

# A BROKEN BARGAIN

*Discrimination, Fewer Benefits and More Taxes for LGBT Workers*

Condensed Version

June 2013



movement advancement project



Center for American Progress

Authors



Partners

With a foreword by



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### **Movement Advancement Project**

The Movement Advancement Project (MAP) is an independent think tank that provides rigorous research, insight and analysis that help speed equality for LGBT people. MAP works collaboratively with LGBT organizations, advocates and funders, providing information, analysis and resources that help coordinate and strengthen their efforts for maximum impact. MAP also conducts policy research to inform the public and policymakers about the legal and policy needs of LGBT people and their families. For more information, visit [www.lgbtmap.org](http://www.lgbtmap.org).

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### **Human Rights Campaign**

The Human Rights Campaign (HRC) seeks to improve the lives of LGBT Americans by advocating for equal rights and benefits in the workplace, ensuring families are treated equally under the law and increasing public support among all Americans through innovative advocacy, education and outreach programs. HRC works to secure equal rights for LGBT individuals and families at the federal and state levels by lobbying elected officials, mobilizing grassroots supporters, educating Americans, investing strategically to elect fair-minded officials and partnering with other LGBT organizations. For more information, visit [www.hrc.org](http://www.hrc.org).

## This report was developed in partnership with:

### **Freedom to Work**

Freedom to Work is a national organization dedicated to the notion that all Americans deserve the freedom to build a successful career without fear of harassment or discrimination because of their sexual orientation or gender identity. For more information, visit [www.freedomtowork.org](http://www.freedomtowork.org).

### **National Partnership for Women & Families**

The National Partnership for Women & Families works to promote fairness in the workplace, reproductive health and rights, access to quality affordable health care, and policies that help women and men meet the dual demands of work and family. For more information, visit [www.nationalpartnership.org](http://www.nationalpartnership.org).

### **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. For more information, visit [www.transequality.org](http://www.transequality.org).

### **Out & Equal Workplace Advocates**

Out & Equal Workplace Advocates (Out & Equal) is the world's largest nonprofit organization specifically dedicated to creating safe and equitable workplaces for LGBT people. Out & Equal believes that people should be judged by the work they do, not by their sexual orientation or gender identity. For more information, visit [www.outandequal.org](http://www.outandequal.org).

### **Service Employees International Union**

Service Employees International Union (SEIU) is an organization of 2.1 million members primarily focused in three sectors: healthcare, property services, and public services. SEIU is committed to building a fair economy, providing workers a voice on the job, fighting for equality and ensuring that all working people can live with dignity. For more information, visit [www.seiu.org](http://www.seiu.org).

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## NOTE ABOUT THIS CONDENSED REPORT

This is a digest version of the full report, *A Broken Bargain: Discrimination, Fewer Benefits and More Taxes for LGBT Workers*, available online at [www.lgbtmap.org/lgbt-workers](http://www.lgbtmap.org/lgbt-workers), or through any of the co-author or partner websites.

This report incorporates information that was current as of May 15, 2013. For legal updates, please see the Movement Advancement Project's Equality Maps at [www.lgbtmap.org/equality-maps](http://www.lgbtmap.org/equality-maps).

The comprehensive full report paints one of the most complete portraits to date of the wide range of obstacles facing LGBT workers in America. It is there that readers can find expanded discussions, detailed tables and figures, full citations, references, attributions and clarifications. As a convenience to those relying on this version as a guide to the original, a list of additional information with corresponding page numbers appears at the end of each condensed section.

## How Does the Supreme Court Challenge to the Federal Defense of Marriage Act Impact this Report?

This report frequently references the impact of the federal Defense of Marriage Act (DOMA) on LGBT workers. Under Section 3 of DOMA, the federal government must treat married same-sex couples as unmarried for the purposes of federal laws and programs. This is true for same-sex couples who are legally married in their state as well as those who are in a state-based domestic partnership or civil union.

A pending case before the U.S. Supreme Court, *United States v. Windsor*, argues that Section 3 of DOMA is unconstitutional. A decision on the case is expected in June 2013.

### So how do the analyses in this report change if the Supreme Court strikes down Section 3 of DOMA?

Even were the federal government required to recognize married same-sex couples, same-sex couples can only marry in 12 states and the District of Columbia. Another seven states offer comprehensive civil unions or domestic partnerships for same-sex couples, but most legal scholars believe it is unlikely that the federal government would recognize these same-sex couples as married. Regardless, a further 31 states, covering 55% of the U.S. population, offer no comprehensive legal recognition for same-sex couples. For the majority of LGBT workers, the analyses in this report would therefore remain fundamentally unchanged. When committed same-sex couples are denied marriage at the state level, they will also continue to be seen as unmarried by the federal government (regardless of DOMA).

For example, at time of publication, all same-sex couples (married and unmarried) are denied Social Security spousal benefits. Should the Supreme Court strike down Section 3 of DOMA, those same-sex couples who live in marriage equality states and who choose to marry will presumably be eligible for Social Security spousal benefits. However, the majority of same-sex couples, who live in states that lack the freedom to marry, will still be denied these benefits. In other words, *the analyses and inequities in this report will remain substantially unchanged for most same-sex couples*—though the benefit and tax inequities facing *married* same-sex couples would likely be largely resolved.

There is no doubt that striking down Section 3 of DOMA would go a long way toward resolving unequal treatment for married same-sex couples. But until same-sex couples can marry throughout the nation, the remaining inequities described in this report will continue to be a problem for the majority of LGBT workers.

Finally, should Section 3 of DOMA be struck down, it will not affect the lack of explicit employment non-discrimination protections for LGBT workers—and the often unchecked bias that makes it harder for LGBT workers to earn a living and provide for themselves and their families.



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**FOREWORD**

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## EXECUTIVE SUMMARY

### The Broken Bargain for LGBT Workers

The basic American bargain is that people who work hard and meet their responsibilities should be able to get ahead. This basic bargain is not just an idea—it is embedded in laws that promote equal access to jobs and that protect workers from unfair practices.

For workers who are lesbian, gay, bisexual and transgender (LGBT), this bargain is broken. Instead of having a fair chance to get ahead, LGBT workers and their families often are held back by bias, fewer workplace benefits, and higher taxes.

Employers who value diversity and who understand that it gives them a competitive advantage can take some steps to ease the burden of unfair treatment of LGBT workers and their families, but they can't fix the broken bargain on their own. The reason: unequal treatment of LGBT workers under the law.

First, no federal law provides explicit nondiscrimination protections for LGBT workers, and fewer than half of states have laws that protect workers based on sexual orientation and gender identity/expression. Second, LGBT workers may do the same job as their coworkers, yet be denied equal access to worker and family benefits—as well as family tax relief.

The combination of job discrimination, fewer benefits and higher taxes leaves many LGBT workers in a vulnerable position that threatens their ability to provide for themselves and their families. If fairness and equality are part of America's basic workplace bargain, this bargain is clearly broken for LGBT workers.

### A Portrait of the LGBT Workforce

The U.S. workforce includes an estimated 5.4 million LGBT workers:

- **LGBT workers are geographically dispersed.** Same-sex couples live in 93% of all U.S. counties. As many as 4.3 million LGBT people live in states with no state laws providing employment protections based on sexual orientation or gender identity/expression.
- **LGBT workers are racially and ethnically diverse.** One in three LGBT respondents (33%) in a 2012 Gallup poll identified as people of color, compared

to 27% of non-LGBT individuals. The LGBT workforce, like the overall U.S. workforce, also includes a significant number of immigrants.

- **LGBT workers are raising children in significant numbers.** New analyses show that 37% of LGBT adults have had a child, while a recent MAP analysis of three different data sources suggests that between 2.0 and 2.8 million American children are being raised by LGBT parents. This makes family benefits important to LGBT and non-LGBT workers alike.
- **LGBT workers have varying levels of education.** Recent polls show that Americans with lower education levels are more likely to identify as LGBT than college graduates and those who have post-graduate degrees. In contrast, census data show a higher probability that individuals in same-sex couples have at least a bachelor's degree. Similarly, the 2011 National Transgender Discrimination Survey found that transgender respondents had much higher levels of educational attainment than the population as a whole.
- **LGBT workers experience unemployment at an equal or higher rate than other workers.** A 2009 state-level survey in California found that 14% of lesbian, gay and bisexual adults were unemployed, compared to 10% of heterosexual adults. Among transgender workers in the U.S., unemployment rates are twice the rate of the population as a whole, with rates for transgender people of color reaching as high as four times the national unemployment rate.
- **LGBT workers in the U.S. are at higher risk of poverty than other workers.** Among the hardest-hit by the broken bargain for LGBT workers are those who are parents, together with their children. Married or partnered LGBT individuals raising children are twice as likely to have household incomes near the poverty line compared to married or partnered non-LGBT parents. In addition, transgender people are nearly four times more likely to have a household income under \$10,000 per year than the population as a whole (15% vs. 4%).

### Fixing the Broken Bargain for LGBT Workers

This report organizes the inequities LGBT workers face into two overarching problems:

1. Job discrimination without legal protection makes it **harder for LGBT workers to find and keep a good job**; and
2. LGBT workers **receive fewer benefits and pay more taxes, which puts LGBT workers and their families at risk.**

Many of the access or equity gaps that affect LGBT workers also disproportionately affect low-income workers broadly, workers with unmarried heterosexual partners, workers of color, and workers who live with and support family members who are not a spouse or legal child, such as an uncle providing care for a nephew.

Fixing the broken bargain will require government and employers to address multiple barriers to equal and fair treatment for LGBT and other workers, as outlined below.

### Discrimination Without Legal Protection Makes It Harder to Find and Keep a Good Job

**Barrier #1: 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.

**Barrier #2: 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.

**Barrier #3: 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.

**Barrier #4: A Lack of 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 federal legal recourse by filing a complaint with the Equal Employment Opportunity Commission (EEOC), but only 16 states and the District of Columbia explicitly prohibit discrimination based on gender identity/expression.

### Fewer Benefits and More Taxes Put LGBT Workers and Their Families at Risk

**Barrier #5: Unequal Access to Health Insurance Benefits.** Under federal and most state laws, most employers can extend family health benefits to married opposite-sex couples yet deny same-sex couples the

same coverage. When employers electively offer family coverage to LGBT workers, most of them have to pay thousands of dollars in extra taxes on the value of the family coverage, although heterosexual workers get the same benefits tax-free. In addition, exclusions in health insurance often deny transgender workers access to both basic healthcare and transition-related care.

**Barrier #6: Denial of Family and Medical Leave.** Because the federal government does not legally recognize the marriages of same-sex couples under the Defense of Marriage Act (DOMA), LGBT employees do not have equal access to federally mandated unpaid leave to provide care for same-sex spouses or partners. Only about one-fifth of states provide equal access to unpaid leave for same-sex couples under state leave laws. In addition, employers may deny transgender workers leave for transition-related care.

**Barrier #7: Denial of Spousal Retirement Benefits.** The same-sex spouses and partners of LGBT workers are systematically denied Social Security benefits designed to protect workers' families during their retirement years. This may cost a retired same-sex couple up to \$14,484 per year and a surviving same-sex spouse or partner up to \$28,968 per year. An LGBT employee also may be unable to opt for continuing pension benefits for a same-sex spouse or partner under an employer-provided pension plan.

**Barrier #8: Unequal Family Protections When a Worker Dies or Is Disabled.** When an LGBT worker dies or becomes disabled, the worker's same-sex spouse—and in some cases, his or her children—will be denied Social Security disability and survivor benefits. A surviving family (spouse and two children) of a worker earning \$40,000 could lose as much as \$29,520 in annual benefits.

**Barrier #9: A Higher Tax Burden for LGBT Families.** State marriage and parenting laws, combined with the federal government's lack of recognition of same-sex couples, mean that LGBT workers pay more taxes because they cannot file using the advantageous "married filing jointly" status. Consider an LGBT family with one working parent who has a taxable income of \$60,000 a year and a stay-at-home parent who has no income. The inability to file a federal tax return as a married couple costs the LGBT family \$2,902 in additional taxes. When working LGBT parents cannot form legal ties to their children, they also generally cannot claim important child-related

deductions and credits such as the child tax credit, the child and dependent care expense credit, and multiple education-related deductions and credits potentially totaling thousands of dollars per year.

**Barrier #10: Inability to Sponsor Families for Immigration.** An LGBT worker is unable to sponsor a foreign-national spouse or partner or a partner's children for the purposes of immigration. This means American LGBT workers may need to live abroad to avoid separation from their families, while highly skilled foreign national LGBT workers may decline to come to the United States if it means they must leave their families behind.

## Fixing the Broken Bargain Is Good for Business and America's Prosperity

America's most successful businesses are opposed to the current inequities for LGBT employees and are taking independent steps to try and fix the broken bargain. Nearly nine out of 10 Fortune 500 companies (88%) provide nondiscrimination protections for their gay and lesbian employees. Additionally, in a 2013 brief submitted to the U.S. Supreme Court, 278 businesses and employers (including Amazon.com, Citigroup, Intel, Marriott, Nike, Pfizer, Twitter, Viacom and the Walt Disney Company) argued that unequal treatment of LGBT workers and their families under federal law harms businesses by:

- Creating complex and difficult compliance burdens by requiring businesses to treat married LGBT employees as single for federal taxes, payroll taxes, and certain workplace benefits—but as married for all other purposes in states that recognize same-sex couples.
- Requiring employers to implement and enforce discriminatory treatment of employees in their own companies, even when doing so goes against core corporate values and basic business sense.
- Creating an environment that makes it harder for LGBT workers to perform at their best.
- Negatively impacting the employer's ability to compete for and hire top talent.

## Recommendations

The report offers detailed recommendations for action by the federal, state and local governments, as well as employers. The following is a summary of these recommendations:

## Reducing Barriers to Finding and Keeping Good Jobs

- **Pass 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 workplaces.
- **Increase wage discrimination protections.** The federal government should expand existing legal protections against wage discrimination to include protections for sexual orientation and gender identity/expression.
- **Ensure effective and swift discrimination claims processing.** For example, 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.
- **Ensure transgender workers can update the gender marker on their identity documents.** A physician's letter, not proof of surgery, should be used as a standard for changing gender on identity documents.
- **Increase data collection on LGBT workers.** Federal, state, and local governments should increase data collection and research on LGBT workers, including demographics, income, benefits, experiences of discrimination, and more.

## Providing Equal Access to Individual and Family Benefits

- **Recognize the families of LGBT workers.** States should allow same-sex couples to marry and ensure that parentage laws allow LGBT parents to be legally recognized as parents. The federal government should recognize married same-sex couples to allow equal access to worker benefits, Social Security, immigration, federal family tax relief and more.
- **Advance equal access to individual and family health insurance benefits.** The federal and state governments should amend health insurance laws to ensure coverage parity and nondiscrimination protections for

transgender health plan enrollees. State and federal lawmakers also should ensure that LGBT families have health insurance on equal terms with other families, including eliminating unfair taxation of these benefits.

- **Provide equal access to individual and family medical leave.** Federal and state medical leave laws should allow transgender workers to take needed individual medical leave—and allow workers to take leave to care for a same-sex partner or spouse.
- **Provide equal access to spousal retirement benefits.** The federal government should broaden Social Security’s definition of spouse to allow a same-sex partner to access spousal and survivor benefits. Policymakers also should change federal law to ensure same-sex partners/spouses can access pension survivor benefits and are equally taxed on inherited retirement plans.
- **Provide equitable economic protections when a worker dies or is disabled.** A same-sex partner/spouse and his or her children should be able to access Social Security survivor and disability benefits in the same manner as the spouse and children of a non-LGBT worker.
- **Revise the IRS tax code to provide equitable treatment for LGBT workers.** The Internal Revenue Service (IRS) should create a designation of “permanent partner,” who would be treated as a spouse for the purposes of the tax code. The IRS also should allow not just legal parents but also those who act as parents to claim a “qualifying child” on their tax filing.
- **Provide pathways to immigration and citizenship for binational LGBT families.** Congress should pass legislation such as the Uniting American Families Act (UAFAs), which would add the category “permanent partner” to the list of family members entitled to sponsor a foreign national for U.S. immigration.

To the extent that all levels of government (and more employers) adopt policies that ensure fair and equal treatment for LGBT workers, America will make great strides in its ongoing effort to build a fair and inclusive society where everyone who works hard has a chance to succeed, get ahead, and provide for themselves and their families.

*Federal law provides* to the working family many benefits and protections relating to health care, protected leave, and retirement. These protections provide security and support to an employee grappling with sickness, disability, childcare, family crisis, or retirement, allowing the employee to devote more focus and attention to his work.

DOMA thwarts these employee expectations, to the direct detriment of some married employees of [our businesses], and, by extension, of [our businesses themselves].

Business Coalition for the Uniting American Families Act. "Letter to Senators Flake, Graham, McCain, Rubio, Bennet, Durbin, Menendez, and Schumer." March 1, 2013.



*[Our businesses]* thrive in large part thanks to the hard work and creativity of our employees. If external forces—such as discrimination on the basis of sexual orientation in the laws of the states where we operate—block us from recruiting, hiring, and retaining the very best employees, we will be unable to achieve the success that each of us is capable of achieving with a workforce of the best and brightest employees.

Supreme Court amicus brief, 100 leading U.S. companies, *Hollingsworth v. Perry*, February 2013.



*Children are disadvantaged* by discrimination faced by their parents and same-sex parents are fearful that without recourse for discrimination, they may not be able to care for their children if they lose their jobs.

Michigan Department of Civil Rights. "Report on LGBT Inclusion Under Michigan Law." January 28, 2013.



*That she was fired* did not just impact her and her family. It impacted me and the people who worked there who cared about her. It impacted the work environment and our image of the company.

Anonymous written testimony. Michigan Department of Civil Rights. "Report on LGBT Inclusion Under Michigan Law." January 28, 2013.



*I'm writing to tell you* my dad's story. About 6 years ago when I was in high school, he lost his job as a police officer when the police chief saw him at a local gay bar. My dad had no means of fighting for his job. He could not find another job and was living on unemployment benefits for as long as the state would allow.

Anonymous written testimony. Michigan Department of Civil Rights. "Report on LGBT Inclusion Under Michigan Law." January 28, 2013.



## INTRODUCTION

The basic American bargain is that those who work hard and meet their responsibilities should be able to get ahead. It is founded on the principle that workers will be judged and rewarded based on their contributions and capabilities—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 that protect workers from unfair practices.

But these laws do not protect everyone.

American 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, and fewer than half of states have laws that protect workers based on sexual orientation and gender identity/expression.<sup>1</sup>

Additionally, even when an LGBT worker does the same job as a non-LGBT coworker, a series of federal and state laws deny the LGBT worker equal access to worker and family benefits—as well as family tax relief. The result? LGBT workers are sent a message that their families do not matter, and that it's OK for their spouses and children to be denied health insurance extended to the families of workers with opposite-sex spouses. They are sent the message that it's OK for LGBT workers to face a higher tax burden and to be denied earned benefits like

*Our principles* are not platitudes. Our mission statements are not simply plaques in the lobby. Statements of principle are our agenda for success: born of experience, tested in laboratory, factory, and office, attuned to competition. Our principles reflect, in the truest sense, our business judgment. By force of law, DOMA (which forces employers to treat married same-sex couples differently) rescinds that judgment and directs that we renounce these principles or, worse yet, betray them.

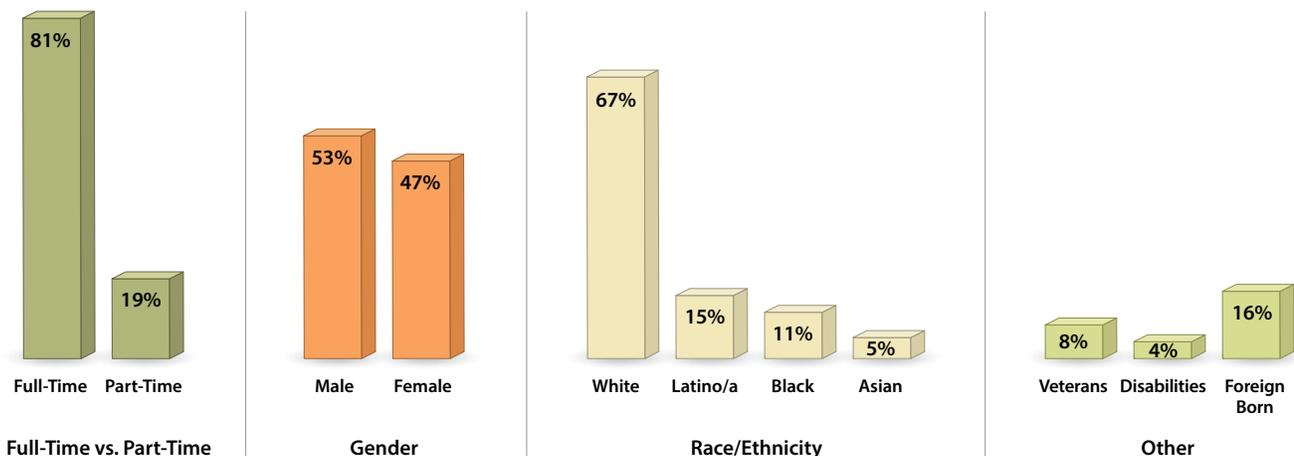
Supreme Court amicus brief, 278 employers and organizations representing employers, *United States v. Windsor*, February 2013.



Social Security. In short, they are sent the message that it's OK for LGBT workers to get less compensation for doing the same job, meaning they have fewer dollars to save for a family home—or even just to put food on the table.

If fairness and equality are part of America's basic workplace bargain, this bargain is clearly broken for LGBT workers. The broken bargain, in turn, can create an untenable situation for employers. Even when a company's leaders believe that fair and equal treatment is

Figure 1: U.S. Workforce Characteristics



Sources: Bureau of Labor Statistics. "Table 8. Employed and unemployed full- and part-time workers by age, sex, race, and Hispanic or Latino ethnicity, Current Population Survey, 2012." February 5, 2013. <http://www.bls.gov/cps/cpsaat08.htm>; "Table A-6. Employment status of the civilian population by sex, age, and disability status, not seasonally adjusted, January 2013." February 1, 2013, <http://www.bls.gov/news.release/empsit.t06.htm>; "Table A-5. Employment status of the civilian population 18 years and over by veteran status, period of service, and sex, not seasonally adjusted, January 2013." February 1, 2013. <http://www.bls.gov/news.release/empsit.t05.htm>; "The Editor's Desk: Racial and ethnic characteristics of the U.S. labor force, 2011," September 5, 2012. [http://www.bls.gov/opub/ted/2012/ted\\_20120905.htm](http://www.bls.gov/opub/ted/2012/ted_20120905.htm); "Labor Force Characteristics of Foreign-Born Workers Summary, 2011." May 2012. <http://www.bls.gov/news.release/forbrn.nr0.htm>

fundamental to their values and business success, the law often forces employers to treat LGBT workers differently. This is why America's leading employers are joining together and forming coalitions to advocate for change.

This report examines the myriad injustices facing LGBT workers in the American workforce—and highlights how these injustices negatively impact both workers and employers. The report also offers specific recommendations to reduce and eliminate inequities for LGBT workers and their families.

## About the American Workforce

The U.S. civilian workforce includes nearly 155 million workers.<sup>2</sup> More than eight in 10 of these workers (84%) work in the private sector, and the remaining 16% work for local, state and federal governments. *Figure 1* on the previous page provides a breakdown of U.S. workforce characteristics.

## LGBT Workers in America

There is less available information about LGBT workers than most other types of workers. Most of the demographic information about LGBT workers comes from U.S. Census data about same-sex couples, Gallup polling, state-level data and population-specific surveys of LGBT individuals. For transgender workers, this report often relies on the 2011 National Transgender Discrimination Survey.<sup>3</sup>

Analyses of these sources show that the U.S. workforce includes an estimated 5.4 million LGBT workers.<sup>4</sup> As the Millennial generation (those born between 1981 and 2000) increasingly enters the workforce, employers can expect to see greater numbers of openly LGBT workers (see *Figure 2*).

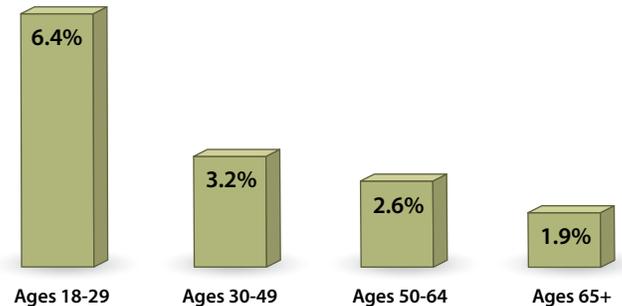
## Where LGBT Workers Live

Despite the common assumption that LGBT people predominantly live in certain major metropolitan areas, same-sex couples are surprisingly geographically dispersed, living in 93% of all U.S. counties.<sup>5</sup> As many as 4.3 million LGBT people live in states with no state laws providing employment protections based on sexual orientation or gender identity/expression.<sup>6</sup>

## Racial and Ethnic Diversity of LGBT Workers

Data suggest that LGBT people are more racially and ethnically diverse than the U.S. population as a whole. One in three LGBT respondents (33%) in a 2012 Gallup

**Figure 2: Percent of Adults Who Self-Identify as LGBT**  
By Age

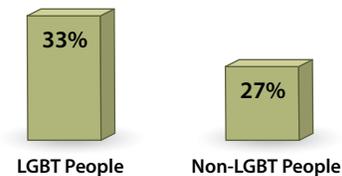


Source: Gates, Gary J. and Frank Newport. "Special Report: 3.4% of U.S. Adults Identify as LGBT." *Gallup Politics*. October 18, 2012. <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx>

**Figure 3: LGBT People Are Racially/Ethnically Diverse**

## Percent of People Identifying as People of Color

LGBT v. Non-LGBT Respondents



Source: Gates, Gary J. and Frank Newport. "Special Report: 3.4% of U.S. Adults Identify as LGBT." *Gallup Politics*. October 18, 2012. <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx>

poll identified themselves as people of color, compared to 27% of non-LGBT respondents. Additionally, people of color were more likely to identify as LGBT than white respondents (see *Figure 3*). The LGBT workforce, like the overall U.S. workforce, also includes a significant number of immigrants. There are an estimated 904,000 LGBT adult immigrants in the U.S.,<sup>7</sup> an estimated 32,300 binational same-sex couples (couples where one member is not an American citizen), and 11,700 same-sex couples where both members are not American citizens.<sup>8</sup>

## LGBT Workers With Children

Analyses show that 37% of LGBT adults have had a child,<sup>9</sup> while a recent MAP analysis of three different data sources suggests that between 2.0 and 2.8 million American children are being raised by LGBT parents.<sup>10</sup> Presumably, a majority of these parents are working parents, making family benefits important to LGBT and non-LGBT workers alike.

Same-sex couples raising children are diverse; 39% of same-sex couples raising children are couples of color, compared to 36% of married opposite-sex couples raising children.<sup>11</sup>

Transgender Americans raising children are also racially and ethnically diverse. Nearly half of Native American transgender people identify as parents (45%), compared to 40% of Latino/a and white respondents and 36% of black respondents.<sup>12</sup>

### Education Levels of LGBT Workers

The data on educational attainment of LGBT adults paint an unclear picture. Recent polls show that Americans with lower education levels are more likely to identify as LGBT,<sup>13</sup> while census data show a higher probability that individuals in same-sex couples have at least a bachelor's degree (see *Figure 4*). The National Transgender Discrimination Survey found that 87% of transgender respondents reported that they had at least some college, compared to 55% of the U.S. population overall.

### Unemployment Rates of LGBT Workers

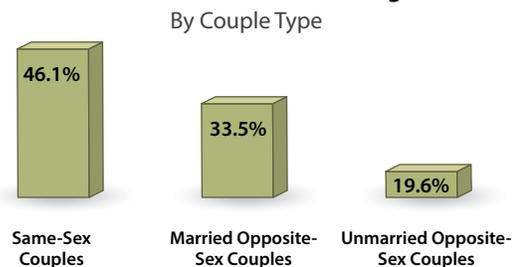
There is very little data about unemployment among LGBT workers. A 2009 state-level survey in California found that 14% of lesbian, gay and bisexual adults were unemployed, compared to 10% of heterosexual adults.<sup>14</sup> The National Transgender Discrimination Survey found that that transgender workers had twice the unemployment rate of the population as a whole, with rates for transgender people of color reaching as high as four times the national unemployment rate (see *Figure 5*).

### Higher Poverty Rates for LGBT Americans

Despite stereotypes to the contrary, research shows that LGBT people are at higher risk of poverty than non-LGBT people.<sup>15</sup> These higher poverty rates should come as no surprise given the challenges explored in this report, including job discrimination, unequal access to worker and family benefits, and higher tax burdens. For example:

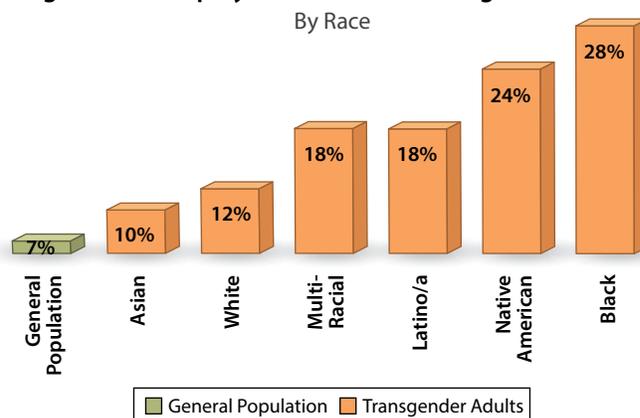
- Transgender people are nearly four times more likely to have a household income under \$10,000 per year than the population as a whole (15% vs. 4%).<sup>16</sup>
- Single LGBT adults raising children are three times more likely to have incomes near the poverty line compared to single non-LGBT individuals raising children.<sup>17</sup>

**Figure 4: Percent of Individuals in Couples Who Have At Least a Bachelor's Degree**



Source: Gates, Gary J. "Same-sex and Different-sex Couples in the American Community Survey: 2005-2011." *The Williams Institute*. February 2013. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/ACS-2013.pdf>

**Figure 5: Unemployment Rates for Transgender Adults**



Source: Grant, Jaime M., 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*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

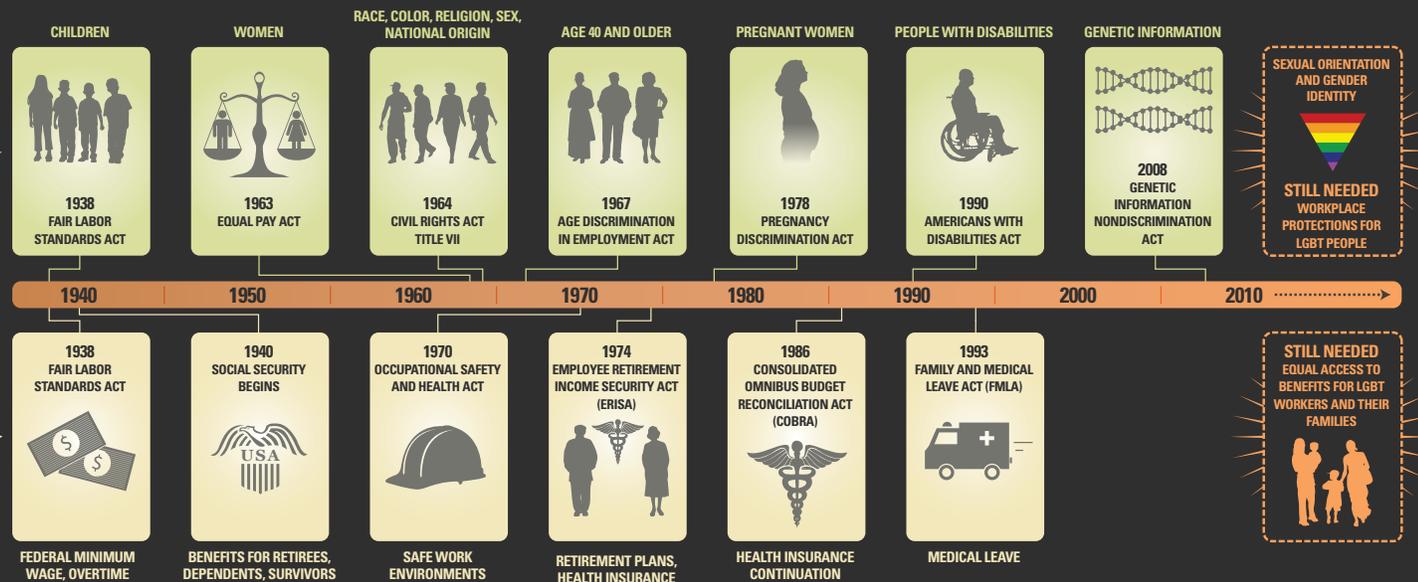
- Married or partnered LGBT individuals raising children are twice as likely to have household incomes near the poverty line compared to married or partnered non-LGBT parents.
- Older same-sex couples face higher poverty rates than older opposite-sex couples.<sup>18</sup> In particular, older lesbian couples are twice as likely to be poor as older heterosexual couples (9.1% vs. 4.6%).

### The Broken Bargain for LGBT Workers

Today, more than 180 federal laws and thousands of state laws aim to support American workers in accessing good jobs in safe workplaces, having equal opportunities to succeed and advance, and receiving fair wages and benefits.<sup>19</sup> The major federal laws are summarized in the diagram, "A Timeline of Important Federal Workplace Protections," on the following page.

# A TIMELINE OF IMPORTANT FEDERAL WORKPLACE PROTECTIONS

## CLASSES OF PROTECTED WORKERS



## WORKER RIGHTS & BENEFITS

None of these federal laws explicitly protect LGBT workers. As shown in the infographic on the following page, the result is that LGBT employees may face more difficulty finding and keeping good jobs—and once working, often receive fewer benefits and pay more income tax on the same salary as their heterosexual peers.

This report organizes the barriers LGBT workers face into two overarching problems:

1. Job discrimination without legal protection makes it **harder for LGBT workers to find and keep a good job**; and
2. LGBT workers **receive fewer benefits and pay more taxes, which puts LGBT workers and their families at risk**.

Fixing the broken bargain will mean addressing multiple barriers to equal and fair treatment for LGBT workers in both of these areas, as outlined later.

## Fixing the Broken Bargain Is Good for Business and America's Prosperity

The lack of legal protections for LGBT workers, combined with the unequal treatment they receive in areas from wages and hiring to family benefits, is not just a problem for LGBT workers; it also harms their coworkers, their employers and America's economy.

More and more businesses are beginning to speak out about the importance of fixing the broken bargain for LGBT workers. In a 2013 brief submitted to the Supreme Court, 278 businesses and employers (including Amazon.com, Citigroup, Intel, Marriott, Nike, Pfizer, Twitter, Viacom and the Walt Disney Company) argued that unequal treatment of LGBT workers and their families under federal law harms businesses by:

- Creating complex and difficult compliance burdens by requiring businesses to treat married LGBT employees as single for federal taxes, payroll taxes, and certain workplace benefits—but as married for all other purposes in states that recognize same-sex couples. Companies have had to reprogram benefits and payroll systems and forms, reconcile different tax and benefit treatments, reconfigure benefit and coverage levels, hire expert attorneys, and train human resources, benefits, and payroll personnel.
- Requiring employers to implement and enforce discriminatory treatment of employees in their own company, even when doing so goes against core corporate values and basic business sense.
- Creating an environment that makes it harder for LGBT workers to perform at their best.
- Negatively impacting the employer's ability to compete for and hire top talent.

# THE BROKEN BARGAIN FOR LGBT WORKERS



## HARDER TO FIND & KEEP A GOOD JOB

Legal discrimination makes it harder to find a good job, succeed, and provide for self and family.



## WORK JUST AS HARD

Once working, LGBT workers do the same job but...



## GET FEWER BENEFITS

...are often unfairly denied individual and family benefits...



## PAY MORE TAXES

...and pay more income tax on the same salary.

### LGBT WORKERS CAN BE LEGALLY REFUSED JOBS OR UNFAIRLY FIRED BY DISCRIMINATORY EMPLOYERS

HETEROSEXUAL

LGBT

#### JOB DISCRIMINATION

Protected from hiring bias?



X

Protected from on-the-job discrimination?



X

Protected from wage discrimination?



X

(Protections are sporadic and inadequate)

### LGBT WORKERS AND THEIR FAMILIES LEFT VULNERABLE

HETEROSEXUAL

LGBT

#### EQUAL ACCESS TO:

#### UNEQUAL BENEFITS

Health benefits?



X

Medical leave?



X

Retirement benefits?



X

Death and disability benefits?



X

### LGBT WORKERS CAN BE DENIED FAMILY TAX RELIEF

HETEROSEXUAL

LGBT

#### UNEQUAL TAXES

Tax relief for family health benefits?



X

Full access to family and child-related tax credits and relief?



X

What's more, employers are becoming increasingly proactive in addressing the absence of legal protections for LGBT workers. Nearly nine out of 10 Fortune 500 companies (88%) provide nondiscrimination protections for their gay and lesbian employees.<sup>20</sup> Similarly, solid majorities of small businesses surveyed by Small Business Majority and the Center for American Progress in 2011 said they take steps to prohibit discrimination based on gender identity (62%) and sexual orientation (69%). When asked why they began taking steps to prevent such discrimination, 82% of small business owners agreed with the statement, "It is the right thing to do."<sup>21</sup>

*Our organizations* are engaged in national and international competition—for talent, customers, and business. That competition demands teamwork, and teamwork thrives when the organization minimizes distracting differences, and focuses on a common mission. DOMA's core mandate—that we single out some of our married colleagues and treat them as a lesser class—upsets this imperative.

Supreme Court amicus brief, 278 employers and organizations representing employers, *United States v. Windsor*, February 2013.



## Additional Introductory Content Found in Full Report

### Expanded Discussion:

- About the American Workforce (pp. 3-5)
- LGBT Workers in America (pp. 5-8)
- Legal Protections for America's Workforce (pp. 8-10)
- The Broken Bargain for LGBT Workers (pp. 10-13)
- Fixing the Broken Bargain Is Good for Business and America's Prosperity (pp. 13-17)

### Infographic:

- Where Americans Work (page 2)

### Tables, Figures and Sidebars:

- Key Terms (page 4)
- LGBT Population by State (page 5)
- Percent of People of Color Who Identify as LGBT (page 6)
- Percent of Same-Sex Couples Raising Own Children by Race/Ethnicity (page 6)
- Percent of Transgender Americans Raising Children by Race/Ethnicity (page 6)
- Education Levels of Transgender Workers (page 7)
- Percent of Children Living in Poverty, by Family Type (page 8)
- Adult Couples Age 65 and Older Living in Poverty, by Household Type (page 8)

## THE BROKEN BARGAIN: DISCRIMINATION WITHOUT LEGAL PROTECTION

### Overview: For LGBT Workers, It Is Harder to Find and Keep A Good Job

Part of the bargain that America and its employers make with workers is that if a person is qualified, works hard and does her part to contribute to her employer's success, then she should be able to find and keep a good job. Americans so strongly believe in this bargain that 73% support workplace nondiscrimination protections for LGBT workers and 89% erroneously believe such protections exist under federal law (see *Figure 6*).

But the bargain of a good job remains broken for LGBT workers in America today. As illustrated in *Figure 7*, continued and often unchecked discrimination against LGBT workers makes it harder for them to find and keep good jobs, receive fair wages and secure equal opportunities to succeed.

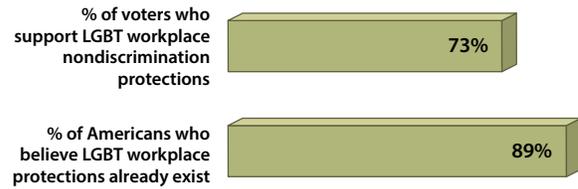
The section that follows explores four barriers to equal and fair treatment for LGBT workers: bias in recruitment and hiring; on-the-job inequality and unfairness; wage gaps and penalties; and inadequate protection under federal and state law. It also offers recommendations for addressing these barriers.

### Barrier: Hiring Bias and On-the-Job Discrimination

LGBT workers often find it harder than non-LGBT workers to secure a good job. Between 8% and 17% of lesbian, gay and bisexual people report being unfairly fired or denied employment, and between 13% and 47% of transgender workers report being unfairly denied employment.<sup>22</sup> LGBT applicants often face a dilemma during job interviews, as those who talk openly about their families could put their chances of getting a successful offer at risk. On the flip side, 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.

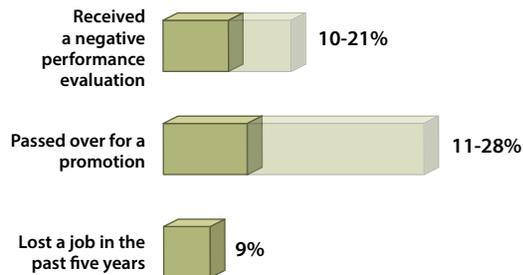
When LGBT candidates secure a job, they may face uncomfortable workplaces where anti-gay slurs, jokes and verbal harassment are commonplace. One survey

Figure 6: Support for LGBT Workplace Protections



Source: Krehely, Jeff. "Polls Show Huge Public Support for Gay and Transgender Workplace Protections." *Center for American Progress*. June 2, 2011. <http://www.americanprogress.org/issues/lgbt/news/2011/06/02/9716/polls-show-huge-public-support-for-gay-and-transgender-workplace-protections/>

Figure 7: Percent of LGB Workers Who Report Challenges  
Advancing at Work Because of Sexual Orientation



Sources: Badgett, M.V. Lee, Holning Lau, Brad Sears, and Deborah Ho. "Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination." *The Williams Institute*. June 2007. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Lau-Ho-Bias-in-the-Workplace-Jun-2007.pdf>; Sears, Brad, and Christy Mallory. "Documented Evidence of Employment Discrimination & Its Effects on LGBT People." *The Williams Institute*. July 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>

found that 58% of LGBT employees have heard jokes or derogatory comments about LGBT people at work.<sup>23</sup> And, the National Transgender Discrimination Study found that 78% of transgender and gender-nonconforming employees experience harassment, mistreatment or discrimination on the job.<sup>24</sup>

Discrimination against LGBT workers can also result in unfair negative performance evaluations, missed promotions and unfair firing. As shown in *Figure 7*, between 10% and 21% of lesbian, gay and bisexual workers reported that bias against their sexual orientation contributed to a negative performance evaluation, while 11% to 28% said such bias is why they were passed over for a promotion. Another survey found that nearly one in 10 "out" workers (9%) reported losing a job in the past five years because of their sexual orientation. The National Transgender Discrimination Survey found that 26% of transgender workers lost a job

# LEGAL DISCRIMINATION

MAKES IT HARDER TO FIND AND KEEP A GOOD JOB



## THE SOLUTION



### LEGAL PROTECTIONS FOR LGBT WORKERS

Pass federal, state and local employment protections for LGBT workers

### INCLUSIVE EMPLOYER POLICIES

Employers can institute nondiscrimination policies and foster an inclusive culture

## THE IMPACT

MAKING IT HARDER FOR LGBT WORKERS TO:

### RECEIVE EQUAL PAY

BARRIER: Wage gaps and penalties

### SUCCEED

BARRIER: On-the-job inequality and unfairness

### FIND GOOD JOBS

BARRIER: Bias in recruitment and hiring

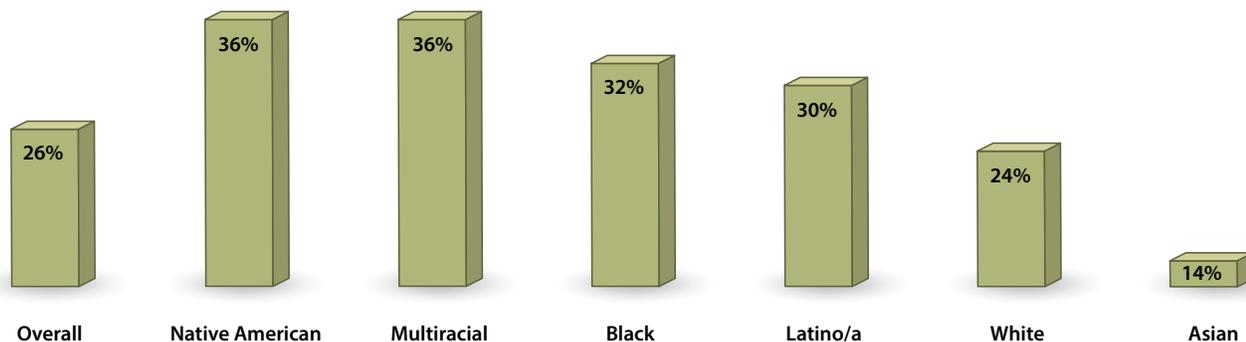
## THE PROBLEM

### ANTI-LGBT EMPLOYERS CAN AND DO LEGALLY DISCRIMINATE

LGBT employees lack explicit workplace protections under federal and most state law



**Figure 8: Percent of Transgender Respondents Reporting Having Lost a Job Because They Are Transgender, By Race**



Source: Grant, Jaime M., 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*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

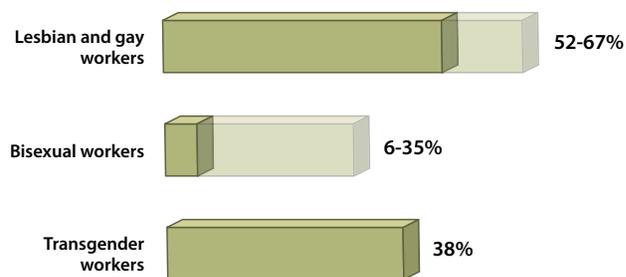
because of their transgender status (see *Figure 8*). These numbers were even higher for black, Latino/a, Native American, and multiracial transgender respondents.

Given the hostility and discrimination LGBT workers face, many may choose not to be open or out. As can be seen in *Figure 9*, although studies vary in their findings, only half (52%) to two-thirds (67%) of lesbian and gay employees are open about their sexual orientation at work, and only 6% to 35% of bisexual workers are open about their sexual orientation. The National Transgender Discrimination Study found that just 38% of transgender workers tell some people at work about their gender identity.

The fact that large numbers of LGBT workers still feel the need to hide who they are underscores that significant numbers of workplaces still do not provide welcoming climates. LGBT employees have reason to be cautious: Those who choose to be open about their sexual orientation or gender identity report higher rates of discrimination and harassment than those who remain closeted. In a recent study, nearly four in 10 employees (38%) who were out at work reported harassment and discrimination in the past five years, compared to 10% of employees who were not out (see *Figure 10*).

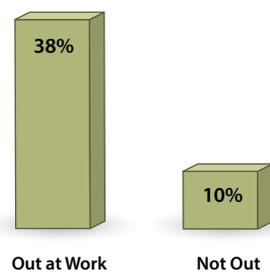
Like other job seekers, some LGBT job applicants are also women, people of color, people with disabilities, and older adults. When workers have more than one trait that can trigger bias, they may face “double discrimination” if they come out at work. Not surprisingly then, a recent study found that black and Latino/a LGBT workers were less likely to be out than other LGBT workers (see *Figure 11* on the next page).

**Figure 9: Percent of LGBT Workers Who Are Open at Work**



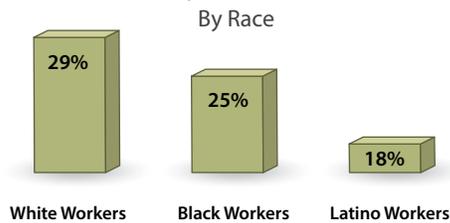
Sources: Hewlett, Sylvia Ann, and Karen Sumberg. *The Power of “Out”*. Center for Work-Life Policy, 2011; Out & Equal Workplace Advocates. “2011 Out & Equal Workplace Survey.” October 2011. <http://outandequal.org/documents/2011%20Out%20Equal%20Workplace%20Survey%20Release%20-%20FINAL%20-%202010-25-11.pdf>; Sears, Brad, and Christy Mallory. “Documented Evidence of Employment Discrimination & Its Effects on LGBT People.” *The Williams Institute*. July 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>; Grant, Jaime M., 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*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

**Figure 10: Rates of Discrimination and Harassment By Status**



Source: Sears, Brad, and Christy Mallory. “Documented Evidence of Employment Discrimination & Its Effects on LGBT People.” *The Williams Institute*. July 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>

**Figure 11: Percent of LGBT Workers Who Are Out to Everyone at Work**



Source: Human Rights Campaign Foundation. "Degrees of Equality: A National Study Examining Workplace Climate for LGBT Employees." 2009. [http://www.hrc.org/files/assets/resources/DegreesOfEquality\\_2009.pdf](http://www.hrc.org/files/assets/resources/DegreesOfEquality_2009.pdf)

### Karen's Story: Surrounded by Slurs, Silenced in Virginia



"That's so gay!" "What a fag!" It seems like I hear my coworkers make comments like these at least once a week. I'm not "out" at work, so I don't think that the comments are directed at me, but I'm always shocked when I hear them. I have a few other gay coworkers—a little secret society of friends—and we talk about how upsetting it is to work with people who make these comments.

Living in rural Virginia, which has no protections for gay or transgender workers, I feel silenced. I have a friend who was fired for talking about his boyfriend at work. I couldn't believe it—until I looked online and found out it was totally legal to do that here.

When we work as a team to care for a patient, it is particularly hard to handle the offensive comments. A coworker of mine was paired with someone who made these comments every day, and he had to hear them his whole 12-hour shift.

I'm comfortable standing up for myself and my friends, but worry what would happen if I told them to stop. If I said I was gay, would they think before saying something offensive? Or would they decide they didn't want to work with me anymore? Would I be fired? My employer is religiously affiliated, so it is hard to know what they would do.

I don't want to lose my job. In fact, I can't afford to lose this job, which pays the bills and has the flexible hours I need to go to school. It is just too risky to talk to someone at work.

—Karen, Virginia

Without workplace protections that give them legal recourse, 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.

### Transgender Employees and Transitioning at Work

"Transitioning" refers to the process during which a person stops living according to the sex assigned to them at birth and starts living as the gender they have always known themselves to be. In self-reports, three out of four transgender workers said that they felt more comfortable and their performance at work improved when they were able to live "24/7/365" in accordance with their gender identity.<sup>25</sup> Yet in the National Transgender Discrimination Survey, one in three transgender workers (32%) said that they have been forced to dress, act, and present in a way at work that fits their birth sex rather than their preferred gender.<sup>26</sup> Likewise, about one in five (22%) reported being denied access to a restroom that was appropriate for their gender.<sup>27</sup>

When transgender workers decide to transition, an employer's response can mean the difference between an accepting and inspiring workplace and one that dehumanizes transgender workers and demoralizes their colleagues. In the best case, the transgender employee will work with human resources to create a timeline and plan covering items such as when an employee's name change will become effective in email and business cards, how the employee will communicate their transition with coworkers, and more.

For most organizations with transgender employees, facilities and restrooms are simply not a problem. In most workplaces, transgender employees simply use the restroom that matches their lived gender. Other workplaces may designate single-occupancy restrooms for all-gender employee use. Yet others still take advantage of cost-effective improvements (for example, installing flaps to cover gaps in stall doors and walls) that can benefit any worker seeking greater privacy.<sup>28</sup>

### Barrier: Wage Gaps and Penalties

For as long as researchers have been collecting wage data on the U.S. workforce, women have

## Leo Kattari's Story: A Smooth Transition, Flexible Leave, Meal Train and All



I'm 27 years old, with a master's in social work and a great job as training and education manager for Colorado Youth Matter, a small Denver-based nonprofit. When I inherited money from my grandmother last year, I knew that I could finally afford to transition completely, so I came out as transgender at work. My supervisor and our executive director couldn't have been more supportive.

Our existing leave provisions didn't specifically cover leave for the surgery, so I had intended to rely on sick leave and vacation to get me through. However, my supervisor sought and received permission to allow me to take two weeks under a flexible interpretation of the paid leave policy, and I worked a third week from home. While I was out, my coworkers independently organized a "meal train" and took turns cooking and bringing meals to me at home.

Once I returned to work, everyone adapted with no problem. I credit my positive experience to Colorado Youth Matter's commitment to social justice, and to honoring uniqueness and diversity—not only of program participants, but also of our staff—every step of the way.

—Leo Kattari, Denver

made less money than men, even when they have comparable education and experience. In 2012, women still earned just \$0.79 for every \$1.00 earned by men; this difference (\$0.21) is called the "gender wage gap." For LGBT workers, it can be difficult to separate the impacts of gender, gender identity/expression and sexual orientation on workplace wages. For example, if a lesbian woman is earning less than a man in a similar job, it's often hard to say whether this is because of her gender or her sexual orientation, or perhaps a combination of the two.

However, studies consistently find that sexual orientation and gender identity/expression do play a role in workplace wages. For example, gay and bisexual men experience a "wage penalty" relative to heterosexual men.<sup>29</sup> 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, when compared to their non-LGBT peers.<sup>30</sup> This is consistent with research that shows that LGBT people are at higher risk of poverty than non-LGBT people.<sup>31</sup>

Lesbian and bisexual women actually fare better than heterosexual women, but still experience the

gender-based wage gap relative to all men.<sup>32</sup> Household income for lesbian couples is considerably lower than it is for both opposite-sex households and households headed by gay men.<sup>33</sup> 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 (see *Figure 12* on the next page).

Transgender workers also face particularly large income disparities. According to the National Transgender Discrimination Survey, 15% of transgender respondents have household incomes under \$10,000 per year, compared to just 4% of the population as a whole (see *Figure 13* on the next page).

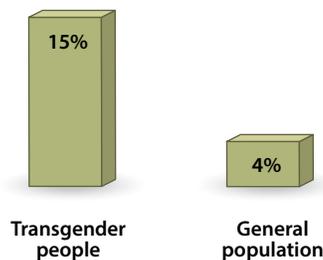
Although policymakers have enacted various laws aiming to abolish unfair disparities in pay, no federal laws address pay disparities based on sexual orientation and gender identity/expression.

**Figure 12: Median Annual Personal Income**

American Community Survey 2011



Source: Gates, Gary J. "Same-sex and Different-sex Couples in the American Community Survey: 2005-2011." *The Williams Institute*. February 2013. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/ACS-2013.pdf>. Data is for individuals in the labor force.

**Figure 13: Percent of People with Household Incomes Under \$10,000**

Source: Grant, Jaime M., 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*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

## Barrier: A Lack of Legal Protections

### Inadequate Federal Protections

Despite overwhelming public support for workplace protections for LGBT workers, many policymakers have shown a perplexing reluctance to expand existing nondiscrimination laws to cover these workers. No federal law explicitly protects workers from discrimination or harassment based on sexual orientation or gender identity/expression. However, lesbian, gay and bisexual people who work for the federal government (with the exception of military personnel) do have some protections stemming from an executive order that protects federal workers based on sexual orientation.<sup>34</sup> So far, no president has signed an executive order that would also prohibit companies that enter into contracts with the federal government from discriminating against LGBT employees.

Although existing executive orders do not explicitly protect transgender federal workers, the prohibition against discriminating based on sex provides protections for transgender workers nationwide, as explained below.

### Some Protections Through the EEOC and the Courts

In a 1989 case, *Price Waterhouse v. Hopkins*, the U.S. Supreme Court ruled that Title VII of the Civil Rights Act prohibited discrimination based not just on biological sex, but also "the entire spectrum" of discrimination based on sex, including gender or sex stereotypes. Federal courts have yet to find that when a person faces discrimination based solely on his or her sexual orientation or gender identity/expression, that such discrimination is in and of itself equivalent to "sex stereotyping." However, the federal Equal Employment Opportunity Commission (EEOC) issued a 2012 opinion in *Macy v. Holder* that went one step further than the federal courts. In short, the EEOC found that a transgender worker facing discrimination can file a claim for sex-based discrimination, without having to first prove that the discrimination was based on sex stereotypes.<sup>35</sup>

The EEOC is a worker's first stop when filing a discrimination claim under Title VII; workers can only file a private lawsuit in court if they have been unsuccessful in resolving their claim through the EEOC.<sup>36</sup> Although the EEOC is separate from the federal court system, the EEOC opinion in *Macy v. Holder* provides legal reasoning that may guide both state and federal courts.

EEOC rulings apply to public and private employers nationwide. However, EEOC rulings are only legally binding for the federal government, not state or local government or private employers. Like the federal courts, the EEOC has not yet found that Title VII protects workers who were fired solely because they are lesbian, gay or bisexual.

A federal legislative solution that explicitly provides or extends nondiscrimination protections on the basis of sexual orientation and gender identity/expression would help create clear national standards for employers and employees.

### Uneven State-Based Protections

To date, only 16 states and the District of Columbia have expanded their laws to include explicit nondiscrimination protections for workers based on

## Kristy Salazar's Story: Lesbian Mom of Three Boys Forced to Leave Hostile Workplace for Unemployment Line



I am a lesbian Latina mother of three boys. In early 2011, I took a corporate “temp-to-perm” contract job working for a large healthcare company in San Diego. The job was supposed to be temporary for the first 90 days, and then become full-time permanent with benefits. Everything was going fine and my performance evaluation was perfect.

One day, Linda, a coworker, was making small talk and said, “Oh, you have a wedding ring, what does your husband do?” I told her, “I don’t have a husband, I have a girlfriend, and we’ve been together for six years and are raising three kids.” A supervisor overheard the conversation, and I couldn’t help but notice her look of surprise and disgust.

Immediately everything changed. The dirty looks and whispering began each morning when I walked in the door. I stopped being invited to team get-togethers outside of work. I was suddenly singled out for wearing the same clothing to work as other women wore with no problems.

I desperately needed the job and benefits so I tried to let it slide, but some days, the anxiety would get the best of me and I’d end up physically ill and crying for hours at home. I finally worked up the courage to talk to my supervisor, who basically denied that it was happening. HR said that they would address it, but that just didn’t happen.

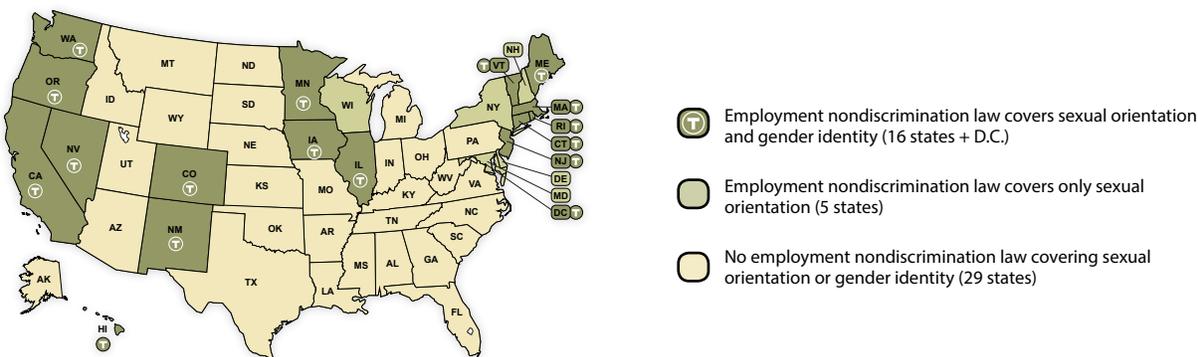
When the six-month contract came to an end, they raised non-existent performance issues, even questioned my health, and then said that we were done. Since I technically worked for a temporary agency, the law didn’t protect me from discrimination and there was nothing I could do. I’m now unemployed, recovering from the abusive work environment, and once again trying to find a job with benefits so that I can provide for my boys.

—Kristy Salazar, CA

their gender identity/expression, while 21 states and the District of Columbia explicitly prohibit discrimination based on sexual orientation (see *Figure 14*).<sup>37</sup> In the states that have nondiscrimination protections, LGBT workers faced with discrimination can seek legal recourse and other penalties in state courts.

Some states have also provided protection to LGBT workers through executive policies.<sup>38</sup> These policies can provide some LGBT workers (usually limited to state employees) with the ability to file complaints within the state agency or department in which they work (though not necessarily through the courts).

**Figure 14: State-Level Nondiscrimination Laws**

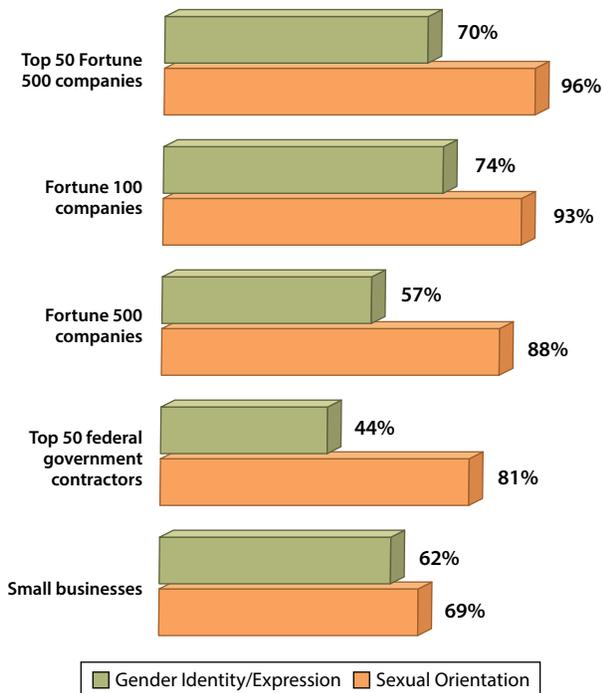


Source: Movement Advancement Project, Equality Maps, current as of May 15, 2013. For updates see [http://lgbtmap.org/equality-maps/employment\\_non\\_discrimination\\_laws](http://lgbtmap.org/equality-maps/employment_non_discrimination_laws).

## Uneven Protections Based on Local Laws and Policies

In the absence of LGBT-inclusive federal and state workplace laws, many cities and counties have passed their own nondiscrimination ordinances (for an updated listing of state and local laws, see [www.lgbtmap.org/equality-maps](http://www.lgbtmap.org/equality-maps)).<sup>39</sup> 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 poorly framed ordinances may fail to provide effective legal remedies for individual workers who experience discrimination.

**Figure 15: Percent of Employers with Nondiscrimination Policies**  
By Employer Type



Sources: Burns, Crosby and Jeff Krehely. "Ensuring Workplace Fairness Is Not Expensive." Center for American Progress. October 12, 2011. <http://www.americanprogress.org/issues/lgbt/news/2011/10/12/10465/ensuring-workplace-fairness-is-not-expensive/>; Burns, Crosby and Jeff Krehely. "Workplace Fairness for Gay and Transgender Workers: Big Benefits, Few-to-No Costs." Center for American Progress. January 27, 2012. <http://www.americanprogress.org/issues/lgbt/news/2012/01/27/11006/workplace-fairness-for-gay-and-transgender-workers/>; Human Rights Campaign Foundation. "Corporate Equality Index 2013: Rating American Workplaces on Lesbian, Gay, Bisexual and Transgender Equality." December 2012. [http://www.hrc.org/files/assets/resources/CorporateEqualityIndex\\_2013.pdf](http://www.hrc.org/files/assets/resources/CorporateEqualityIndex_2013.pdf); Sears, Brad, and Christy Mallory. "Economic Motives for Adopting LGBT-Related Workplace Policies." The Williams Institute. October 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>

## Strong Support for Equal Treatment from Private Employers and Unions

While policymakers at all levels of government continue to defy American values by blocking legal protections for LGBT employees, America's most successful corporations recognize that creating LGBT-inclusive workplaces is both good for business and the right thing to do. 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 15*).

Collective bargaining agreements in unionized workforces can also be helpful. Bargaining agreements often protect LGBT workers (as well as many colleagues who might be unfairly targeted for dismissal) by specifying that union workers can be fired only for good reason (often called "just cause"). Separately, unions can bargain with employers for explicit nondiscrimination protections based on sexual orientation and gender identity/expression.<sup>40</sup>

When employers make it clear that all employees should be treated equally and judged only on their job performance and skills, they create a culture in which every worker has an opportunity to contribute and thrive.

## Recommendations/Solutions

A series of common-sense changes would help ensure that LGBT workers have the same chance as other workers to find and keep good jobs and to succeed. As spelled out on the following page, solutions include passing nondiscrimination laws and policies, fostering diverse workplaces, increasing wage discrimination protections, and ensuring effective and swift processing of discrimination claims.

Recommendations to Eliminate or Reduce Bias, Discrimination and Wage Gaps for LGBT Workers		Full Report Page References
<b>Adopt Nondiscrimination Laws and Policies</b>		
<b>Federal</b>	Congress should pass federal employment nondiscrimination legislation such as the Employment Nondiscrimination Act (ENDA) to ban public and private employment discrimination nationwide on the basis of gender identity/expression and sexual orientation.	page 45
<b>Federal</b>	The president should mandate that federal contractors prohibit discrimination on the basis of gender identity/expression and sexual orientation.	page 45
<b>Federal</b>	The federal government and its agencies should clarify that existing executive orders that protect workers based on sex also include protections for transgender employees.	page 45
<b>State/Local</b>	State and local lawmakers should ban employment discrimination in states/municipalities without current protections for gender identity/expression and/or sexual orientation.	page 46
<b>State</b>	State governors should mandate that state and local government employers and contractors prohibit discrimination on the basis of gender identity/expression and sexual orientation.	page 46
<b>Employer</b>	Employers should send a clear message that all workplace discrimination is prohibited at their workplaces through employer-based LGBT-inclusive nondiscrimination policies and procedures designed to significantly reduce hiring bias, foster welcoming and inclusive work environments, and reduce discrimination.	page 46
<b>Increase Wage Discrimination Protections</b>		
<b>Federal/State/ Employer</b>	Congress and state lawmakers should increase protections against wage discrimination based on sexual orientation and gender identity/expression. Employers should institute fair wage policies.	pp. 45, 47
<b>Ensure Effective and Swift Discrimination Claims Processing</b>		
<b>Federal</b>	The federal government and its agencies should ensure efficient case processing by the EEOC.	page 46
<b>State/Local</b>	State and local lawmakers should ensure nondiscrimination laws include mechanisms for swift and effective claims processing.	page 47
<b>Employer</b>	Employers should ensure there is an effective and responsive grievance system for all employees.	page 48
<b>Foster Diverse and Inclusive Workplaces</b>		
<b>Employer</b>	<ul style="list-style-type: none"> <li>• Employers should dispel myths/stereotypes and increase awareness through workforce diversity training.</li> <li>• Employers should ensure support for transitioning transgender employees.</li> <li>• Employers should encourage employees to voice workplace issues, concerns, and opportunities.</li> <li>• Employers should expand their talent pool by targeting outreach to potential LGBT employees.</li> </ul>	pp. 48-49
<b>Ensure Transgender Workers Can Update the Gender Marker on Identity Documents</b>		
<b>State/ Employer</b>	State governments, as well as employers, should ensure transgender worker can update the gender marker on their identity documents with a physician's letter—but should not require proof of surgery.	page 47
<b>Increase Data Collection on LGBT Workers</b>		
<b>Federal/State</b>	The federal government and its agencies, as well as state governments, should expand research and data collection on LGBT workers.	pp. 46-47

## Additional “Discrimination Without Legal Protection” Content Found in Full Report

### Expanded Discussion:

- For LGBT Workers, It Is Harder to Find and Keep a Good Job (pp. 18-21)
- Bias in Recruitment and Hiring; On-The-Job Inequality and Unfairness; Wage Gaps & Penalties; A Lack of Legal Protections (pp. 21-44)
- Recommendations/Solutions (pp. 21-44)
- Expanded Stories: Karen’s Story (page 28); Kristy Salazar’s Story (page 32); Leo Kattari’s Story (page 50)

### Infographics, Tables, Figures and Sidebars:

- Transgender Workers Work as Hard, Denied Healthcare & Leave (infographic) (page 52)
- What Is a “Good Job”? (page 20)
- Studies Show Hiring Bias Is Pervasive (page 21)
- CIA Beefs Up LGBT Recruiting (page 24)
- Workplace Harassment for LGBT Workers (page 25)
- Harassment vs. Discrimination: What’s the Difference? (page 25)
- Percent of LGBT Workers Who Are Open at Work, by Race (page 26)
- The Unique Challenges Facing Bisexual Workers (page 28)
- How Workplace Facilities Can Meet Diverse Needs (page 30)
- Women’s Earnings Compared to Men’s, by Race/Ethnicity (page 33)
- Median Weekly Earnings by Race/Ethnicity (page 33)
- Wage Gaps and Penalties by Gender and Sexual Orientation (page 34)
- Median Annual Personal Income (page 34)
- All Over the Map: Federal Appellate Case Law Offers Varying Protections for LGBT Workers Based on Sex Stereotypes (page 38)
- Nondiscrimination Laws Leave Religious Employers Free to Discriminate (page 40)
- Map of Local Employment Nondiscrimination Protections (page 42)
- Equality Means Business in Florida (page 43)
- Percent of Employers with Nondiscrimination Policies, by Employer Type (page 43)
- Government and Employers Can All Help End Discrimination Against LGBT Workers (page 44)

### Stories:

- Jenny Strauss’s Story: No More Pastel, Sweaty Palms or Confessions (page 23)
- John Herr’s Story: When His Partner Dies, His Boss Publicly “Outs” Him to 1,500+ Employees (page 27)
- Camryn Anderson’s Story: Comprehensive Plan + Senior Management Support = Engaged Employee (page 29)
- Aidan’s Story: A Company’s Upsetting Response to a Transgender Colleague (page 30)
- Vandy Beth Glenn’s Story: Fired Transgender Worker Is Protected by Courts After Being Called “Immoral” (page 40)

## THE BROKEN BARGAIN: FEWER BENEFITS AND MORE TAXES

### Overview: Unequal Treatment Puts LGBT Workers and Their Families at Greater Risk

In the same way that America is not holding up its end of the bargain with LGBT workers when it comes to providing equal access to good jobs and fair pay, the nation also falls short in offering LGBT workers and their families the same job-related benefits and tax advantages available to non-LGBT workers (see infographic on the next page). LGBT workers may do the same jobs and work just as hard as their non-LGBT counterparts, but the broken bargain means they are performing equal work for unequal compensation. They receive fewer benefits (which make up 31% of compensation among civilian workers)<sup>41</sup> and often have to pay thousands of dollars more in taxes.

When it comes to earned benefits for transgender workers, the broken bargain starts with the fact that they can be denied appropriate healthcare and medical leave when employers, medical providers or health insurance companies do not adequately understand transgender health needs (see infographic on next page). In addition, all LGBT workers face a “1-2-3 punch” that can result in denial of many benefits designed to protect the health and economic security of American families<sup>42</sup>:

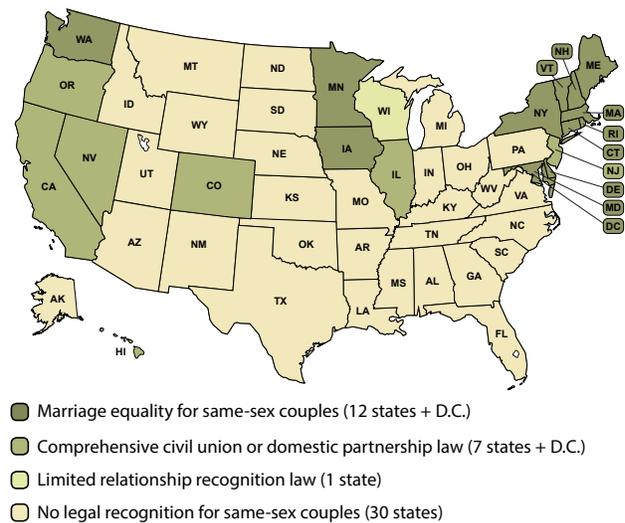
- 1. First, couples have to be married, and workers must have a legal parent-child relationship with their children, in order to access most family benefits and tax relief.** These narrow eligibility requirements also affect other families, such as unmarried heterosexual couples or an uncle who is raising his niece.
- 2. Second, most states prevent same-sex couples from marrying and/or have no mechanisms for some LGBT parents to create legal ties to the children they are raising. This often makes it impossible for LGBT workers to meet the legal requirements for accessing family benefits.** In most of the nation, an LGBT worker cannot meet the requirement that his or her same-sex partner be a legal spouse in order to receive family benefits (see *Figure 16*). Also, because some parenting rights flow from or are tied to marriage, LGBT workers may be legal strangers to their children. For example, same-sex couples are often denied access to joint or stepparent adoption, and the partner of a lesbian woman using donor insemination may not be considered a legal parent under state law.<sup>43</sup>

- 3. Third, even when LGBT workers can marry a same-sex partner, their marriages are not recognized by the federal government.** The Defense of Marriage Act (DOMA) prevents the federal government from recognizing the relationships of same-sex couples, even when a couple is married in their state. This makes it impossible for same-sex couples to meet the legal requirements for accessing federal family benefits and family tax relief. A challenge to DOMA's discriminatory federal treatment of married couples is currently before the U.S. Supreme Court, with a decision expected in June 2013.<sup>44</sup> However, even if the Supreme Court requires the federal government to recognize married same-sex couples, it is very unlikely that the decision would remove all barriers to federal recognition of same-sex couples in states where same-sex couples are denied marriage.

The 1-2-3 punch means LGBT workers may be denied an array of benefits, including family health insurance; leave to take care of a same-sex spouse or partner; Social Security spousal, survivor, death and disability benefits; family tax relief; and more.

The remainder of this section of the report provides more detail on many of the important non-wage benefits available to U.S. workers, how LGBT workers are denied equal access to these benefits, and what policymakers and business can do to help fix the broken bargain.

**Figure 16: State Marriage and Relationship Recognition Laws**



Source: Movement Advancement Project, Equality Maps, current as of May 15, 2013. For updates see [http://lgbtmap.org/equality-maps/marriage\\_relationship\\_laws](http://lgbtmap.org/equality-maps/marriage_relationship_laws).

# LGBT WORKERS WORK AS HARD GET FEWER BENEFITS AND PAY MORE TAXES

## → THE PROBLEM

DISCRIMINATORY  
BENEFITS, TAXATION  
AND FAMILY LAW



## → THE IMPACT

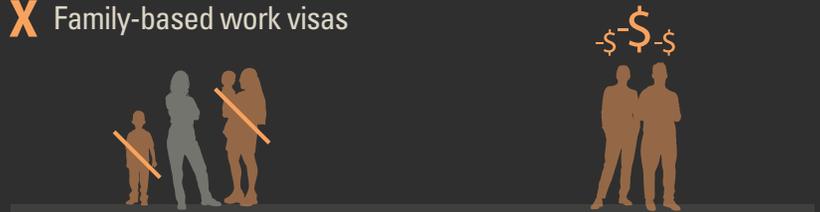
UNFAIR TAXATION AND  
REDUCED ACCESS TO  
BENEFITS LEAVES LGBT  
WORKERS AND THEIR  
FAMILIES VULNERABLE

### UNEQUAL BENEFITS

- X** Family health benefits
- X** Family medical leave
- X** Spousal retirement benefits
- X** Family death and disability benefits
- X** Family-based work visas

### UNFAIR TAXATION

- X** Denied family tax relief



## → THE SOLUTION

### FAIR BENEFITS AND TAXATION

Revise benefit and tax law to more broadly recognize today's families

### FAMILY RECOGNITION

Legally recognize the partners and children of LGBT workers

### EMPLOYER POLICIES

Employers can adopt policies that minimize the impact of unfair laws

*We must no longer* be a nation that allows loving, committed same-sex couples to be denied the economic and workplace rights and protections that heterosexual couples simply take for granted. The right to join your spouse’s healthcare plan, to enjoy the tax benefits of marriage, to receive the Social Security and pension benefits following the loss of a spouse, to visit your spouse in the hospital or make end-of-life decisions—these are all denied to same-sex couples.

Randi Weingarten, President, American Federation of Teachers. “Labor Movement Stands Up for Full Equality for Gay and Lesbian Americans.” March 5, 2013.



### Barrier: Unequal Access to Health Insurance Benefits

The United States is one of the few industrialized nations that does not provide universal healthcare. As a result, among working-age Americans (ages 25-64), more than six in 10 (62%) receive health insurance through an employer, and more than half of these workers choose coverage that includes at least one family member.<sup>45</sup> Although many employers offer health benefits, no federal or state law requires that they do so. However, the Affordable Care Act will extend tax credits to employers that offer health benefits beginning in 2014, and will require employers with 50 or more full-time workers who do not provide health insurance to their employees to pay an annual penalty.

#### Individual Health Insurance Coverage

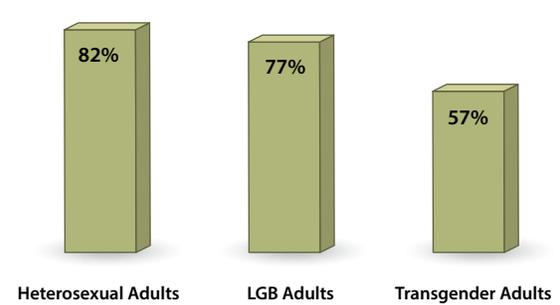
 **Problem:** LGBT workers have lower rates of health insurance and transgender employees have inadequate coverage.

**?** **About the Benefit.** Employer-provided individual health insurance coverage provides access to basic and condition-related care to individual employees.

**⚖** **Inequities for LGBT Workers.** When an employer offers health insurance to individual workers, the employer cannot systematically exclude individual

LGBT workers from its health coverage. However, research shows that LGBT adults are less likely to have health insurance than their non-LGBT counterparts, with transgender workers having particularly low rates of health insurance (see *Figure 17*). This reduced access is also more pronounced among LGBT people of color. Additionally, transgender workers often face denials of coverage, higher premiums, and exclusions for both basic and transition-related care. Insurers may create broad exclusions for anyone with a history of hormone use or gender dysphoria. Insurance companies’ classifications of members as male or female can also result in inappropriate denial of gender-specific care. For example, if a transgender man submits paperwork as “male” with his insurance provider, he may be rejected for gynecological care for ovarian cancer. Finally, many insurers still exclude coverage for transition-related care, even when they cover the exact same services (such as mastectomies or hormone replacement therapy) for non-transgender people under other circumstances.

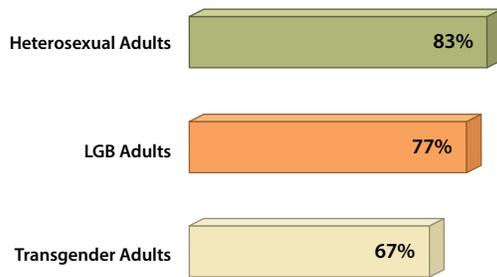
**Figure 17: Percent of Adults with Health Insurance**



Source: Krehely, Jeff. “How to Close the LGBT Health Disparities Gap.” *Center for American Progress*. December 21, 2009. <http://www.americanprogress.org/issues/lgbt/report/2009/12/21/7048/how-to-close-the-lgbt-health-disparities-gap/>.

**🚫 Impact on LGBT Workers.** When lack of health insurance is coupled with the daily stress of stigma and discrimination, it is not surprising that a growing body of research finds that LGBT Americans have poorer health outcomes, including higher rates of chronic illnesses,<sup>46</sup> greater incidence of psychological distress, and overall poorer health (see *Figure 18* on the next page). Additionally, when transgender workers are denied needed care, they may have to forego necessary treatment or pay for such treatment out of pocket, potentially costing thousands of dollars per year.

**Figure 18: Percent of Adults Reporting Excellent or Very Good Overall Health**



Source: Massachusetts Department of Public Health. "The Health of Lesbian, Gay, Bisexual and Transgender Persons in Massachusetts." July 2009. <http://www.masstpc.org/wp-content/uploads/2012/10/DPH-2009-lgbt-health-report.pdf>

## Family Health Insurance Coverage



*Problem:* Employers that offer family health insurance coverage to employees are not required to offer these benefits to LGBT families.

**?** **About the Benefit.** Employer-provided family health insurance coverage provides access to basic and condition-related care to the spouses, partners and children of employees.

**⚖️** **Inequities for LGBT Workers.** In general, employers that offer health insurance benefits must do so without discriminating. For example, an employer can't offer family benefits to Asian employees but not black employees. However, federal law allows large companies with self-funded insurance plans to offer family health insurance benefits to married opposite-sex couples but deny those benefits to married same-sex couples.<sup>47</sup> Also, no law prevents employers from offering health insurance to married couples and legally recognized children while denying such insurance to unmarried couples and non-legally recognized children. This creates obvious problems for LGBT workers, who are denied marriage and the ability to create legal parenting ties in most states.

**🚫** **Impact on LGBT Workers.** As a result of these inequitable laws, 17% of same-sex couples have only one spouse or partner covered by health insurance, compared to only 8% of opposite-sex couples.<sup>48</sup> LGBT families often have two choices: either do without insurance (resulting in the lower insurance rates discussed above); or buy expensive private insurance on the open market, which can cost a family from \$5,076 to \$7,615 annually.<sup>49</sup>

## Unequal Access to COBRA



*Problem:* The families of LGBT workers are denied equal access to health insurance continuation coverage.

**?** **About the Benefit.** Under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), employers with 20 or more employees must offer their workers the opportunity to continue to receive their individual and family health insurance coverage for up to 18 months after a job transition. A worker's family members have independent rights to elect to receive continued health coverage, even if the worker cannot or does not wish the family to receive this coverage (for example, if the worker dies or the spouses divorce).

**⚖️** **Inequities for LGBT Workers.** LGBT families are denied independent COBRA rights since these rights only need to be extended to a worker's federally recognized legal spouse and dependent children.

**🚫** **Impact on the Families of LGBT Workers.** While families of non-LGBT workers can maintain their existing health benefits regardless of the worker's choices and circumstances, LGBT families could lose all coverage if a worker dies or if the parents divorce. Paying out-of-pocket for private family health insurance can cost from \$7,614 to \$11,421 for 18 months of coverage.<sup>50</sup>

## Unfair Taxation of Family Health Benefits



*Problem:* LGBT employees pay federal income and payroll taxes on family health benefits in all 50 states and cannot use pre-tax dollars to pay for family health premiums.

**?** **About the Benefit.** To expand the number of children and adults with health insurance, the federal government allows employees to receive family health insurance as a tax-free benefit. Workers can also pay for the employee portion of family health insurance premiums using pre-tax dollars.

**⚖️** **Inequities for LGBT Workers.** When an LGBT employee receives health benefits for a same-sex spouse/partner and/or the partner's children, the family faces a double tax penalty. First, the value of the benefits is added to the employee's taxable income (even though the employee does not receive any additional salary).

Unlike an employee with an opposite-sex spouse, the LGBT employee must then pay both income and payroll (FICA) tax on these benefits. Second, workers who receive health benefits are often required to pay a portion of the total cost via an employee premium. This cost is deducted pre-tax for employees with opposite-sex spouses, but not for employees with same-sex spouses.

**🔧 Impact on LGBT Workers and Their Families.** These tax penalties can be extremely costly for LGBT workers. Consider an LGBT worker earning \$50,000 annually who has a spouse and two children covered under the employee's health insurance. An analysis by the Movement Advancement Project shows that, due to unfair taxation, the LGBT worker who receives these family benefits will pay \$3,200 more in taxes than a heterosexual worker in the same family situation.<sup>51</sup>

### Donna's Story: Compromising a Career and Working Two Jobs to Get Domestic Partner Benefits



Seven years ago, my partner and I moved back to Minneapolis. Kelly and I were so excited to return to the Midwest, where we had attended college and made many friends. I started a job at my current company, primarily because I would be able to sign Kelly up for health benefits. It isn't my dream job—it's not even in my field. I stay because of the health benefits and feel stuck professionally.

Even though Kelly and I consider ourselves lucky to receive domestic benefits, my paycheck takes a hit every month. I have to pay taxes on the cost of her health insurance, and I have to pay for her insurance using post-tax dollars. The costs add up. For us, it means Kelly and I both work second jobs.

—Donna, Minnesota

## Unequal Access to Family Pre-Tax Healthcare Savings Plans



**Problem:** LGBT workers cannot use pre-tax savings to pay for out-of-pocket health expenditures for their families.

**🔍 About the Benefit.** Health Flexible Spending Arrangements (FSAs) and Health Savings Accounts (HSAs) are programs that allow workers to use pre-federal-tax dollars to pay for out-of-pocket health-related expenses for themselves, their spouse, and their eligible dependents. Dependent Care Assistance Programs (DCAPs) allow employees to pay for up to \$5,000 in dependent care expenses using pre-tax dollars.

**⚖️ Inequities for LGBT Workers.** Because they are governed by federal tax law, FSAs, HSAs and DCAPs cannot be used by LGBT workers to pay for the health-related expenses of a same-sex partner or spouse—nor the non-dependent children of a spouse or partner. For example, LGBT workers cannot use pre-tax dollars to pay for family copayments, deductibles, and other out-of-pocket costs such as eyeglasses. Additionally, workers cannot transfer FSA and HSA funds to a same-sex spouse/partner tax-free upon the worker's death.

**🔧 Impact on LGBT Workers and Their Families.** The inability to use pre-tax savings to pay for ordinary out-of-pocket family health expenses can cost, on average, an additional \$779 annually.<sup>52</sup>

## Barrier: Denial of Family and Medical Leave

### Individual Medical Leave and Challenges for Transgender Workers



**Problem:** Transgender workers may face denials of leave for transition-related care.

**🔍 About the Benefit.** The federal Family and Medical Leave Act (FMLA) grants up to 12 weeks of unpaid leave when a worker has a "serious health condition." FMLA defines "serious health condition" to include any period of incapacity or treatment connected with inpatient care in a hospital (i.e., an overnight stay), hospice, or residential medical care facility, or a period of incapacity requiring absence of more than three days from work that involves continuing treatment by a healthcare provider.

**⚠ Inequities for Transgender Workers.** For transgender workers, accessing FMLA-covered time off for transition-related care can pose several challenges. Some physicians and employers may not correctly categorize transition-related healthcare as a serious health condition, and therefore unfairly deny leave. A transgender employee may also need to release protected health information to the employer to receive leave, thereby revealing his or her transgender status.

**🚫 Impact on Transgender Workers.** Given that transgender people lack explicit workplace protections in most states, revealing confidential health information and the employee's transgender status could pose a serious risk. Additionally, when transgender workers are unfairly denied leave, they must choose between losing their jobs or forgoing needed medical care.

### Family Medical Leave to Care for a Child or Spouse/Partner



*Problem:* LGBT workers can be denied leave to care for an ill or injured same-sex spouse or partner.

**❓ About the Benefit.** The FMLA also allows eligible employees up to 12 weeks of unpaid leave to care for a spouse, parent or child with a "serious health condition."

**⚠ Inequities for LGBT Workers and Their Families.** When it comes to caring for children, the FMLA uses a broad definition of family that allows an LGBT worker to take time off to take care of his or her child, regardless of whether the worker is a legal parent of that child. Unfortunately, the FMLA does not allow workers to take time off to care for a same-sex spouse or partner.

**🚫 Impact on LGBT Workers.** An employee who has a sick same-sex spouse or partner will likely face difficult decisions. Does she take time away from work and risk losing her job? Or does she leave her sick spouse or partner alone in a hospital room all day and go to work worrying about whether the person she loves is really getting the care she needs? Or does she hire expensive in-home care costing over \$200 per day?<sup>53</sup>

## Barrier: Denial of Spousal Retirement Benefits

### Denial of Social Security Spousal Benefits



*Problem:* The spouses/partners of LGBT workers are systematically denied Social Security spousal and survivor benefits.

**❓ About the Benefit.** No retirement plan is more important for retired American workers than Social Security. Excluding Social Security benefits from seniors' incomes, the poverty rate among older adults would rise from roughly 9% to more than 43%.<sup>54</sup> Workers are not automatically granted Social Security; it is an earned benefit. Eligibility and benefit amounts are based on how much workers contribute to Social Security in the form of mandatory payroll taxes throughout their working lives.

**⚠ Inequities for LGBT Workers and Their Families.** Despite paying into Social Security in the same manner as their peers, LGBT workers are not equally eligible for Social Security benefits. The biggest difference is that the same-sex spouses and partners of LGBT workers are systematically denied three Social Security benefits designed to protect workers' families during the post-retirement years:

- The spousal benefit, which allows the opposite-sex spouse of a worker to receive up to 50% of the worker's earned Social Security benefit if that amount is higher than the benefit the spouse earned herself or himself.
- The survivor benefit, which allows a surviving opposite-sex spouse (or ex-spouse) to receive the greater of his or her individual Social Security benefit or 100% of the deceased worker's benefit amount.
- A one-time "death benefit" of \$255, which often helps cover funeral, burial or cremation expenses.

**🚫 Impact on LGBT Workers.** The lack of spousal benefits can cost a retired same-sex couple up to \$14,484 a year in lost benefits, while the lack of survivor benefits can cost an LGBT surviving spouse/partner up to \$28,968 a year in lost benefits.<sup>55</sup> Over time, the effects of unequal benefits compound, potentially leaving a same-sex couple or surviving spouse in poverty, while providing adequate financial security for an opposite-sex couple in an identical initial financial situation (see "A Tale of Two Retired Workers" on the next page).

A Tale of Two Retired Families: Social Security for One, Fear-Filled Financial Future for the Other	Married Heterosexual Couple		Married Lesbian Couple	
				
	George	Maria	Christine	June
Individual Monthly Social Security Benefit <sup>vvv</sup>	\$1,230 (average benefit for a retired worker)	\$365 (based on sporadic work history at lower income)	\$1,230 (average benefit for a retired worker)	\$365 (based on sporadic work history at lower income)
Monthly Social Security with Spousal Benefit	\$1,230	\$615 (half of George's benefit)	\$1,230	\$365 (denied spousal benefit)
Combined Social Security Benefit	\$1,845/mo (\$22,140/yr)		\$1,595/mo (\$19,140/yr)	
Annual Difference			-\$3,000 per year	
George and Christine both die at age 75—Social Security for Maria and June	George's Social Security Income	Maria's Social Security Income	Christine's Social Security Income	June's Social Security Income
	\$1,230	\$1,230 (Maria's Social Security increased to George's amount)	\$1,230 (Social Security)	\$365 (June is denied Social Security survivor benefits)
Social Security Benefit for Surviving Spouse	\$1,230/mo (\$14,760/yr)		\$365/mo (\$4,380/yr)	
Annual Difference			-\$10,380 per year	
TOTAL DIFFERENCE OVER 20 YEARS			-\$133,800	
THE BOTTOM LINE	 Income at <b>128%</b> of the poverty line <sup>www</sup>		 Income at <b>38%</b> of the poverty line. Received <b>\$133,800</b> less in Social Security over 20 years	

<sup>vvv</sup>The average Social Security benefit for a retired worker in 2012. U.S. Social Security Administration. "Average monthly Social Security benefit for a retired worker." [http://ssa-custhelp.ssa.gov/app/answers/detail/a\\_id/13/~/average-monthly-social-security-benefit-for-a-retired-worker](http://ssa-custhelp.ssa.gov/app/answers/detail/a_id/13/~/average-monthly-social-security-benefit-for-a-retired-worker) (accessed March 4, 2013).

<sup>www</sup>2013 Federal Poverty Guidelines are \$11,490 for one person.

## Marvin Burrow's Story: 77-year-old Shoe Salesperson Denied Partner's Social Security Benefits



Marvin Burrows and Bill Swenor were married in San Francisco in 2004 under the direction of the city's Mayor Gavin Newsom. Although their marriage was soon rendered void by a ruling by the California Supreme Court, they had spent more than 50 years together when Bill died in 2005.

Marvin, a retired shoe salesman who was 77 at the time, faced not only the grief of losing Bill, but was also forced to leave their family home and his pets and his furniture behind when he couldn't afford to stay any longer. Why? Because unlike married opposite-sex couples in the United States, same-sex couples cannot collect any of their partner's Social Security benefits. According to Bill, who lives on a fixed income and is facing heart surgery, the \$1,100 a month in Social Security survivor benefits could have helped him not only keep his home, but pay his medical bills.

Source: Adapted from New, Catherine. "Social Security Benefits Denied To Same-Sex Couples, Costing Thousands: Report." *Huffington Post*, March 5, 2013. [http://www.huffingtonpost.com/2013/03/05/social-security-benefits-same-sex-couples\\_n\\_2806755.html](http://www.huffingtonpost.com/2013/03/05/social-security-benefits-same-sex-couples_n_2806755.html)

## Unequal Treatment Under Defined-Benefit Plans/Pensions



**Problem:** The same-sex spouse or partner of an LGBT worker may be unfairly denied earned pension benefits when the worker dies.

**?** **About the Benefit.** Defined-benefit plans, often called "pension plans," usually allow a retired employee to receive a set level of benefit payments (usually monthly) over the course of his or her retirement. Nearly one-third (31%) of retirees age 65 and older receive some income from pension plans.<sup>56</sup> Under federal law, pension plans automatically extend financial protection to a worker's spouse should the worker die. A Qualified Joint and Survivor Annuity (QJSA) makes the pension payable (albeit with a smaller monthly payment) over the lifetimes of both the worker and his or her spouse. A Qualified Pre-Retirement Survivor Annuity (QPSA) allows the worker's surviving spouse to receive the pension if the worker dies before retiring.

**⚖️ Inequities for LGBT Workers and Their Families.** Because federal law regulates most aspects of pensions, employers are not required to make QJSAs nor QPSAs available for same-sex partners or spouses (though many employers still elect to do so).

**🚫 Impact on LGBT Workers.** LGBT workers have to live with the anxiety of knowing that there may be nothing

## Charlie Morgan's Story: Battling Breast Cancer, She Fights for Benefits for Her Wife, Karen



Photo by Michael Key, Washington Blade

Chief Warrant Officer Charlie Morgan of the New Hampshire National Guard was diagnosed with breast cancer in 2008. After surgery and chemotherapy, she won the battle against the disease and was deployed to Kuwait. Three years later, her cancer returned and Morgan was diagnosed with stage-four terminal breast cancer in 2011. She was married to Karen Morgan, and together they had a daughter, Casey Elena.

As passionate about LGBT equality as she was about defending her country, Morgan was a plaintiff in a landmark legal case challenging the Defense of Marriage Act (DOMA). When meeting with the staff of U.S. House Speaker John Boehner (R-OH), she said she wasn't afraid to die, but she wanted DOMA stricken from the books so her wife would receive pension benefits. DOMA prohibits same-sex spouses of troops from receiving pensions and Social Security death benefits.

In an interview with the *Washington Blade*, Morgan said, "I'm very worried about the military survivor benefits for Karen if I don't survive this bout with cancer. I am worried that Karen would not receive the same spousal survivor benefits as our heterosexual counterparts."

Morgan died on February 10, 2013. Her wife is currently not entitled to spousal Social Security benefits.

Source: Adapted from Johnson, Chris. "Lesbian guardsman who fought DOMA dies of cancer," *Washington Blade*. February 10, 2013. <http://www.washingtonblade.com/2013/02/10/lesbian-guardsman-who-fought-doma-dies-of-cancer/> (accessed March 24, 2013).

in their pension plans to ensure continuing support after their death for a surviving same-sex spouse or partner. Consider a worker who retired at age 65 with 20 years of service and a salary of \$50,000. A joint life annuity (QJSA) might pay the couple \$1,827 per month. If the worker died and his opposite-sex spouse lived another decade, the surviving spouse would receive \$219,240 in additional pension income—income that would be denied a same-sex spouse or partner.<sup>57</sup>

### 401(k)s, IRAs and Other Defined-Contribution Plans



**Problem:** Same-sex spouses and partners of LGBT workers are denied tax-advantaged rollover and distribution options for defined-contribution retirement plans upon the worker's death.

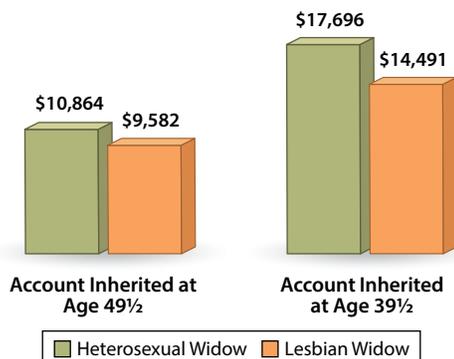
**?** **About the Benefit.** Defined-contribution plans, such as 401(k)s, Simple IRAs, or stock or profit-sharing plans, are the most common form of employer-sponsored retirement plans for employees in the private sector. The amount of money available to the worker during retirement depends on what the employee and the employer contributed over time. If a worker with an opposite-sex spouse dies, the funds in the worker's retirement account may be rolled over to his spouse tax-free—and the inherited and “rolled-over” assets are then treated as the spouse's own. This means opposite-sex spouses can leave inherited retirement accounts to grow tax-free until they reach the age of 70½ years.

**⚠️ Inequities for LGBT Workers and Their Families.** Only spouses are granted significant tax advantages under the federal law governing these types of plans. Because federal law does not recognize the relationships of same-sex couples, an LGBT employee's same-sex spouse/partner who inherits such an account is considered a “non-spousal” beneficiary—and is required to immediately start drawing down and paying taxes on the funds.

**🔪 Impact on LGBT Workers.** Over time, the different treatment of a same-sex spouse/partner can have a significant impact on retirement savings and income, especially for those who inherit an account earlier in life. For example, a lesbian widow inheriting a \$50,000 IRA at age 39 might lose \$3,205 in annual retirement income due to this inequitable tax treatment (see *Figure 19*).

**Figure 19: Difference in Annual Retirement Income from \$50,000 Inherited IRA**

Annual Income from Inheritance Drawn Down from Age 65-80



Sources: MAP analysis as explained in the longer-form of this report, pp. 86-87.

## Barrier: Unequal Family Protections When a Worker Dies or Becomes Disabled

### Social Security Survivors and Disability Insurance Benefits



**Problem:** Families of disabled and deceased LGBT workers are denied equal Social Security death and disability benefits.

**?** **About the Benefit.** In addition to providing retirement income, Social Security also provides the equivalent of life or disability insurance through the Old-Age, Survivors and Disability Insurance (OASDI) program. When a worker is disabled or dies, her legally recognized children under age 18 can also receive benefits through OASDI, as can the worker's opposite-sex spouse if the spouse is caring for the worker's child and if the child is under age 16. This program provides benefits to more children than any other social program in the United States. In 2011, Social Security benefits lifted more than 1.1 million children out of poverty.<sup>58</sup> OASDI benefits are particularly vital for families of color.<sup>59</sup>

**⚠️ Inequities for LGBT Workers and Their Families.** Under federal law, a worker's same-sex spouse/partner cannot receive survivor or disability benefits. In addition, if the worker is parenting the couple's children but is not a legal or biological parent, the family will also be denied disability benefits meant to support their children.

**🔪 Impact on LGBT Workers.** The average monthly benefit for the opposite-sex spouse of a disabled worker was \$299 in 2011, while the average monthly

benefit for a disabled worker's child was \$322.<sup>60</sup> Assuming a worker has a spouse and two children who all receive the average benefit amount, this equates to \$11,316 in annual household income. In 2011, the average monthly benefit for the opposite-sex spouse of a deceased worker was \$884, while a minor child of a deceased working parent received an average of \$783 per month.<sup>61</sup> These figures increase dramatically when looking at maximum benefits. For example, the surviving family (spouse and two children) of a deceased worker who was earning \$40,000 annually could lose as much as \$29,520 in annual benefits based on the maximum benefit allowed.<sup>62</sup>

## Barrier: A Higher Tax Burden for LGBT Families

### Unequal Taxation for LGBT Families



*Problem:* LGBT families can be denied access to joint filing status and child and family-related tax credits resulting in significantly higher taxation.

**?** **About the Benefit.** The federal government provides a number of marriage and family-based incentives and tax credits aimed at helping workers, regardless of economic circumstance, ease the financial burdens of raising a family. The Tax Foundation estimates that an average-income American family receives approximately \$16,781 in such federal tax relief each year.<sup>63</sup>

**⚠** **Inequities for LGBT Workers and Their Families.** LGBT workers are denied many of the most important family and child tax credits, resulting in significantly higher taxation. First, workers with same-sex spouses/partners cannot file a joint federal tax return (which would normally result in a much lower tax payment). Second, when LGBT parents cannot form legal ties to their children, they also generally cannot claim many important child-related deductions and credits, including tax exemptions for dependents; the child tax credit; the child and dependent care expense credit; and multiple education-related deductions and credits. Additionally, LGBT workers are spending a considerable amount of added time and money dealing with tax issues. Same-sex couples often must run multiple tax scenarios, create “dummy” federal returns, submit extra paperwork, face audits, and face denials of legitimate tax credits.

**⚠** **Impact on LGBT Workers.** Same-sex couples and their children can be left with significantly less money, both to provide for their families now, and to save for their future. Consider an LGBT family with one working parent who has a taxable income of \$60,000 a year and a stay-at-home parent who has no income. When filing as “single,” the working parent, prior to other family-related deductions and credits, would face a federal tax burden of approximately \$11,036. But if that worker were able to file jointly as part of a married couple, the couple's federal tax burden would be only \$8,134. The inability to file a federal tax return as a married couple costs the LGBT family \$2,902 in additional taxes. Combined with other tax inequities, the disparities are even more significant. Consider a same-sex couple raising two children. The primary wage earner earns \$48,202 per year while his partner (who is the legal parent of the children) works part-time and earns \$7,250 per year. An analysis by the Movement Advancement Project shows that this family would pay \$5,838 more in taxes than an identically situated heterosexual couple raising two children.<sup>64</sup>

## Barrier: Inability to Sponsor Families for Immigration

### U.S. Immigration Law Forces Workers to Choose Between Employment and Family



*Problem:* LGBT family members can be denied work and family-related visas because their relationships are not recognized.

**?** **About the Benefit.** U.S. immigration law grants U.S. citizens and lawful permanent residents with family members in another country the ability to sponsor those family members to immigrate to the United States. Likewise, lawmakers have enacted policies to encourage highly skilled foreign-born workers to immigrate, and to allow their families to join them.

**⚠** **Inequities for LGBT Workers and Their Families.** LGBT workers nationally and globally are currently unable to sponsor a same-sex partner (or a partner's children) for immigration into the United States. This is true whether they are applying for an employment-related or a family-related visa.

**⚠** **Impact on LGBT Workers and Employers.** An LGBT worker could be forced to choose between: (1) living without his or her family to take a U.S. job; (2) trying to

secure temporary visas for family members that will not allow them to work; or (3) remaining abroad. The law also puts employers in a bind. For example, a company may offer a job to a foreign LGBT student who moved to the United States to study, is now graduating from a doctoral program, and wishes for his family to join him. Or, a company may want to recruit a highly skilled LGBT employee from another country who needs to relocate together with her family. In both of these cases, the LGBT employees would need to leave their families behind in order to accept the job offer—meaning they would most likely decline the job.

## Employers Take Action to Reduce the Inequities

Fixing the broken bargain when it comes to issues like benefits, taxation and immigration requires government action. But, in the same way that many employers are taking steps to reduce discrimination against LGBT employees, they also are voluntarily doing their part to try and ease the burden of the law's unfair treatment of LGBT workers by helping them access certain job-related benefits.

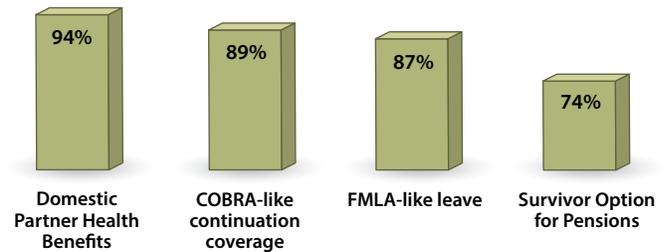
Figure 20 shows the strong support for extending family benefits among Fortune 500 companies surveyed by the Human Rights Campaign. For example, the vast majority of these leading companies voluntarily extend the following benefits to their employees:

- **Domestic partner health benefits** (94%)
- **COBRA-like health insurance continuation coverage** (89%)
- **FMLA-like family and medical leave** (87%)
- **Pension plan survivor options for same-sex couples** (74%)<sup>65</sup>

Employers also are working to address some of the other problems discussed in this section of the report, such as:

- **Unfair taxation of family benefits.** Some employers have begun to increase (or “gross up”) pay for workers with same-sex spouses/partners to counterbalance the unfair taxation of these benefits. Just a few of the companies and firms that have done so are Accenture, Cisco, Discovery Channel, Deutsche Bank, JetBlue, Goldman Sachs, Symantec and Winston & Strawn. Additionally, the Business Coalition for Benefits Tax Equity brings together

**Figure 20: Participating Fortune 500 Companies**  
2013 Human Rights Campaign Corporate Equality Index



Source: Human Rights Campaign. “Corporate Equality Index 2013.” 2012.

more than 80 leading U.S. employers that support legislative efforts to end the unfair taxation of family health insurance benefits for LGBT workers.<sup>66</sup>

- **Unfair immigration policies.** More than 30 major global companies have joined the Business Coalition for the Uniting American Families Act (UAFA). This group advocates for the passage of the federal legislation and educates Congress on why extending immigration eligibility to the same-sex foreign-born partners of U.S. citizens and lawful permanent resident partners makes good business sense. Among the members of the coalition are companies from American Airlines and Bristol-Myers Squibb to Cisco Systems, Citi, Nike and Starwood Hotels.<sup>67</sup>

Through their actions to ease the burden of unfair treatment on LGBT employees, as well as their advocacy of broader solutions, these companies are demonstrating that reducing inequities in areas from access to health benefits to taxation to immigration is not just good for LGBT workers and their families. It also will deliver important benefits to their employers and, more broadly, to the U.S. economy.

*I think you'll find* that, historically, most companies ... don't want to get involved in social issues. To see this many businesses rallying behind this cause tells you that it's a real business issue.

P. Sabin Willett, Partner at Bingham McCutchen, as quoted in Stewart, James B. “Refusing to Be Late on Gay Marriage.” *The New York Times*. March 1, 2013.



## Recommendations/Solutions

The federal government, state government and employers all have distinct and important roles to play in helping LGBT workers receive equal benefits. States must provide paths to marriage and ways for LGBT parents to create legal ties to their children. Additionally, the federal government could go a long way toward fixing the broken bargain for many LGBT workers by repealing DOMA and expanding federal law to recognize today's families, including same-sex "permanent partners" and

children for whom a worker acts as a parent. Many of the access or equity gaps that affect LGBT workers also affect low-income workers broadly, workers with heterosexual domestic partners, workers of color, and workers who live with and support family members who are not a spouse or legal child, such as an uncle providing care for a nephew. The recommendations spelled out below help these workers as well, while also easing compliance burdens on employers and supporting their ability to attract and retain the workers they need to succeed.

Recommendations to Help LGBT Workers and Their Families Gain Equal Access to Work-Related Benefits		Full Report Page References
<b>Recognize the Families of LGBT Americans</b>		
<b>Federal</b>	<p>Congress should repeal the federal Defense of Marriage Act (DOMA), which currently prevents the federal government from recognizing same-sex couples under various laws and retirement programs—even couples who are legally married in their states.</p> <p>Combined with state-level marriage, repeal of DOMA would provide equal access to family health benefits, COBRA benefits, pre-tax health savings accounts, family and medical leave, spousal retirement benefits, Social Security death and disability benefits, family-based tax relief, and family-based immigration visas.</p>	page 97
<b>Federal</b>	Congress should pass the Respect for Marriage Act, which would unambiguously require that the federal government respect state-recognized marriages as well as same-sex couples in legally recognized civil unions and domestic partnerships, thereby granting these couples the same access as married opposite-sex couples to all federal programs.	page 97
<b>State</b>	State lawmakers should work to legalize marriage for same-sex couples in all states.	page 98
<b>State</b>	State lawmakers should pass comprehensive parental recognition laws at the state level to help LGBT workers gain legal ties to their children.	page 98
<b>Individual and Family Health Benefits</b>		
<b>Health Insurance</b>		
<b>State</b>	State lawmakers should revise state insurance laws to ensure that LGBT workers can obtain individual health insurance (whether purchased privately or provided through employers) that meets their healthcare needs, including coverage parity for transgender people.	page 98
<b>Federal</b>	Congress should revise federal laws to ensure that self-insured employers provide equal access to family health benefits for all workers' partners and dependents, regardless of marital status or legal status of parent-child relationships.	page 98
<b>State</b>	State lawmakers should revise state laws to ensure that fully insured employers provide equal access to family health benefits for all workers' partners and dependents, regardless of marital status or legal status of parent-child relationships.	page 99
<b>Federal</b>	Congress and the President should extend equal family health benefits to all federal government employees, including LGBT workers.	page 99

Recommendations to Help LGBT Workers and Their Families Gain Equal Access to Work-Related Benefits		Full Report Page References
<b>Individual and Family Health Benefits (continued)</b>		
<b>State, Local</b>	State and local lawmakers should extend equal family health benefits to all state and local government employees, including LGBT workers.	page 99
<b>Employer</b>	Employers should offer affordable health insurance benefits, including equal family coverage for the partners of all employees and their dependents, regardless of marital status or legal status of parent-child relationships.	page 99
<b>COBRA Health Insurance Continuation Benefits</b>		
<b>Federal</b>	Congress should ensure equal access to COBRA health insurance continuation benefits for any child or adult who is eligible for coverage under an employer's health plan.	page 99
<b>Employers</b>	Employers should consider providing COBRA-equivalent coverage for LGBT employees and their families.	page 100
<b>Taxation of Health Benefits</b>		
<b>Federal/State</b>	Congress should end unfair federal taxation of family health benefits for LGBT families by allowing any adult or child covered under an employee's health plan to receive health benefits without placing an extra tax burden on the employee. States that impose additional state taxes on domestic partner benefits should also end such unfair taxation.	page 100
<b>Employer</b>	Employers should consider helping LGBT workers pay for the extra tax burden incurred when receiving family health benefits.	page 100
<b>Pre-Tax Healthcare Savings Plans</b>		
<b>Federal</b>	Congress should allow LGBT workers to use pre-tax savings for out-of-pocket expenses for family members.	page 100
<b>Family and Medical Leave</b>		
<b>Federal/State/ Employer</b>	Federal and state governments and employers should revise the federal Family and Medical Leave Act (FMLA)/state medical and family leave laws/employer leave policies to broaden the definition of covered caregivers to include leave to care for a domestic partner, same-sex spouse, parent-in-law, adult child, sibling or grandparent.	pp. 100-101
<b>Federal/State/ Employer</b>	The Department of Health and Human Services should clarify that the federal FMLA allows leave for transgender workers seeking transition-related care. State policymakers and employers should similarly clarify state medical and family leave laws and employer leave policies, respectively.	page 101
<b>Retirement and Survivor Benefits</b>		
<b>Social Security Retirement Benefits</b>		
<b>Federal</b>	Congress should expand Social Security retirement benefits to include same-sex spouses and partners.	page 101
<b>Pensions/Defined-Benefit Plans</b>		
<b>Federal</b>	Congress should expand mandates for survivor benefits for pensions/defined-benefit plans.	page 101
<b>Employer</b>	Employers should consider offering survivor benefits to the same-sex spouses and partners of LGBT workers.	page 102

Recommendations to Help LGBT Workers and Their Families Gain Equal Access to Work-Related Benefits		Full Report Page References
<b>Retirement and Survivor Benefits (continued)</b>		
<b>401(k)s, IRAs, and Other Defined-Contribution Plans</b>		
<b>Federal</b>	Federal tax law should treat “non-spouse” beneficiaries of inherited IRAs in the same manner as spousal beneficiaries.	page 102
<b>Social Security Survivor and Disability Benefits</b>		
<b>Federal</b>	Congress should ensure equal access to earned Social Security death and disability benefits for partners/spouses of LGBT workers and any children for whom the worker functions as a parent.	page 102
<b>Employer</b>	Employers should offer alternative death and disability options, such as life and disability insurance to workers.	page 102
<b>Federal Income Tax Inequities</b>		
<b>Federal</b>	<p>Congress should provide equal access to federal tax relief for LGBT workers and their families by:</p> <ul style="list-style-type: none"> <li>• Expanding the spousal credits and deductions to same-sex spouses and “permanent partners.”</li> <li>• Broadening the definition of the “qualifying person” test for “head of household” status and the credit for child and dependent care expenses.</li> <li>• Broadening the definition of “qualifying child.”</li> <li>• Expanding access to the credit for child and dependent care expenses so that any person who pays for the childcare or dependent care of another person can claim the credit.</li> <li>• Expanding access to education deductions and credits to allow any individual who pays the tuition and fees of another person to take these deductions and credits.</li> <li>• Ending inequitable taxation of family health benefits.</li> </ul>	page 103
<b>Immigration and Citizenship for LGBT Workers and Their Families</b>		
<b>Federal</b>	Congress should pass legislation allowing U.S. citizens to sponsor a “permanent partner” for the purposes of immigration.	page 104
<b>Federal</b>	Congress should enact comprehensive immigration reform that includes avenues to legal status for undocumented workers already living in the United States.	page 104
<b>Federal</b>	All relevant agencies and departments should take immediate action to prevent unnecessary discrimination against LGBT immigrants.	page 104

## Additional “Fewer Benefits and More Taxes” Content Found in Full Report

### Expanded Discussion:

- Unequal Treatment Puts LGBT Workers and Their Families at Greater Risk (pp. 51-55)
- Unequal Access to Health Insurance Benefits; Denial of Family and Medical Leave; Denial of Spousal Retirement Benefits; Unequal Family Protections When a Worker Dies or Becomes Disabled; A Higher Tax Burden for LGBT Families; Inability to Sponsor Families for Immigration (pp. 60-95)
- Recommendations/Solutions (pp. 95-104)

### Infographic:

- Transgender Workers Work As Hard But Are Denied Healthcare and Leave (page 52)

### Tables, Figures and Sidebars:

- How LGBT Workers Face Unequal Access to Benefits and Tax Relief (Overview Table) (pp. 56-59)
- Single vs. Family Health Insurance (page 60)
- Percent of Employers Offering Health Insurance by Number of Workers Employed (page 60)
- High Cost of Health Insurance Leaves Workers Unprotected (page 61)
- Family Health Benefits for Private-Sector and State/Local Government Employees (page 61)
- LGB Adults with Health Insurance by Race/Ethnicity (page 62)
- Transgender Adults with Insurance by Race/Ethnicity (page 62)
- LGBT People Experiencing Healthcare Discrimination from Healthcare Professionals (page 63)
- Percent of Adults Reporting Psychological Distress (page 63)
- Percent of Employers Offering Health Insurance Benefits to Unmarried Same-Sex Partners (page 64)
- When Must a Private Employer Offer Benefits to the Same-Sex Spouses/Partners of Employees? (page 66)
- States Offering Same-Sex Partner Health Benefits to State Employees (page 67)
- The Battle for Domestic Partner Health Benefits for Public Employers in Michigan (page 68)
- America Compromises National Security In Order to Treat Gay Service Members Unfairly (page 69)
- A Tale of Two Working Families: Unfair Federal Taxation on Family Health Insurance (page 71)
- Lack of Paid Leave Adds to Challenges Facing Low-Wage Workers (page 75)
- Maps of State Family Leave Laws (page 77)
- Percentage of Social Security Beneficiaries Age 65 or Older with High Reliance on Social Security Benefits (page 79)
- Annual Social Security Income of Older Couples (page 80)
- Access to Retirement Benefits By Employer Type and Size (page 82)
- Lack of Joint Survivor Options for a Same-Sex Partner Creates Significant Financial Hardship (page 83)
- Percent of Large Employers with Pension Plans Extending Retiree and Survivor Benefits to Same-Sex Spouses/Partners (page 87)
- A Tale of Two Federal Tax Returns: Tax Inequities Multiplied (pp. 91-92)
- LGBT Undocumented Immigrants Face Added Challenges (page 94)
- Who Can Help LGBT Workers Receive Equal Benefits? (page 96)

### Stories:

- Dr. Andries Coetzee’s Story: Uncertain Healthcare Coverage for a Professor’s Partner (page 67)
- Tracy Johnson’s Story: Military Tells Fallen Staff Sergeant’s Parents of Death—But Not Her Wife (page 70)
- Kelly Glossip’s Story: Denied Pension of State Trooper Who Was Partner for 15 Years (page 84)
- Family Plans for the Worst Because Social Security Benefits May Not Be Available (page 88)
- Family Left Destitute After Being Denied Social Security Survivor Benefits (page 89)

## Conclusion

The unfair laws and policies described in this report can impose substantial burdens on millions of LGBT workers and their families across the country. The real-world impact of these burdens can be seen more clearly when we focus on their combined effects on the individuals and families who are put in harm's way by America's broken bargain.

To illustrate the interplay of many of these issues, the next two pages offer two scenarios that compare the very different outcomes for LGBT workers and non-LGBT coworkers. The first scenario compares two single workers, one who is transgender and one who is not. The second scenario compares two married workers raising children, one who is gay and the other who is heterosexual. In both cases, the LGBT workers end up at a clear and significant disadvantage despite having essentially the same initial starting point and experiencing an equivalent sequence of events.

These stories show the real costs of America's broken bargain with LGBT workers. The workers in the stories are not unique. LGBT workers live in every state in the country. They work for all types of employers and in all types of jobs. And yet they and their families continue to face discrimination, fewer benefits and higher taxation—making it harder for these workers to take care of their families, avoid poverty, and save money for education, retirement and other needs.

Fixing the broken bargain for LGBT workers will help ensure that they and their families are treated fairly no matter where they work, that they receive the same compensation for the same work, and that they can access important benefits aimed at keeping America's workers and families healthy and financially secure.

America has passed numerous laws and policies based on an understanding that protecting the interests of workers and their families is good for the economy and good for the country. It is time for those protections to extend to LGBT workers. It is time to send LGBT workers the message that they and their families matter, and to show that our nation and our economy are stronger when we treat all workers fairly.

*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.

Michigan Department of Civil Rights.  
"Report on LGBT Inclusion Under  
Michigan Law." January 28, 2013.



Two Qualified and Capable Workers, Two Different Outcomes		
 Suzanne, who is transgender	 Rachel, who is not	Added financial burden for Suzanne
<b>At the interview...</b>		
<ul style="list-style-type: none"> <li>Recruiter is uncomfortable, interview ends early.</li> </ul>	<ul style="list-style-type: none"> <li>Recruiter and Rachel chat comfortably; entire interview goes well.</li> </ul>	
<b>During background checks...</b>		
<ul style="list-style-type: none"> <li>Must file an application with "old" name.</li> <li>Driver's license and Social Security card don't match gender expression.</li> </ul>	<ul style="list-style-type: none"> <li>Sails through application and background checks.</li> </ul>	
<b>On the job...</b>		
<ul style="list-style-type: none"> <li>Salary of \$30,000<sup>a,278</sup></li> <li>Snide comments and jokes.</li> <li>Passed over for promotions.</li> </ul>	<ul style="list-style-type: none"> <li>Salary of \$45,000.</li> <li>Rising star in the company.</li> <li>Mentored by her supervisor.</li> <li>Is promoted at start of third year; salary bumped to \$55,000.</li> </ul>	<b>\$105,000 over five years<sup>b</sup></b> (\$15,000 per year for years one and two; \$25,000 per year for years three through five)
<b>Receiving individual healthcare benefits ...</b>		
<ul style="list-style-type: none"> <li>Insurer refuses to pay for hormone treatment and lab tests for Suzanne.</li> </ul>	<ul style="list-style-type: none"> <li>Rachel is fully covered, including for birth control.</li> </ul>	<b>\$5,000 over five years</b> (Suzanne pays \$1,000 annually; \$250 for doctor and lab visits and \$750 for hormone therapy out-of-pocket) <sup>c</sup>
<b>Taking medical leave after four years...</b>		
<ul style="list-style-type: none"> <li>Job harassment and unequal treatment have taken a toll on Suzanne.</li> <li>She seeks medical leave for treatment for anxiety and depression, but her leave is refused because her condition isn't "serious enough."</li> <li>The insurance company refuses to pay for treatment, citing policy exclusions for "her condition."</li> </ul>	<ul style="list-style-type: none"> <li>Rachel experiences the death of both of her parents just a few months apart.</li> <li>She seeks family medical leave and mental health counseling.</li> <li>Both leave and counseling are granted and covered.</li> </ul>	<b>\$4,500</b> (for one year of counseling <sup>d</sup> )
<b>After four and a half years...</b>		
<ul style="list-style-type: none"> <li>When Suzanne takes a week of needed mental health leave, the company fires her.</li> </ul>	<ul style="list-style-type: none"> <li>Rachel is promoted to regional sales manager</li> </ul>	<b>\$18,077 in lost income</b> <ul style="list-style-type: none"> <li>\$577 in lost income because she is not covered for her one-week medical leave<sup>e</sup></li> <li>\$17,500 in lost income because she is and remains unemployed for the next 6 months</li> </ul>
<b>BOTTOM LINE</b>		
<ul style="list-style-type: none"> <li>Unemployed.</li> <li>No savings.</li> </ul>	<ul style="list-style-type: none"> <li>Salary of \$65,000.</li> <li>Rising star in company.</li> <li>Healthy savings.</li> </ul>	<b>\$132,577 in just 5 years</b> Extra financial burden in lost income, out-of-pocket medical expenses, denied promotions, unfair firing

<sup>a</sup> Research has found that transgender women may see their wages fall by nearly one-third after they transition from male to female.

<sup>b</sup> For sake of simplicity, these numbers are pre-tax.

<sup>c</sup> Assumes a cost of \$40 per month for hormone therapy and \$500 per year for doctors' visits and lab tests. See "Transgender Health Benefits." <http://www.tgender.net/taw/tsins.html>

<sup>d</sup> Assumes 50 weeks of counseling at \$90 per week, paid out-of-pocket by Suzanne.

<sup>e</sup> Assumes company offers paid leave; calculated at 1/52nd of her \$30,000 salary.

Two Working Families, Two Different Outcomes		
 <p>Blake and Benjamin, same-sex couple with two children, Lea and Elisa</p>	 <p>Carlos and Sarah, married opposite-sex couple with two children, Ella and Natalie</p>	Added financial burden for Blake and Benjamin's family
<b>Accessing family health benefits...</b>		
<ul style="list-style-type: none"> <li>Blake has individual health insurance coverage, but no family benefits are provided for Benjamin, Lea and Elisa. Instead the family must buy insurance on the private market.</li> </ul>	<ul style="list-style-type: none"> <li>Carlos's health insurance is covered and he pays only a small premium for Sarah and the children.</li> </ul>	\$4,743 annually <sup>f</sup>
<b>Filing annual tax returns...</b>		
<ul style="list-style-type: none"> <li>Both Blake and Benjamin must file as "single" and forego the more tax-advantaged "married filing jointly" status.</li> <li>Blake cannot claim the children, and loses out on most child tax credits and deductions.</li> </ul>	<ul style="list-style-type: none"> <li>Carlos and Sarah file jointly, further reducing taxable income.</li> <li>Family receives full benefit of child and family-related tax credits and deductions.</li> </ul>	\$895, annually <sup>g</sup>
<b>Taking medical leave...</b>		
<ul style="list-style-type: none"> <li>Blake is denied leave to care for Benjamin while he recovers from heart surgery; has to hire a home health aide.</li> </ul>	<ul style="list-style-type: none"> <li>Carlos takes leave to care for Sarah and the children while Sarah recovers from a mastectomy.</li> </ul>	\$2,100, one-time <sup>h</sup>
<b>Dealing with the deaths of primary wage earners...</b>		
<ul style="list-style-type: none"> <li>After Blake's death, Benjamin and the children receive no survivor benefits from Blake's Social Security contributions or pension.</li> </ul>	<ul style="list-style-type: none"> <li>After Carlos dies, Sarah and the children receive \$2,916<sup>i</sup> in Social Security survivor benefits monthly and \$850 monthly from Carlos's modest pension.</li> </ul>	\$3,766 monthly ongoing moving forward, or \$45,192 per year
<b>BOTTOM LINE</b>		
<ul style="list-style-type: none"> <li>Lose their home.</li> <li>Forced to move out of state to live with family.</li> </ul>	<ul style="list-style-type: none"> <li>Keep home.</li> <li>Children graduate from local high school with friends.</li> </ul>	<p><b>\$59,380 in just 10 years<sup>j</sup> plus lost survivors' benefits of \$45,192 each year moving forward.</b></p> <p>Extra financial burden of lost compensation, extra taxation, out-of-pocket medical expenses, denied leave, survivor benefits.</p>

<sup>f</sup> This includes the net cost of health insurance for three people. Total cost of \$7,615 minus \$2,872, which Carlos pays out-of-pocket for his employer-provided family coverage (excluding his own coverage) (see Table X, footnote X).

<sup>g</sup> Assumes Blake files as single and does not claim the children, resulting in taxes owed of \$6,099. Assumes Benjamin earns \$7,250 in annual part-time income, files as single and claims the children, generating a refund of \$3,548 for a net owed by the household of \$2,551. Carlos and Sarah file jointly with the same incomes (\$50,000 and \$7,250 respectively) and owe \$1,656 for a difference of \$895. Computed using 2012 federal income tax forms.

<sup>h</sup> On average, an employee taking FMLA leave is away from work for 10 days. If an employee cannot take these 10 days to care for a same-sex spouse or partner, we assume they will need 10 days of care from a home health aide. We assume 10 hours of care per day at the average hourly rate of \$21 yielding \$2,100 for 10 days.

<sup>i</sup> Calculated using U.S. Social Security Administration. "Social Security Online Social Security Quick Calculator." <http://www.ssa.gov/OACT/quickcalc/index.html> (accessed March 1, 2013).

<sup>j</sup> For the sake of simplicity, we took the annual cost and multiplied by 10, then added one-time costs for a total across the 10 years.

## ENDNOTES

- <sup>1</sup> Although explicit federal legal protections based on “gender identity” do not exist, the law is emerging for transgender workers, who may now be protected under Title VII of the Civil Rights Act’s protections based on sex. We discuss this in more detail on page 12 of this report.
- <sup>2</sup> U.S. Central Intelligence Agency. *The World Factbook*. February 12, 2013. <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> (accessed March 1, 2013).
- <sup>3</sup> The National Transgender Discrimination Survey was conducted by The Task Force and the National Center for Transgender Equality. The survey is the largest survey of transgender and gender-nonconforming people; 6,450 people took the survey and participants came from all 50 states. Grant, Jaime M., 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*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf) (accessed February 28, 2013). Hereafter, Grant, J. et al., *National Transgender Discrimination Survey*.
- <sup>4</sup> Recent studies conclude that approximately 3.8% of the adult population in the U.S. identifies as LGBT. Applying this figure to the number of Americans who are of “working age” (between 20 and 64), we estimate there are nearly 7 million LGBT people of working age in the U.S. If we assume that these LGBT people are as likely to be “in the labor force” as Americans on the whole (77%), then we estimate there are approximately 5.4 million “working-age” LGBT people who are in the labor force. This means that they are either currently working or are looking for work, and it does not include people who are in school, people staying home to care for children, or so-called “discouraged workers” who have been unable to find work and are no longer looking for work. Estimates of percent of adult population that identifies as LGBT from Gates, Gary J. “How many people are lesbian, gay, bisexual, and transgender?” *The Williams Institute*. April 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf> (accessed March 1, 2013); Working age population from U.S. Census Bureau. “Table 1. Population by Age and Sex: 2011, Current Population Survey, 2011.” November 2012. <http://www.census.gov/population/age/data/2011comp.html> (accessed March 1, 2013); Labor force statistics from U.S. Department of Labor, Bureau of Labor Statistics. “Table 3. Employment status of the civilian noninstitutional population by age, sex, and race, Current Population Survey, 2012.” February 5, 2013. <http://www.bls.gov/cps/cpsaat03.htm> (accessed February 28, 2013).
- <sup>5</sup> Gates, Gary J. “Counting the LGBT Community: Same-sex unions and LGBT demographics in the U.S.” *The Williams Institute*. Out & Equal Conference 2012. <http://www.outandequal.org/documents/2012ExFoPresentationGates.pptx> (accessed March 1, 2013). Hereafter, Gates, G.J., *Counting the LGBT Community*.
- <sup>6</sup> Analysis by the Movement Advancement Project based on data found in: Gates, Gary J. and Frank Newport. “Special Report: 3.4% of U.S. Adults Identify as LGBT.” Gallup Politics. October 18, 2012. <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx> (accessed February 28, 2013). Hereafter Gates, G. J. et al., *Special Report*.
- <sup>7</sup> Gates, G.J., *Counting the LGBT Community*. See also Burns, Crosby, Ann Garcia, and Philip E. Wolgin. “Living in Dual Shadows: LGBT Undocumented Immigrants. Center for American Progress. March 2013. <http://www.americanprogress.org/wp-content/uploads/2013/03/LGBTUndocumentedReport-5.pdf> (accessed March 15, 2013). Hereafter, Burns, C. et al., *Dual Shadows*.
- <sup>8</sup> Gates, G.J., *Counting the LGBT Community*; Burns, C. et al., *Dual Shadows*.
- <sup>9</sup> Gates, Gary J. “LGBT Parenting in the United States.” February 2013. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf> (accessed March 2, 2013). Hereafter, Gates, G.J., *LGBT Parenting*.
- <sup>10</sup> Movement Advancement Project, Family Equality Council and Center for American Progress. *All Children Matter: How Legal and Social Inequalities Hurt LGBT Families*. October 2011, Appendices pp. 118-119. <http://www.lgbtmap.org/file/all-children-matter-full-report.pdf> (accessed February 28, 2013).
- <sup>11</sup> Gates, G.J., *LGBT Parenting*.
- <sup>12</sup> Grant, J. et al., *National Transgender Discrimination Survey*.
- <sup>13</sup> Gates, G.J. et al., *Special Report*.
- <sup>14</sup> UCLA Center for Health Policy Research. “2009 California Health Interview Survey.” <http://healthpolicy.ucla.edu/chis/Pages/default.aspx>.
- <sup>15</sup> Albelda, Randy, M.V. Lee Badgett, Alyssa Schneebaum, and Gary J. Gates. “Poverty in the Lesbian, Gay, and Bisexual Community.” *The Williams Institute*. March 2009. <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/poverty-in-the-lesbian-gay-and-bisexual-community/> (accessed February 27, 2013). Hereafter, Albelda, R. et al., *Poverty in the LGBT Community*; Grant, J. et al., *National Transgender Discrimination Survey*.
- <sup>16</sup> Grant, J. et al., *National Transgender Discrimination Survey*.
- <sup>17</sup> Gates, G.J., *LGBT Parenting*.
- <sup>18</sup> Albelda, R. et al., *Poverty in the LGBT Community*.
- <sup>19</sup> U.S. Department of Labor. “Summary of the Major Laws of the Department of Labor.” <http://www.dol.gov/opa/aboutdol/lawsprog.htm> (accessed March 1, 2013).
- <sup>20</sup> Human Rights Campaign Foundation. “Corporate Equality Index 2013: Rating American Workplaces on Lesbian, Gay, Bisexual and Transgender Equality.” December 2012. [http://www.hrc.org/files/assets/resources/CorporateEqualityIndex\\_2013.pdf](http://www.hrc.org/files/assets/resources/CorporateEqualityIndex_2013.pdf) (accessed March 4, 2013).
- <sup>21</sup> Global Strategy Group. “Center for American Progress/Small Business Majority survey of small business owners.” August, 2011.
- <sup>22</sup> Badgett, M.V. Lee, Holning Lau, Brad Sears, and Deborah Ho. “Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination.” *The Williams Institute*. June 2007. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Lau-Ho-Bias-in-the-Workplace-Jun-2007.pdf> (accessed February 27, 2013).
- <sup>23</sup> Human Rights Campaign Foundation. “Degrees of Equality: A National Study Examining Workplace Climate for LGBT Employees.” 2009. [http://www.hrc.org/files/assets/resources/DegreesOfEquality\\_2009.pdf](http://www.hrc.org/files/assets/resources/DegreesOfEquality_2009.pdf) (accessed February 28, 2013).
- <sup>24</sup> Grant, J. et al., *National Transgender Discrimination Survey*.
- <sup>25</sup> Law, Charlie L., Larry R. Martinez, Enrica N. Ruggs, Michelle R. Heble, and Emily Akers. “Trans-parency in the workplace: How the experiences of transsexual employees can be improved.” *Journal of Vocational Behavior*. 79 (2011) 710-723.
- <sup>26</sup> Grant, J. et al., *National Transgender Discrimination Survey*.
- <sup>27</sup> Grant, J. et al., *National Transgender Discrimination Survey*.
- <sup>28</sup> For example, the Human Rights Campaign provides “Workplace Gender Transition Guidelines,” <http://www.hrc.org/resources/entry/workplace-gender-transition-guidelines> (accessed April 17, 2013).
- <sup>29</sup> Sears, Brad, and Christy Mallory. “Documented Evidence of Employment Discrimination & Its Effects on LGBT People.” *The Williams Institute*. July 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf> (accessed February 28, 2013). Hereafter, Sears B. et al., *Documented Evidence*.
- <sup>30</sup> Gates, G. J. et al., *Special Report*.
- <sup>31</sup> Albelda, R. et al., *Poverty in the LGBT Community*; Grant, J. et al., *National Transgender Discrimination Survey*.
- <sup>32</sup> Sears B., *Documented Evidence*.
- <sup>33</sup> Albelda, R. et al., *Poverty in the LGBT Community*.
- <sup>34</sup> U.S. Equal Employment Opportunity Commission. “Directives Transmittal: Procedures for Complaints of Discrimination Based on Sexual Orientation.” July 15, 2009. [http://www.eeoc.gov/eeoc/internal/sexual\\_orientation\\_order.cfm](http://www.eeoc.gov/eeoc/internal/sexual_orientation_order.cfm) (accessed March 4, 2013); U.S. Office of Personnel Management. “Addressing Sexual Orientation Discrimination in Federal Civilian Employment: A Guide to Employee’s Rights.” <http://www.opm.gov/er/address2/guide01.asp> (accessed March 4, 2013). Note: Although executive orders are more vulnerable to change from subsequent administrations than federal law, they can also include more specificity in their provisions and reach than broader legislation.
- <sup>35</sup> *Macy v. Holder*, Appeal No. 0120120821, Equal Employment Opportunity Commission (April 20, 2012). <http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt> (accessed March 4, 2013).
- <sup>36</sup> Unless the lawsuit is based on discrimination under the Equal Pay Act, which allows a claimant to go directly to court.
- <sup>37</sup> Delaware, Maryland, New Hampshire, New York, and Wisconsin. Source: Movement Advancement Project. “Employment Non-Discrimination Laws.” <http://lgbtmap.org/equality-maps/employment-non-discrimination-laws> (accessed March 4, 2013).
- <sup>38</sup> Alaska, Arizona, Delaware (gender identity/expression), Indiana, Kansas, Kentucky, Michigan, Missouri, Montana, Ohio, and Pennsylvania. Source: Hunt, Jerome. “A State-by-State Examination of Nondiscrimination Laws and Policies.” *Center for American Progress Action Fund*. June 2012. [http://www.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/state\\_nondiscrimination.pdf](http://www.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/state_nondiscrimination.pdf) (accessed March 4, 2013).
- <sup>39</sup> Movement Advancement Project. “Local Employment Non-Discrimination Ordinances.” <http://www.lgbtmap.org/equality-maps/non-discrimination-ordinances> (accessed March 4, 2013).
- <sup>40</sup> For example, at the 72nd annual convention of the United Electrical, Radio and Machine Workers of America in 2011, a resolution was passed to encourage local chapters to include in their labor contracts “anti-discrimination clauses that prohibit discrimination based on sexual orientation and gender identity.” Source: United Electrical, Radio, and Machine Workers of America. “Policy 2011-2013: Resolutions and Reports Adopted by the 72nd Convention.” September 25-29, 2011. <ftp://ueunion.org/w6pdfs/UEPolicy11-13.pdf> (accessed March 4, 2013).

- <sup>41</sup> U.S. Department of Labor, Bureau of Labor Statistics. "News Release: Employer Costs for Employee Compensation – September 2012." December 11, 2012. <http://www.bls.gov/news.release/ecec.nr0.htm> (accessed February 28, 2013).
- <sup>42</sup> In this section of the report, we use "LGBT families" to refer to families headed by same-sex couples because this is where most of the inequities occur. Our more restrictive use of the term "LGBT families" is not meant in any way to diminish bisexual or transgender people in an opposite-sex relationship, nor other LGBT workers whose families do not meet this definition. We also recognize that many LGBT adults form families with other loved ones and "families of choice" who provide support and that laws may be inadequate in these areas as well.
- <sup>43</sup> For a detailed discussion of how family and parenting law make it harder for LGBT parents to form legal ties to their children, see Movement Advancement Project, Family Equality Council and Center for American Progress. "Securing Legal Ties for Children Living in LGBT Families." July 2012. <http://www.lgbtmap.org/file/securing-legal-ties.pdf> (accessed February 28, 2013).
- <sup>44</sup> *United States v. Windsor*, cert. granted, U.S. Supreme Court, docket 12-307. 2013. <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-307.htm> (accessed February 28, 2013).
- <sup>45</sup> DeNavas-Walt, Carmen, Bernadette D. Proctor, and Jessica C. Smith. *Income, Poverty, and Health Insurance Coverage in the United States: 2011*. U.S. Census Bureau, Current Population Reports, P60-243, Washington, DC: U.S. Government Printing Office, 2012. <http://www.census.gov/prod/2012pubs/p60-243.pdf> (accessed February 28, 2013).
- <sup>46</sup> Krehely, Jeff. "How to Close the LGBT Health Disparities Gap." Center for American Progress. December 21, 2009. <http://www.americanprogress.org/issues/lgbt/report/2009/12/21/7048/how-to-close-the-lgbt-health-disparities-gap/> (accessed March 1, 2013).
- <sup>47</sup> Fully insured employers, or those that buy insurance through health insurance companies, are subject to state health insurance laws. By contrast, self-insured employers pay claims directly and are subject to federal law.
- <sup>48</sup> Gates, Gary J. "Same-sex and Different-sex Couples in the American Community Survey: 2005-2011." *The Williams Institute*. February 2013. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/ACS-2013.pdf> (accessed March 1, 2013).
- <sup>49</sup> The average monthly premium for individual health insurance purchased on the private market in the 33 states that lack relationship recognition for same-sex couples is \$212. If we assume that the employee's spouse/partner and one child are required to purchase insurance on the private market because coverage is not available through the employer, the family will spend \$5,076 annually, whereas if the employee's spouse/partner and both children cannot receive coverage through the employer, the cost of coverage annually would be \$7,615. This average was calculated using data from The Henry J. Kaiser Family Foundation. "Average Per Person Monthly Premiums in the Individual Market, 2010," StateHealthFacts.org, <http://www.statehealthfacts.org/comparamtable.jsp?ind=976&cat=5> (accessed February 28, 2013).
- <sup>50</sup> See note *supra*, for the calculations and sources for these estimates. We multiplied the annual estimates by 1.5 to estimate the cost of coverage for 18 months of COBRA.
- <sup>51</sup> MAP analysis assuming worker earns \$50,000 and receives \$6,928 worth of family health benefits; see detailed explanation on pp. 71-72 of the long form of this report.
- <sup>52</sup> According to the Kaiser Family Foundation, 2009 out-of-pocket expenses for healthcare averaged \$795 per person (see The Henry J. Kaiser Family Foundation. "Health Care Costs: A Primer," page 21. May 2012. <http://www.kff.org/insurance/upload/7670-03.pdf> (accessed February 28, 2013)). If an employee must instead pay for these expenses using after-tax dollars, the employee would have \$540 less. We multiplied \$795 by three for a total of \$2,385 and then assumed a tax rate of 32.65% (25% income tax plus 7.65% payroll/FICA tax).
- <sup>53</sup> We assume 10 hours of care per day at the average hourly rate of \$21 yielding \$2,100 for 10 days. Average hourly rate for home health aide is from MetLife Mature Market Institute. "Market Survey of Long-Term Care Costs." November 2012. <https://www.metlife.com/assets/cao/mmi/publications/studies/2012/studies/mmi-2012-market-survey-long-term-care-costs.pdf> (accessed March 1, 2013). Average FMLA leave is from U.S. Department of Labor. "Balancing the Needs of Families and Employers: Family and Medical Leave Surveys 2000 Update." 2000. <http://www.dol.gov/whd/fmla/toc.htm> (accessed March 26, 2013).
- <sup>54</sup> Center on Budget and Policy Priorities. "Policy Basics: Top Ten Facts about Social Security." Updated November 6, 2012. <http://www.cbpp.org/cms/index.cfm?fa=view&id=3261> (accessed March 4, 2013).
- <sup>55</sup> Assumes one same-sex spouse/partner retired at age 65 and earned the maximum monthly Social Security payout and the other is not recognized as a spouse by Social Security.
- <sup>56</sup> U.S. Census Bureau. "Current Population Survey, 2012 Annual Social and Economic Supplement: PINC-08. Source of Income in 2011." [http://www.census.gov/hhes/www/cpstable/032012/perinc/pinc08\\_64.xls](http://www.census.gov/hhes/www/cpstable/032012/perinc/pinc08_64.xls) (accessed March 4, 2013).
- <sup>57</sup> Calculated using the University of California Retirement Human Resources and Benefits. "UC Retirement Plan Benefit Estimator." <http://atyourservice.ucop.edu/applications/ucrplcalc/estimator.html> (accessed March 1, 2013).
- <sup>58</sup> Van de Water, Paul N. and Arloc Sherman. "Social Security Keeps 21 Million Americans Out of Poverty: A State-by-State Analysis." Center on Budget and Policy Priorities. October 2012. <http://www.cbpp.org/cms/index.cfm?fa=view&id=3851> (accessed March 4, 2013).
- <sup>59</sup> U.S. Social Security Administration, Office of Retirement and Disability Policy. "Annual Statistical Supplement to the Social Security Bulletin, 2010, Table 5.A1-Number and average monthly benefit, by type of benefit and race, December 2009." <http://www.ssa.gov/policy/docs/statcomps/supplement/2010/supplement10.pdf> (accessed March 4, 2013). Note: Although more recent years' data are available, this data is no longer tabulated by race; Forum on Child and Family Statistics. "Race And Hispanic Origin Composition: Percentage Of U.S. Children Ages 0-17 By Race And Hispanic Origin, 1980-2011 And Projected 2012-2050." <http://www.childstats.gov/americaschildren/tables/pop3.asp?popup=true> (accessed March 4, 2013).
- <sup>60</sup> Social Security benefit data available from U.S. Social Security Administration, Office of Retirement and Disability Policy. "Fast Facts & Figures About Social Security, 2012." [http://www.ssa.gov/policy/docs/chartbooks/fast\\_facts/2012/fast\\_facts12.pdf](http://www.ssa.gov/policy/docs/chartbooks/fast_facts/2012/fast_facts12.pdf) (accessed March 4, 2012).
- <sup>61</sup> U.S. Social Security Administration, Office of Retirement and Disability Policy. "Annual Statistical Supplement, 2012. Old-Age, Survivors, and Disability Insurance, Table 5.A1, Number and average monthly benefit, by type of benefits and sex, December 2011." <http://www.ssa.gov/policy/docs/statcomps/supplement/2012/5a.html#table5a1> (accessed March 4, 2013).
- <sup>62</sup> Assumes a worker earning \$40,000 annually who dies at age 35. For a non-LGBT worker, each child under age 18 is eligible to receive \$1,018 per month—as is the surviving spouse who is caring for children age 16. Although \$1,018 X 3 = \$3,054, the maximum family benefit allowable is \$2,460 or \$29,520 annually. Calculated using U.S. Social Security Administration. "Social Security Online Social Security Quick Calculator." <http://www.ssa.gov/OACT/quickcalc/index.html> (accessed March 1, 2013).
- <sup>63</sup> Andrew Chamberlain and Gerald Prant, "Who Pays and Who Receives Government Spending? An Analysis of Federal, State and Local Tax and Spending Distributions, 1991-2004," Tax Foundation, 2007.
- <sup>64</sup> MAP analysis; see detailed explanation on pp. 90-92 of the long form of this report.
- <sup>65</sup> Looking more broadly however, only 35% of all private-sector workers with access to a pension plan had a plan providing retirement survivor benefits for same-sex spouses or partners. Source: U.S. Department of Labor, Bureau of Labor Statistics. "Employee Benefits in the United States, March 2011: Unmarried Domestic Partner Benefits Fact Sheet, July 26, 2011." [http://www.bls.gov/ncs/ebs/sp/ebs\\_domestic.pdf](http://www.bls.gov/ncs/ebs/sp/ebs_domestic.pdf) (accessed March 4, 2013).
- <sup>66</sup> Human Rights Campaign. "Business Coalition for Benefits Tax Equity, Members." <http://www.hrc.org/resources/entry/business-coalition-for-benefits-tax-equity-members> (accessed March 26, 2013).
- <sup>67</sup> Immigration Equality Action Fund. "Business Coalition for the Uniting American Families Act." [http://immigrationequalityactionfund.org/legislation/business\\_coalition\\_for\\_uafa/](http://immigrationequalityactionfund.org/legislation/business_coalition_for_uafa/) (accessed March 7, 2013).

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