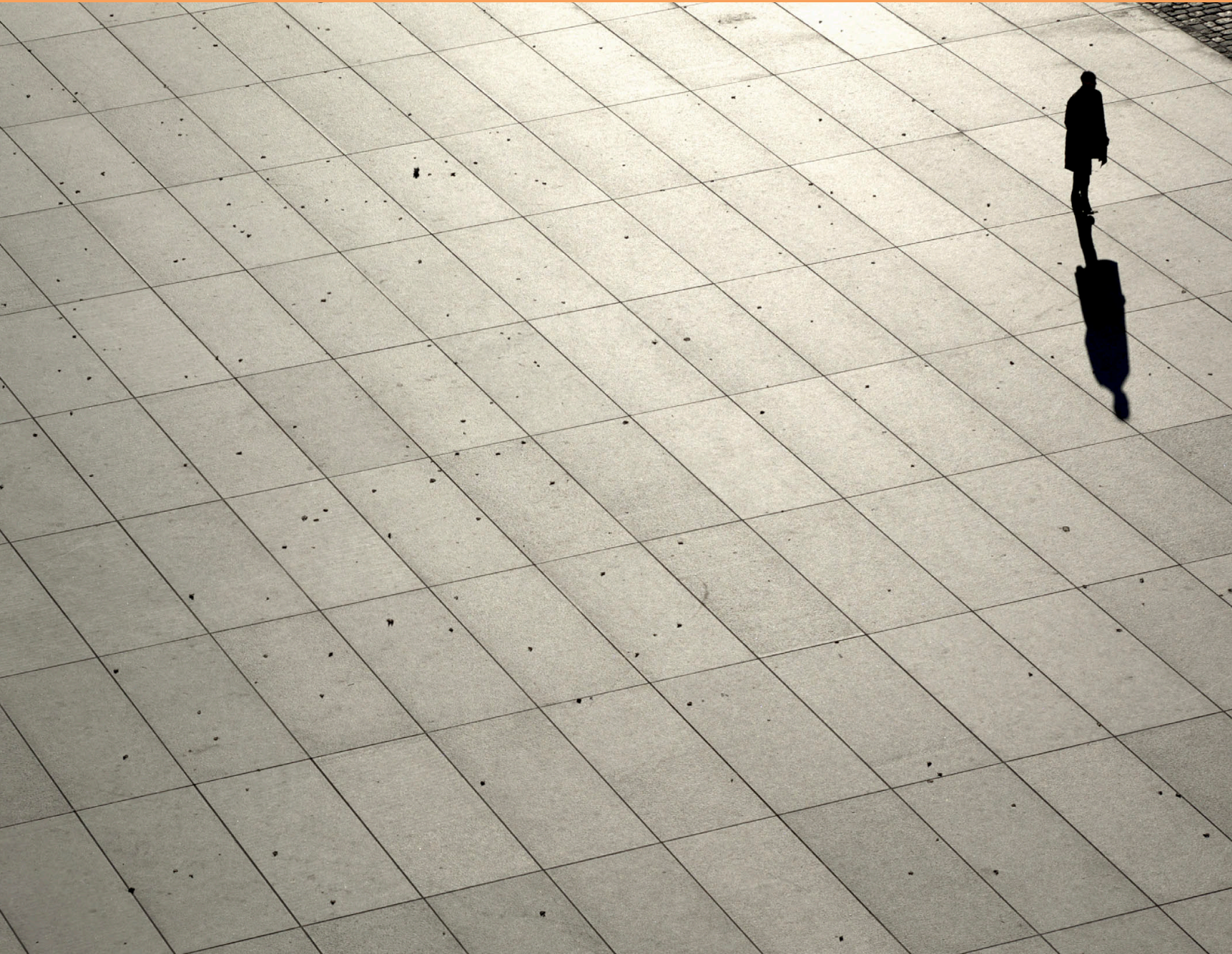


*A Broken Bargain:*

# UNCHECKED DISCRIMINATION AGAINST LGBT WORKERS

May 2014



movement advancement project ▶

Center for American Progress



HUMAN RIGHTS CAMPAIGN



Authors



Partners

## INTRODUCTION

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

But these laws do not protect everyone.

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

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

- **Bias and Discrimination in Recruitment and Hiring.** LGBT workers can put their job prospects at risk if they disclose that they are LGBT while looking for work.
- **On-the-Job Inequality and Unfairness.** An LGBT employee may be in a workplace that is blatantly hostile, one that condones anti-gay jokes and slurs, and/or one where employers look the other way and allow a discriminatory climate to flourish. In such a work environment, workers may choose not to be open about being LGBT or risk being stigmatized, discriminated against, or unfairly fired.
- **Wage Gaps and Penalties.** In addition to job and workplace discrimination, LGBT employees face wage disparities that make it harder for them to provide for themselves and their families.

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

## Discrimination Faced By LGBT Workers



### Hiring Bias

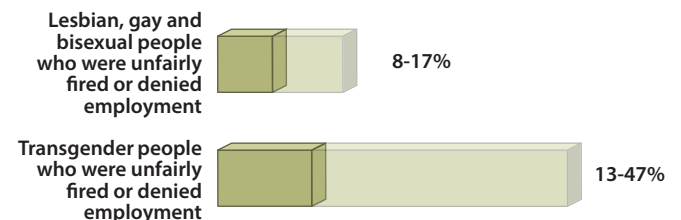
LGBT workers often find it harder than non-LGBT workers to secure a good job (see *Figure 1*).

For example, studies show that people who have LGBT-related work or volunteer experience on their résumé are less likely to be invited to job interviews than individuals with otherwise identical résumé, as are similarly qualified transgender applicants.<sup>3</sup>

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

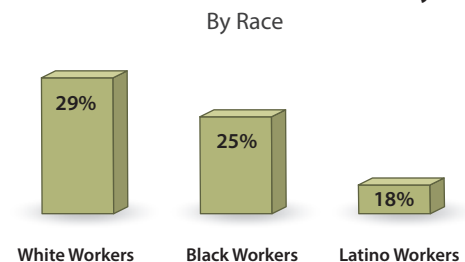
Like other job seekers, some LGBT job applicants are also women, people of color, people with disabilities, and older adults. Workers with multiple identities, such

**Figure 1: Denied Employment or Unfairly Fired**



Source: Endnote 4.

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



Source: Endnote 5.

*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.

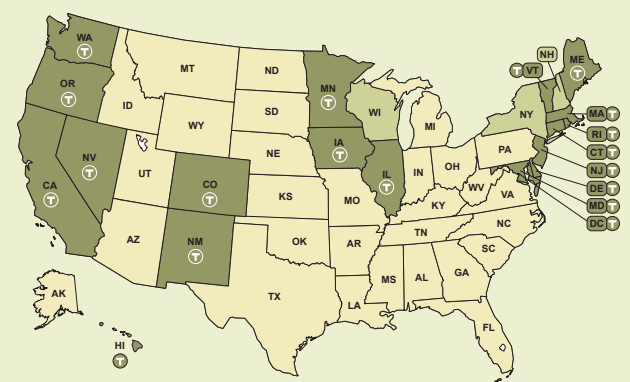


### LGBT Workers Lack Legal Protections

Only 21 states and the District of Columbia have laws prohibiting discrimination in employment based on sexual orientation.<sup>6</sup> Transgender workers facing workplace discrimination may seek recourse under federal law by filing a complaint with the Equal Employment Opportunity Commission (EEOC), but the EEOC's decisions are not binding on private employers (though most private employers voluntarily comply with EEOC rulings).<sup>7</sup> Only 18 states and the District of Columbia explicitly prohibit discrimination based on gender identity/expression (see *Figure 3*).<sup>8</sup>

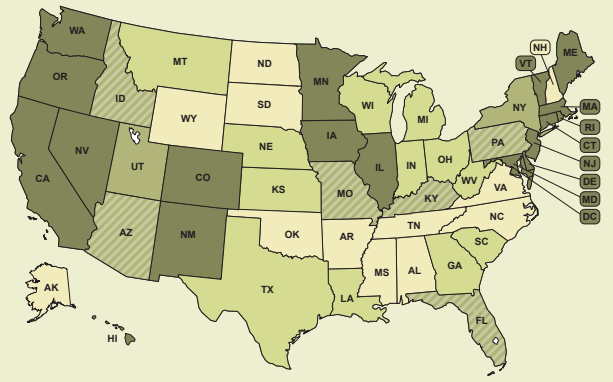
In the absence of LGBT-inclusive federal and state workplace laws, many cities and counties have passed their own local nondiscrimination ordinances (see *Figure 4*). Local ordinances often provide the sole source of legal protection for LGBT municipal employees, LGBT employees of municipal contractors,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

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



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

**Figure 4: Local Employment Nondiscrimination Ordinances**



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

Source for Figures 3 and 4: Movement Advancement Project, Equality Maps, current as of May 28, 2014. For updates, see [www.lgbtmap.org/equality-maps](http://www.lgbtmap.org/equality-maps).

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

### On-the-Job Discrimination



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

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

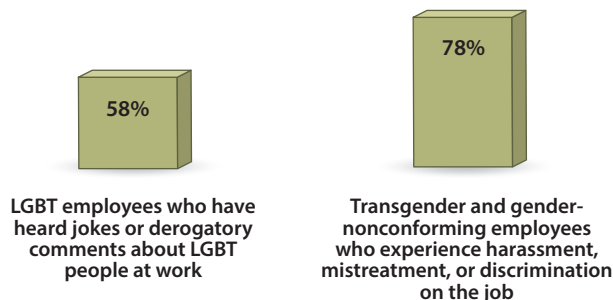
### Wage Gaps and Penalties



Studies consistently find that sexual orientation and gender identity/ expression do play a role in workplace wages.<sup>11</sup> Gay and bisexual men experience a “wage penalty” relative to heterosexual men.<sup>12</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, compared to their non-LGBT peers.<sup>13</sup> This is consistent with research that shows that LGBT people are at higher risk of poverty than non-LGBT people.<sup>14</sup>

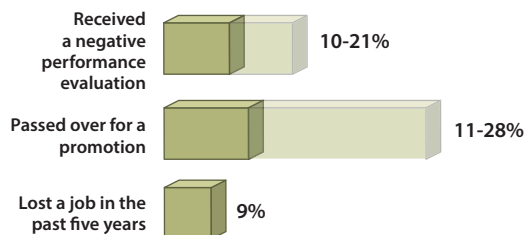
Women in same-sex couples actually fare better than women in married different-sex couples, but still experience the gender-based wage gap relative to all men (see *Figure 8* on the next page).<sup>15</sup> Household income for lesbian couples is considerably lower than it is for both opposite-sex households and households headed by gay men.<sup>16</sup> Two lesbian women—even if they individually earn

**Figure 5: On-the-Job Discrimination**



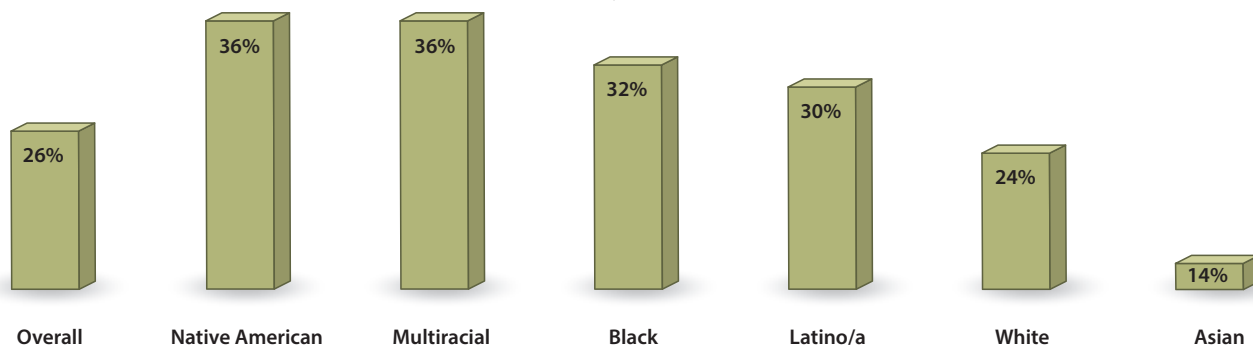
Source: Endnote 10.

**Figure 6: Percent of Lesbian, Gay and Bisexual Workers Who Report Challenges Advancing at Work Because of Sexual Orientation**



Sources: Endnote 11.

**Figure 7: Percent of Transgender Respondents Reporting They Lost a Job Because They Are Transgender**  
By Race



Source: Endnote 10.

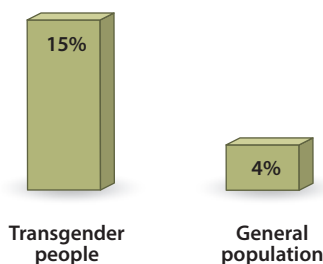
more than comparable heterosexual women—may still have a combined household income that is lower than that of a married opposite-sex couple because both earners' wages are affected by the gender wage gap. Studies find that lesbians and bisexual women are more likely to live in poverty than are heterosexual women.<sup>17</sup>

**Figure 8: Median Annual Personal Income**  
American Community Survey 2011



Source: Endnote 18.

**Figure 9: Percent of People with Household Incomes Under \$10,000**



Source: Endnote 19.

*[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.



Transgender workers also face particularly large income disparities compared to the general population. According to the largest survey of transgender people in the U.S. to date, 15% of transgender respondents have household incomes under \$10,000 per year, compared to just 4% of the population as a whole, as shown in *Figure 9*.<sup>20</sup>

## Discrimination Harms LGBT Workers, Businesses, and Communities

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

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

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

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

## Solutions for Fair Treatment at Work

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

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

## RECOMMENDATIONS

### Enact nondiscrimination laws and policies.

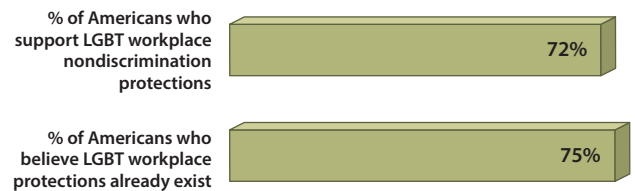
Federal, state, and local governments should pass nondiscrimination laws/ordinances that include explicit protections for LGBT workers on the basis of sexual orientation and gender identity/expression. Employers can also adopt nondiscrimination policies for their own workplaces.

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

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

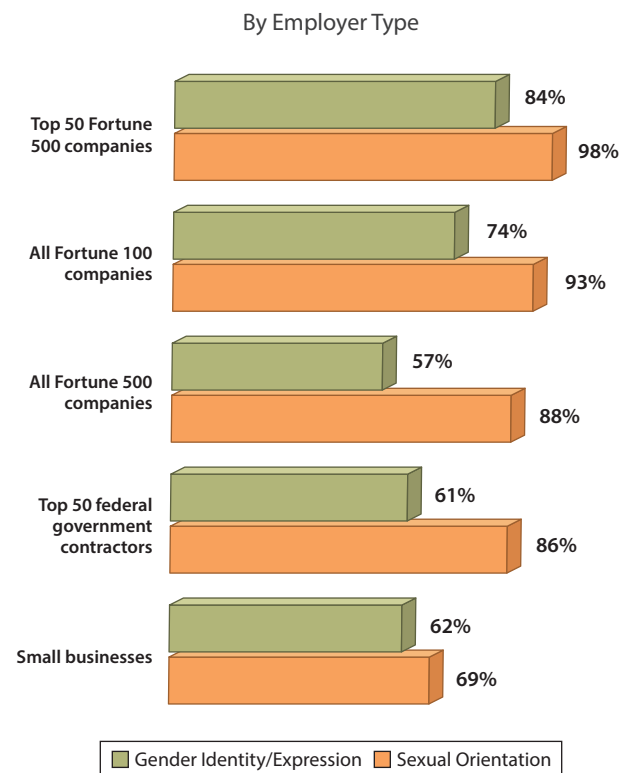
**Ensure effective and swift discrimination claims processing.** The federal government should address the

Figure 10: Support for LGBT Workplace Protections



Source: Endnote 27.

Figure 11: Percent of Employers with Nondiscrimination Policies



Sources: Endnote 28.

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.

## ENDNOTES

- <sup>1</sup> A 2012 opinion issued by the Equal Employment Opportunity Commission (EEOC) in *Macy v. Holder* found that discrimination based on transgender status falls under prohibitions against sex-based discrimination within Title VII of the Civil Rights Act. EEOC decisions apply to public and private employers nationwide, and are given some deference when considered by federal courts, though they are only binding on the federal government. Protection for LGB people under Title VII is emerging. For example, the EEOC has found that cases brought by LGB people alleging sex-stereotypes are covered under Title VII's prohibition on discrimination based on sex and it is currently investigating complaints filed by LGB individuals. In April 2014, a federal district court ruled in *TerVeer v. Billington* that sexual orientation discrimination prohibited by Title VII.
- <sup>2</sup> Movement Advancement Project. "Employment Non-Discrimination Laws." [http://lgbtmap.org/equality-maps/non\\_discrimination\\_laws](http://lgbtmap.org/equality-maps/non_discrimination_laws). Hereafter, MAP, *Employment Non-Discrimination Laws*.
- <sup>3</sup> Pichler, Shaun, Arup Varma, and Tamara Bruce. "Heterosexism in Employment Decisions: The Role of Job Misfit." *Journal of Applied Social Psychology*. October 2010: 2527-2555; Tilcsik, Andras. "Pride and Prejudice: Employment Discrimination against Openly Gay Men in the United States." *American Journal of Sociology*. September 2011: 586-626; Make the Road New York. "Transgender Need Not Apply: A Report on Gender Identity Job Discrimination." March 2010 (updated May 2010). [http://www.maketheroad.org/pix\\_reports/TransNeedNotApplyReport\\_05.10.pdf](http://www.maketheroad.org/pix_reports/TransNeedNotApplyReport_05.10.pdf) (accessed February 28, 2013).
- <sup>4</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 26, 2014). Hereafter, Badgett, M.V.L. et al., *Bias in the Workplace*.
- <sup>5</sup> HRC, *Degrees of Equality*.
- <sup>6</sup> MAP, *Employment Non-Discrimination Laws*.
- <sup>7</sup> See *Macy v. Holder* and Endnote 1 for more information.
- <sup>8</sup> MAP, *Employment Non-Discrimination Laws*.
- <sup>9</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 March 31, 2014). Hereafter, HRC, *Degrees of Equality*.
- <sup>10</sup> HRC, *Degrees of Equality*; 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, 2014). Hereafter, Grant, J.M. et al., *National Transgender Discrimination Survey*.
- <sup>11</sup> Badgett, M.V.L. et al., *Bias in the Workplace*; 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 March 31, 2014). Hereafter, Sears, B. et al., *Documented Evidence*.
- <sup>12</sup> Sears, B. et al., *Documented Evidence*.
- <sup>13</sup> 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).
- <sup>14</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*; Badgett, M.V. Lee, Laura E. Durso, and Alyssa Schneebaum. "New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community." The Williams Institute. June 2013. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf> (accessed April 23, 2014). Hereafter, Badgett, M.V.L. et al., *New Patterns of Poverty in the LGBT Community*; Grant, J.M. et al., *National Transgender Discrimination Survey*.
- <sup>15</sup> Sears, B. et al., *Documented Evidence*.
- <sup>16</sup> Albelda, R. et al., *Poverty in the LGBT Community*; Badgett, M.V.L. et al., *New Patterns of Poverty in the LGBT Community*.
- <sup>17</sup> Albelda, R. et al., *Poverty in the LGBT Community*; Badgett, M.V.L. et al., *New Patterns of Poverty in the LGBT Community*.
- <sup>18</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>. Data is for individuals in the labor force.
- <sup>19</sup> Grant, J.M. et al., *National Transgender Discrimination Survey*.
- <sup>20</sup> Grant, J.M. et al., *National Transgender Discrimination Survey*.
- <sup>21</sup> Badgett, M.V. Lee, Laura E. Durso, Angeliki Kastanis and Christy Mallory. "The Business Impact of LGBT-Supportive Workplace Policies." May 2013. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-of-LGBT-Policies-May-2013.pdf> (accessed April 23, 2014).
- <sup>22</sup> Supreme Court amicus brief, 278 employers and organizations representing employers, *United States v. Windsor*, February 2013.
- <sup>23</sup> Level Playing Field Institute. "The Corporate Leavers Survey: The Cost of Employee Turnover Due Solely to Unfairness in the Workplace." 2007. <http://www.lphi.org/sites/default/files/corporate-leavers-survey.pdf> (accessed February 28, 2013).
- <sup>24</sup> Gibbons, John M. "Employee Engagement: A Review of Current Research and Its Implications." The Conference Board. November 2006.
- <sup>25</sup> Forbes Insights. "Global Diversity and Inclusion: Fostering Innovation Through A Diverse Workforce." July 2011. [http://images.forbes.com/forbesinsights/StudyPDFs/Innovation\\_Through\\_Diversity.pdf](http://images.forbes.com/forbesinsights/StudyPDFs/Innovation_Through_Diversity.pdf) (accessed March 1, 2014).
- <sup>26</sup> Small Business Majority. "Opinion Poll: Small Businesses Support Workplace Nondiscrimination Policies." June 4, 2013. <http://www.smallbusinessmajority.org/small-business-research/downloads/060413-workplace-nondiscrimination-poll-report.pdf> (accessed January 29, 2014).
- <sup>27</sup> Jones, Robert P., Daniel Cox, and Juhem Navarro-Rivera. "A Shifting Landscape: A Decade of Change in American Attitudes about Same-Sex Marriage and LGBT Issues." Public Religion Research Institute. February 26, 2014. [http://publicreligion.org/site/wp-content/uploads/2014/02/2014.LGBT\\_REPORT.pdf](http://publicreligion.org/site/wp-content/uploads/2014/02/2014.LGBT_REPORT.pdf).
- <sup>28</sup> 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>; Sears, Brad and Christy Mallory. "Report Update: Sexual Orientation and Gender Identity Non-Discrimination Policies of the Top 50 Federal Contractors and the Top 50 Fortune 500 companies, 2013." The Williams Institute. May 2014. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/SOGLpolicies-update-May-2014.pdf> (accessed May 15, 2014).

## ABOUT THIS BRIEF

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

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