recent review of studies finds that workplaces that value LGBT workers and treat them fairly see many positive benefits, including:21

Attracting and Retaining Top Talent. Successful companies of all sizes know that imposing arbitrary limits on the hiring pool makes no business sense, and adds to the costs of attracting talent. Treating LGBT workers unfairly will result in a talent drain as these workers look elsewhere for jobs. What’s more, it is not just LGBT workers who will become disenchanted and leave. Employers will also lose workers who are not LGBT but who are uncomfortable watching their coworkers being treated unfairly.22 It is estimated that 2 million people voluntarily leave jobs each year because of workplace unfairness, and this turnover costs businesses as much as $64 billion annually.23

Boosting Productivity and Results. When workers feel satisfied, respected, and valued, they do their best work and contribute to an organization’s bottom line.24 Similarly, when an employee sees that an employer is committed to diversity and workplace fairness, he or she will be more likely to stay with that company and more likely to recommend that company to others as a good place to work.

Spurring Innovation and Reaching New Markets. An inclusive work environment can be a key advantage for organizations that want to grow and expand their products and services. Creating such an environment requires a culture that encourages freedom of thought, cross-pollination of ideas, and ingenuity.25 In addition, when a company’s workforce mirrors the diversity of its customers, it is easier for the company to understand the needs of those customers, particularly in fields where relationships and networking are key to business development.
Solutions for Fair Treatment at Work

The majority of Americans believe that workers should be treated fairly. In fact, 72% of Americans support workplace nondiscrimination protections for LGBT workers, while 75% erroneously believe such protections already exist under federal law (see Figure 10).

While many elected officials remain at odds with the American public by blocking legal protections for LGBT workers, America’s most successful businesses recognize that creating LGBT-inclusive workplaces is both good for business and the right thing to do. A 2013 Small Business Majority survey of small business owners found that 69% support legislation protecting LGBT workers from employment discrimination.26 Countless private employers, ranging from large corporations to mom-and-pop small businesses, have put in place policies that protect LGBT workers in their workplaces (see Figure 11).

RECOMMENDATIONS

Enact nondiscrimination laws and policies. Federal, state, and local governments should pass nondiscrimination laws/ordinances that include explicit protections for LGBT workers on the basis of sexual orientation and gender identity/expression. Employers can also adopt nondiscrimination policies for their own workplaces.

The president should issue an executive order mandating that federal contractors have employment policies prohibiting discrimination on the basis of actual or perceived sexual orientation or gender identity. Such an order, together with state-level protections, could help ensure that a majority of the American workforce is covered by employment protections. The Department of Labor should start accepting transgender discrimination cases under existing executive orders given the EEOC’s ruling in Macy v. Holder that discrimination against transgender people constitutes sex discrimination.

Increase wage discrimination protections. The federal government should expand existing legal protections against wage discrimination to include protections based on sexual orientation and gender identity/expression.

Ensure effective and swift discrimination claims processing. The federal government should address the backlog of discrimination cases before the EEOC, while private employers and unions should institute clear and effective grievance systems.

Foster diverse and inclusive workplaces. Government and private employers should put in place policies and procedures that foster welcoming and inclusive workplaces and encourage diversity.
ABOUT THIS BRIEF

This brief is based on content from A Broken Bargain: Discrimination, Fewer Benefits and More Taxes for LGBT Workers, a report that examines how job discrimination without legal protection makes it harder for LGBT workers to find and keep good jobs; and how LGBT workers receive fewer benefits and pay more taxes, which puts LGBT workers and their families at risk. The report also offers recommendations for how federal, state, and local governments, as well as employers, can reduce barriers to good jobs and equal access to individual and family benefits for LGBT workers. For more information, visit www.lgbtmap.org/lgbt-workers, www.americanprogress.org, www.hrc.org, or www.freedomtowork.org.

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