

A BROKEN BARGAIN FOR TRANSGENDER WORKERS

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Partners

A Supplemental Report to *A Broken Bargain: Discrimination, More Taxes and Fewer Benefits for LGBT Workers*

This report was authored by:

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.

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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.

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.

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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.

National Gay and Lesbian Task Force

The National Gay and Lesbian Task Force (The Task Force) works to build the power of the LGBT community from the ground up through training activists, organizing broad-based campaigns to defeat anti-LGBT referenda and advance pro-LGBT legislation, and by building the organizational capacity of the LGBT movement. As part of a broader social justice movement, The Task Force works to create a nation that respects the diversity of human expression and identity and creates opportunity for all. For more information, visit www.nlgtf.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.

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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.

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EXECUTIVE SUMMARY

The basic American bargain is that people who work hard and meet their responsibilities should be able to get ahead. It is an agreement 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.

For transgender workers in America, this bargain is broken. Instead of having a fair chance to get ahead, transgender workers often are held back by bias and unequal workplace benefits. Even though 77% of voters say they support protecting transgender people from discrimination in employment, no federal law provides explicit legal protections for transgender workers based on gender identity/expression; and only 17 states and the District of Columbia have laws that offer these protections.

Among the results of these inequities are extraordinarily high rates of unemployment and poverty among transgender people in the United States.

Transgender Workers in America

A 2011 analysis by the Williams Institute estimates that 0.3% of American adults, or 700,000 Americans, are transgender. The report presents the latest demographic information about transgender workers, including:

- **The population of transgender workers is expected to grow.** More younger people are identifying as lesbian, gay, bisexual and transgender (LGBT). A 2012 Gallup poll found that, compared with older adults, a much greater proportion of young people identify as LGBT: 6.4% of adults between the ages of 18 and 29 self-identify as LGBT, compared to 1.9% of adults age 65+.
- **Transgender workers are geographically dispersed.** Respondents in the National Transgender Discrimination Survey lived in all 50 states, and their geographic distribution approximately mirrored that of the general U.S. population.
- **Transgender workers are racially and ethnically diverse.** The National Transgender Discrimination Survey found that 24% of transgender people in the U.S. identified as people of color, compared to 22% of the general population. Also, 4% of transgender adults are immigrants.

- **Transgender people are highly educated.** Transgender respondents to the National Transgender Discrimination Survey had much higher levels of educational attainment than the population as a whole, with 87% of transgender people reporting that they had at least some college and 47% reporting that they had obtained a college or graduate degree.
- **Employment discrimination and the impact of social stigma contribute to very high rates of unemployment among transgender workers.** The National Transgender Discrimination Survey found that the unemployment rate for transgender workers was twice the rate for the population as a whole (14% compared to 7%), with the rate for transgender people of color reaching as high as four times the national unemployment rate.
- **High rates of unemployment and under-employment place transgender people at extraordinarily high risk of poverty.** According to the National Transgender Discrimination Survey, 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%).

The Broken Bargain: Discrimination With Limited Legal Protection

For many transgender workers in the United States, going to work still means facing harassment, discrimination and unjust firing without explicit legal protection. The report summarizes four discrimination-related barriers facing transgender workers.

Barrier #1: Pervasive Misunderstanding, Hiring Bias and On-The-Job Discrimination. Many Americans have very little understanding of what it means to be transgender. As a result, for transgender people seeking work, the entire job search and hiring process is a minefield, particularly if a legal name or gender on an identity document does not match the outward appearance of the applicant. Once a transgender employee is hired, he or she may face many forms of harassment and discrimination, including denial of promotions or unfair firing.

Barrier #2: Wage Inequities. In addition to job and workplace discrimination, transgender employees face wage disparities that make it harder for them to provide for themselves and their families.

Barrier #3: Unclear Legal Protections. Transgender workers may seek federal legal recourse by filing a complaint with the Equal Employment Opportunity Commission (EEOC) for sex discrimination under Title VII of the Civil Rights Act. But federal law does not provide explicit nondiscrimination protections for transgender workers, and only 17 states and the District of Columbia explicitly prohibit discrimination based on gender identity/expression.

Barrier #4: Inability to Update Legal Documents. Historically, state and federal governments have imposed intrusive and burdensome requirements—such as proof of sex reassignment surgery—that have made it impossible for many transgender people to obtain accurate and consistent identification documents. When these documents do not match a transgender individual’s gender presentation, it can greatly complicate that person’s life, particularly in a post-9/11 world.

The Broken Bargain: Inequitable Health and Leave Benefits

For most workers in the United States, a paycheck is only one of many important benefits that come with having a job. Other work-related benefits include health insurance and family and medical leave. The report describes in detail how the denial of health and leave benefits for many transgender workers results in health problems, added costs for medical care and other problems.

Barrier #5: Unequal Access to Health Insurance Benefits. Although transgender employees may have equal access to health insurance enrollment, they may still be denied appropriate coverage and care. For example, a transgender employee may find that an insurance company refuses to cover a range of routine and medically necessary care because of coverage exclusions that directly or inadvertently target transgender people. Exclusions in health insurance often deny transgender workers access to both basic healthcare and transition-related care.

Barrier #6: Denial of Personal Medical Leave. Employers may deny transgender workers leave for transition-related care, incorrectly stating that such care does not constitute a “serious medical condition.” As a result, transgender employees may face a difficult choice: Put their jobs at risk to care for themselves, or make do without leave and put their health in jeopardy.

Recommendations

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

Eliminating or reducing bias, discrimination and wage gaps for transgender workers. The report includes recommendations for strengthening workplace protections at the federal, state and local levels—as well as recommendations for partnering with employers to develop strong policies and practices to foster diverse and inclusive workplaces, regardless of the law. Major recommendations include:

Federal Solutions

- Congress should ban public and private employment discrimination nationwide on the basis of gender identity/expression and sexual orientation.
- The President should mandate that federal contractors prohibit discrimination on the basis of gender identity/expression and sexual orientation.
- The federal government and its agencies should work to make it easier for transgender people to update their identity documents to match their lived gender.

State and Local Solutions

- State lawmakers should ban employment discrimination in states without current protections for gender identity/expression.
- Governors should mandate that state employers and contractors prohibit discrimination on the basis of gender identity/expression.
- In the absence of nationwide and state-level protections, local lawmakers should take action to protect transgender workers.

Employer Solutions

- Employers should send a clear message that workplace discrimination against transgender workers will not be tolerated.
- Employers should dispel myths/stereotypes and increase awareness through workforce diversity training.
- Employers should ensure support for transitioning transgender employees.

Eliminating inequitable health and leave benefits.

Equitable access to health and leave benefits for transgender workers requires action by federal, state, and local policymakers. However, fair-minded employers who want to do what they can to treat all their workers fairly and equally can also make changes to their health insurance and leave policies to ensure that transgender workers are treated fairly on the job. The report includes recommendations related to both health insurance and medical leave for transgender workers. Among the major recommendations:

Health Insurance

- The U.S. Department of Health and Human Services should continue to clarify and enforce nondiscrimination protections covering transgender people under the Affordable Care Act.
- State lawmakers and/or policymakers should revise state insurance laws and/or policies to ensure that LGBT workers can obtain individual health insurance (whether purchased privately or provided through employers) that meets their healthcare needs.
- Federal, state and local lawmakers should extend equal health benefits to all government employees, including transgender workers.
- Employers should offer affordable health insurance benefits, including routine and transition-related care, for transgender employees.

Medical Leave

- The Department of Labor should clarify that the federal Family and Medical Leave Act (FMLA) allows leave for transgender workers seeking transition-related care.
- State lawmakers and/or policymakers should revise or pass state medical and family leave laws and policies to explicitly include transgender workers.
- Employers should expand leave options beyond existing state and federal mandates.

Conclusion

Fixing the broken bargain for transgender workers will help ensure that they 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 available to other workers to protect their health and livelihood. It is time to send transgender workers the message that they matter, and to show that our nation and our economy are stronger when we treat all workers fairly.

INTRODUCTION

The U.S. workforce reflects the diversity of American society. It includes workers who are young, middle-aged and old. Workers of many races and ethnic and faith backgrounds. American-born workers and immigrants. Workers who are heterosexual, or lesbian, gay, or bisexual. The U.S. workforce also includes workers who are transgender.

The basic American bargain is that those who work hard and meet their responsibilities should be able to get ahead. It is an agreement 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 often do not adequately protect transgender workers. Even though 77% of voters say they support protecting transgender people from discrimination in employment,¹ no federal law provides explicit legal protections for transgender workers based on gender identity/expression; and only 17 states and the District of Columbia have laws that offer these protections.^a

Additionally, even when a transgender worker does the same job as a coworker, he or she may receive unequal healthcare coverage or be unfairly denied medical leave. The result? Transgender workers are sent a message that they don't deserve the same compensation for doing the same job—and that their health doesn't matter.

Fairness and equality are part of America's basic workplace bargain, yet this bargain is clearly broken for transgender workers.

This report examines the inequities facing transgender workers in the American workforce and highlights how these inequities negatively impact both workers and employers. The report discusses barriers facing transgender workers in two areas: 1) those barriers that make it harder for transgender workers to find and keep good jobs; and 2) those that prevent transgender workers from accessing the same job-related benefits as other workers, placing their health and productivity at risk.

The report also offers specific recommendations for government and employers to reduce and eliminate inequities for transgender workers—recommendations that benefit the entire American workforce.

Transgender Workers in America

A 2011 analysis by the Williams Institute estimates that 0.3% of American adults, or 700,000 Americans, are transgender.² National data about transgender people in the workforce can be hard to find.^b Therefore, this report

Key Terms

- **Transgender.** The term *transgender* describes those whose gender identity (the sense of gender that every person feels inside) and/or gender expression (behavior, clothing, haircut, voice and body characteristics) is different from the sex that was assigned to them at birth. At some point in their lives, many transgender people decide they must live their lives as the gender they have always known themselves to be, and often transition to living as that gender. Whether or not a person is transgender is independent of and separate from a person's sexual orientation. A transgender person may be heterosexual, gay, lesbian or bisexual.
- **Gender Identity and Gender Expression.** *Gender identity* refers to one's internal sense of gender. The term *gender expression* refers to how people outwardly express their gender through their clothing, haircut, behavior, etc. The two terms are not interchangeable.
- **Transition.** This term refers to the period during which people stop living according to the sex assigned to them at birth and start living as the gender they have always known themselves to be. Among other things, transitioning may include changing one's gender expression, beginning medical treatment such as hormone therapy, or changing legal documents (e.g., driver's license, Social Security record, birth certificate).⁴ For some, transitioning may involve primarily a social change but no medical component; for others, medical procedures are an essential step toward embodying their gender.

Note: Throughout this report, we use the third-person pronouns "he" and "she" interchangeably to refer to transgender individuals and other workers.

^a Although explicit federal legal protections based on "gender identity" do not exist, transgender workers may now be protected under Title VII of the Civil Rights Act and its protections based on sex. We discuss this in more detail on pp. 20-23 of this report.

^b The federal Bureau of Labor Statistics at the U.S. Department of Labor collects information about labor market activity, but it does not collect data about the gender identity of workers.

relies on the 2011 National Transgender Discrimination Survey, which is the first comprehensive nationwide survey of transgender people in America.³ At times, this report also references broader demographic information about LGBT workers from Gallup polling—but it is important to note that transgender workers make up only a small minority of overall LGBT respondents.

Growing Numbers of Transgender Workers

As the Millennial generation (those born between 1981 and 2000) increasingly enters the workforce, employers may expect to see greater numbers of openly transgender workers. A 2012 Gallup poll found that, compared with older adults, a much greater proportion of young people identify as LGBT: 6.4% of adults between the ages of 18 and 29 self-identify as LGBT; this is three times the percentage of adults age 65+ who do so (1.9%) (see *Figure 1*).

Where Transgender Workers Live

Respondents in the National Transgender Discrimination Survey lived in all 50 states, and their geographic distribution approximately mirrored that of the general U.S. population (see *Figure 2*). Given that 63% of the LGBT population lives in states with no state laws providing employment protections based on gender identity/expression, we can assume that the majority of transgender workers do as well.⁵

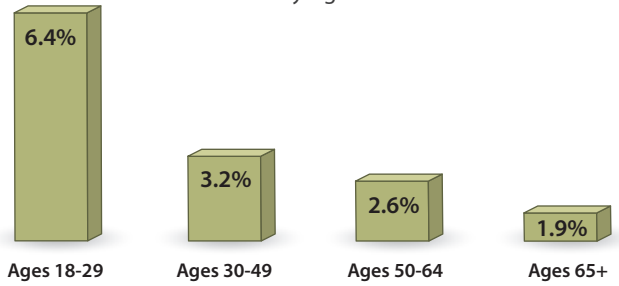
Racial and Ethnic Diversity of Transgender Workers

The National Transgender Discrimination Survey found that transgender respondents are racially and ethnically diverse. Of those surveyed, 24% identified as people of color, compared to 22% of the general population (see *Figure 3* on the next page). Also, 4% of transgender adults are immigrants; half of this group identified as undocumented immigrants, and the other half as documented immigrants.⁶

Education Levels of Transgender Workers

The National Transgender Discrimination Survey found that transgender respondents had much higher levels of educational attainment than the population as a whole, with 87% of transgender people reporting that they had at least some college and 47% reporting that they had obtained a college or graduate degree. The comparable numbers for the general population

Figure 1: 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 2: Geographic Distribution of Transgender Respondents

The National Transgender Discrimination Survey Sample
1 dot = 1 respondent

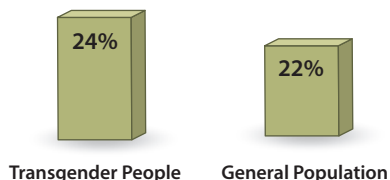


General Population Density
1 dot = 100,000 people



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; U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/00000.html>.

Figure 3: Percent of Transgender People Identifying as People of Color



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *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; U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/00000.html>.

were 55% and 27%, respectively (see *Figure 4*). Higher rates of formal education may be evidence that transgender respondents returned to school at a later age. Despite higher education levels, however, transgender people are far more likely than other Americans to be unemployed, have low incomes, and live in poverty, as described below.

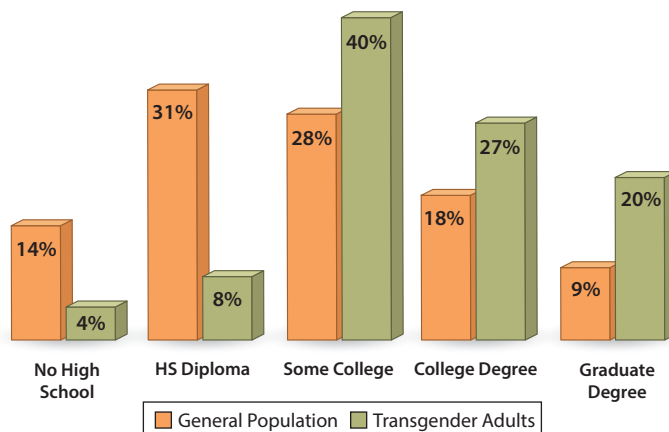
High Unemployment Rates for Transgender Workers

Employment discrimination and the impact of social stigma contribute to very high rates of unemployment among transgender workers. The National Transgender Discrimination Survey found that the unemployment rate for transgender workers was twice the rate for the population as a whole (14% compared to 7%), with the rate for transgender people of color reaching as high as four times the national unemployment rate (see *Figure 5*). More than four in 10 transgender people (44%) who are currently working said they were underemployed, which could mean that they have only been able to find part-time or temporary work, or that they are overqualified for the jobs that they have.⁷

Income and Poverty

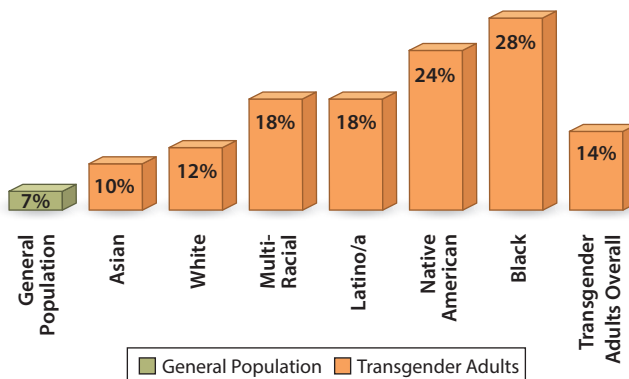
High rates of unemployment and underemployment place transgender people at extraordinarily high risk of poverty. According to the National Transgender Discrimination Survey, transgender people are nearly four times more likely to have a household income under \$10,000 per year than the population as a whole (15% vs. 4%, see *Figure 6*).⁸ Therefore, even when transgender people do find work, they are far more likely to find low-paying jobs that place them within the “working poor.” Prior research also supports these

Figure 4: Education Levels of Transgender People and General Population



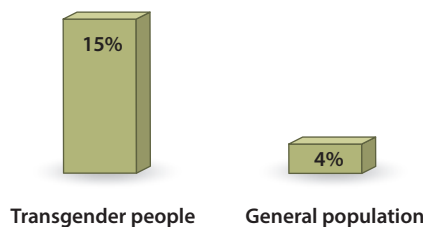
Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *National Transgender Discrimination Survey*, 2011. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

Figure 5: Unemployment Rates for Transgender Adults by Race



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *National Transgender Discrimination Survey*, 2011. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

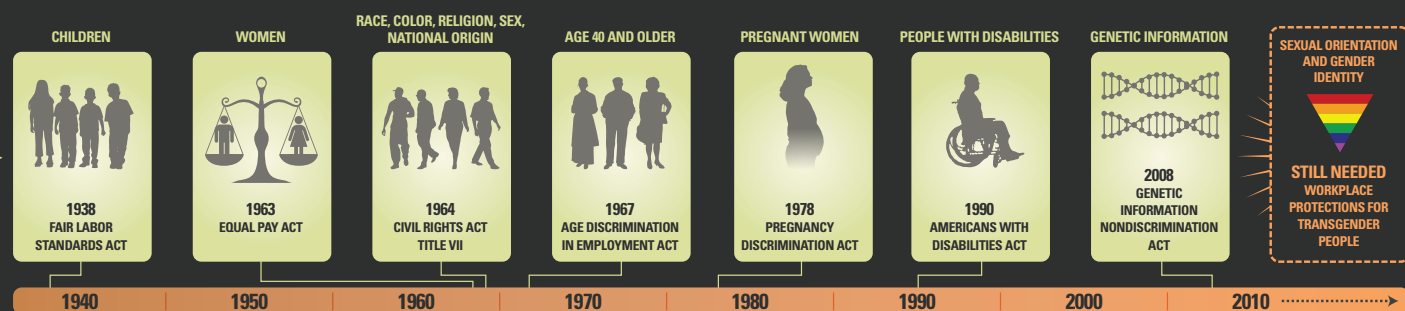
Figure 6: Percent of People with Household Incomes Under \$10,000



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *National Transgender Discrimination Survey*, 2011. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

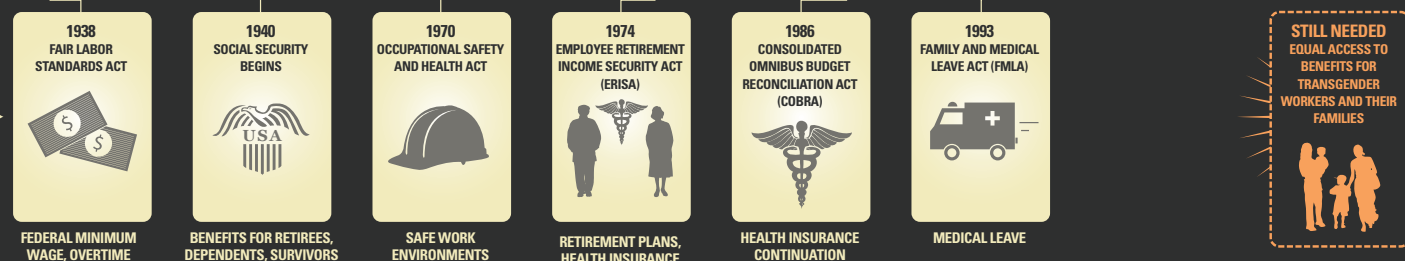
A TIMELINE OF IMPORTANT FEDERAL WORKPLACE PROTECTIONS

CLASSES OF PROTECTED WORKERS



SEXUAL ORIENTATION AND GENDER IDENTITY

STILL NEEDED WORKPLACE PROTECTIONS FOR TRANSGENDER PEOPLE



STILL NEEDED EQUAL ACCESS TO BENEFITS FOR TRANSGENDER WORKERS AND THEIR FAMILIES

WORKER RIGHTS & BENEFITS

findings. In a 2009, the Movement Advancement Project analyzed 14 studies of transgender people that included income data. Across the 10 studies that measured annual incomes below \$15,300, an average of 46% of transgender respondents reported earning this amount or less (71% in the highest study and 17% in the lowest).⁹ Similarly, a 2009 study of transgender people in California found that transgender respondents were twice as likely as the general population to live below the poverty line.¹⁰

The Broken Bargain for Transgender 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 at work, and receiving fair wages and benefits.¹¹ Unfortunately, as shown in the infographic above, none of these federal laws, and few state laws, explicitly protect transgender workers on the basis of gender identity/expression.

For many transgender workers, going to work still means facing harassment, discrimination and unjust firing without explicit legal protection. Transgender workers also are likely to receive smaller paychecks and fewer benefits than others doing the same work.

As shown in the infographic on the following page, this report organizes the barriers transgender workers face into two overarching problems:

- 1. Job discrimination with limited legal protection** makes it harder for transgender workers to find and keep good jobs; and
- 2. Less pay and inequitable health benefits** mean that transgender workers get fewer benefits for the same work—and have a harder time accessing necessary healthcare.

Fixing the broken bargain for transgender workers will mean addressing multiple barriers to equal and fair treatment, as outlined on the pages that follow.

Discrimination with Limited Legal Protection Makes it Harder to Find and Keep a Good Job

Barrier #1: Pervasive Misunderstanding, Hiring Bias and On-The-Job Discrimination. Many Americans have very little understanding of what it means to be transgender. As a result, for transgender people seeking work, the entire job search and hiring process is a minefield, particularly if a legal name or gender on an identity document (ID) does not match the outward appearance of the applicant. Once a transgender employee is hired, he or she may face many forms of harassment and discrimination, including denial of promotions or unfair firing.

THE BROKEN BARGAIN

FOR TRANSGENDER WORKERS



HARDER TO FIND & KEEP A GOOD JOB

Inadequate nondiscrimination protections make it harder to find a good job, succeed, and provide for self and family.

TRANSGENDER WORKERS ARE REFUSED JOBS OR UNFAIRLY FIRED BY DISCRIMINATORY EMPLOYERS

	NON-TRANSGENDER	TRANSGENDER
JOB DISCRIMINATION	Protected from hiring bias?	✓
	Protected from on-the-job discrimination?	✓
	Protected from wage discrimination?	✓
		(LACK EXPLICIT PROTECTIONS)



DENIED EQUAL HEALTH BENEFITS

Are often unfairly denied health and medical leave benefits.

TRANSGENDER WORKERS AND THEIR FAMILIES LEFT VULNERABLE

	NON-TRANSGENDER	TRANSGENDER
UNEQUAL BENEFITS	EQUAL ACCESS TO:	
	Health benefits?	✓
	Medical leave?	✓
		X
		X

Barrier #2: Wage Inequities. In addition to job and workplace discrimination, transgender employees face wage disparities that make it harder for them to provide for themselves and their families. Transgender workers report chronically low wages, with 15% of transgender adults making \$10,000 per year or less.¹²

Barrier #3: Unclear Legal Protections. Transgender workers may seek federal legal recourse by filing a complaint with the Equal Employment Opportunity Commission (EEOC) for sex discrimination under Title VII of the Civil Rights Act. But federal law does not provide explicit nondiscrimination protections for transgender workers, and only 17 states and the District of Columbia explicitly prohibit discrimination based on gender identity/expression.¹³

Barrier #4: Inability to Update Legal Documents. Historically, state and federal governments have imposed intrusive and burdensome requirements—such as proof of sex reassignment surgery—that have made it impossible for many transgender people to obtain accurate and consistent ID. Since many transgender people do not need or want sex reassignment surgery—or cannot afford it—making surgery a requirement for an ID change creates undue burdens for many transgender people.

Inequitable Health and Leave Benefits Put Transgender Workers at Risk

Barrier #5: Unequal Access to Health Insurance Benefits. Exclusions in health insurance often deny transgender workers access to both basic healthcare and transition-related care.

Barrier #6: Denial of Personal Medical Leave. Employers may deny transgender workers leave for transition-related care, incorrectly stating that such care does not constitute a “serious medical condition.” As a result, transgender employees may face a difficult choice: Put their jobs at risk to care for themselves, or make do without leave and put their health in jeopardy.

A Story of Two Workers

The unfair laws and policies described in this report impose real, everyday burdens on transgender workers across the country. The impact of these inequities can be seen more clearly when we focus on the transgender individuals who are put in harm’s way because America has not yet been able to fix the broken bargain. Consider the stories of Mark and Jonathan (see the table on the next page).

Mark and Jonathan are 25-year-old classmates about to graduate *magna cum laude* from the same business school; Mark is transgender and Jonathan is not. They apply for a job with the same company and both are asked to interview.

During Mark’s interview, the recruiter notices that Mark played field hockey in high school and asks what it was like to play on a boys’ field hockey team. Mark answers truthfully—that he played on the girls’ team. He transitioned from female to male in his early 20s. The interview ends early. In contrast, Jonathan’s entire interview goes well, and he and the recruiter chat comfortably about Jonathan’s interests.

Mark is unfairly ranked as less qualified than Jonathan and is considered for a lower-level job. During company background checks, Mark must file an application with his “old” name (Suzanne) and show a driver’s license and Social Security card that don’t match his current gender. Jonathan sails through background checks.


Both candidates receive a job offer, but Mark is underemployed in an assistant sales position making \$30,000 a year, while Jonathan is appropriately hired as a junior sales representative making \$45,000 per year.

On his first day of work, Mark finds new business cards and his name plate awaiting him. The problem is that they both have the name “Suzanne” on them. Coworkers begin to gossip and Mark avoids personal conversations. Jonathan, on the other hand, is invited to join his coworkers for a drink after work.

Both Jonathan and Mark receive individual worker health benefits. However, while Jonathan is fully covered, Mark must pay out-of-pocket for doctors’ visits and hormone therapy, costing him \$1,000 per year.

At the start of their third year with the company, Jonathan is promoted, while Mark is passed over.

After four years, Mark seeks treatment and medical leave related to depression and anxiety stemming from the negative work environment. The health insurance company refuses to cover any mental health treatment for Mark, citing blanket policy exclusions for mental health counseling for transgender workers. In addition, the employer refuses to give Mark medical leave. Mark begins to pay \$90 per week out-of-pocket for counseling. By contrast, when Jonathan’s father and mother die in rapid succession, Jonathan is granted a week of paid leave, and the health insurance company covers mental health counseling.

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

^c For sake of simplicity, these numbers are pre-tax.

^d 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>

^e Assumes 50 weeks of counseling at \$90 per week, paid out-of-pocket by Mark.

^f Assumes company offers paid leave; calculated at 1/52nd of his \$30,000 salary.

After four-and-a-half years, Mark feels that the stress is too much. He takes a week of leave to recuperate and the company fires him.

The net result? Mark faces an extra financial burden of over \$130,000 in just five years. And, instead of being able to use his considerable skills to contribute to the success of the company, he finds himself unemployed and without any savings.

This is just one illustration of how life is needlessly more difficult for transgender workers. And this discrimination doesn't just harm Mark. Had his employer treated him fairly, the company would have had two rising stars, not just one.

Fixing the Broken Bargain Is Good for Business and American Prosperity

The lack of explicit legal protections for transgender workers, combined with the unequal treatment they receive in areas from wages and hiring to health benefits, is not just a problem for transgender workers; it also harms their coworkers and their employers. Organizations that create diverse and inclusive workplaces are better positioned to attract and retain top talent. They benefit from decreased costs associated with absenteeism and turnover (or "churn"). They also have higher levels of employee satisfaction, which can boost productivity and innovation and result in higher profits.

Employers are becoming increasingly proactive in addressing the absence of legal protections for transgender workers; 57% of Fortune 500 companies provide nondiscrimination protections for their transgender employees.¹⁴ Similarly, four in 10 small businesses surveyed by Small Business Majority in 2013 said they take steps to prohibit discrimination based on sexual orientation and gender identity/expression. When asked why they began taking steps to prevent such discrimination, 80% of small business owners said it is because they believe all employees should be treated fairly and equally, and 72% said it is "the right thing to do."¹⁵ Some employers are also finding ways to close the gap in benefits for transgender workers. Forty-two percent of surveyed employers in the 2013 Corporate Equality Index offer transgender-inclusive health benefits, up from 19% in 2008.¹⁶

The bottom line: America's leading small and large businesses know that the broken bargain for transgender workers hurts employers and American

prosperity. To the extent that all levels of government (and more employers) adopt policies that ensure fair and equal treatment for transgender workers, businesses will be better positioned to succeed, grow and contribute to the success of local, regional and national economies.

Fixing the broken bargain for transgender workers helps employers meet three business imperatives:

Attracting and retaining top talent. For employers, finding qualified workers can be a challenge. According to a recent survey, 47% of CEOs were very confident about their companies' growth over the next three years, yet 54% were concerned about whether they will have the talent they need.¹⁷ In 2012, 31% of surveyed CEOs said that talent constraints hampered innovation.¹⁸

Successful companies of all sizes know that imposing arbitrary limits on the hiring pool makes no business sense, while adding to the costs of attracting talent. Competing for top workers means making hiring decisions based on skills and abilities, rather than unrelated characteristics such as gender identity and expression. In addition, the premium on talented labor in today's economy means that employers also cannot afford to lose qualified workers they already have. Treating transgender workers unfairly will result in a talent drain as these workers—and coworkers who believe in treating all employees fairly—begin to look elsewhere for jobs.

It is estimated that more than 2 million people voluntarily leave their jobs each year because of workplace unfairness such as negative or disparaging comments, unfair employment policies, or invisibility on the job.¹⁹ Cumulatively, turnover related to unfair treatment of workers costs businesses in the U.S. as much as \$64 billion each year.²⁰

More than half of the companies on *Fortune* magazine's list of the "100 Best Companies to Work For" include gender identity in their nondiscrimination policies.

Center for American Progress, 2012



Boosting productivity and results. Employers that create a welcoming environment for transgender workers are taking an important step to improve productivity, competitiveness and results. Not only can transgender workers bring unique qualifications and commitment to their work, but the inclusive environment that these employers create also has its own benefits. The reason: When workers feel satisfied, respected and valued, they do their best work and contribute to an organization's bottom line. Similarly, when an employee sees that an employer is committed to diversity and workplace fairness, she will be more likely to stay with that company and more likely to recommend it to others as a good place to work.

More than three decades of research have confirmed a link between employees' increased job satisfaction and consequent decreases in absenteeism and churn. In addition, research shows that employee satisfaction is a driver for customer satisfaction and customer loyalty.

Spurring innovation and reaching new markets. In a 2011 *Forbes* study, 85% of leaders of large companies said that diversity is crucial because of the many perspectives and ideas needed to drive innovation.²¹ To improve

products and services, smart businesses are creating cultures that foster entrepreneurship and risk-taking. An inclusive work environment can be a key differentiator 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. Regardless of industry or product niche, transgender team members can bring unique perspectives to the table, helping to tailor a company's products and services to a diverse, global marketplace.

What's Next

In the sections that follow, this report details how the barriers identified above make it difficult for transgender employees to find good jobs and advance in their careers. It also shows how these barriers limit access to workplace benefits like health insurance and medical leave, leaving transgender workers vulnerable. Finally, the report provides a number of recommendations to remove existing barriers so that transgender workers can find and keep good jobs and get the healthcare and medical leave they need and have earned.

Leo Kattari's Story: A Smooth Transition, 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 medically transition, so I came out as transgender at work. First, I told my supervisor and our executive director and they couldn't have been more supportive. Neither was really surprised since I had always been fairly androgynous. In fact, my supervisor confessed that she had always felt uncomfortable calling me by my birth name and using female pronouns.

The next step was to come out to the rest of the team. Since we have a tight-knit staff, I told them myself at our regular staff meeting, where I was met with unconditional support, kudos, and excitement for the next steps of my journey. Following that, our executive director sent an email to our external partners, noting the change of my name and which pronouns to use. The tone was matter-of-fact, respectful, enthusiastic, and positive.

As I prepared for surgery, our human resource manager did some research to see if our health benefits could help cover the surgery or hormone replacement therapy, but as I expected, the answer was no. And although we have a clear nondiscrimination policy that includes sexual orientation and gender identity/expression, our existing leave provisions didn't specifically cover leave for the surgery. I had intended to rely on sick leave and vacation to get me through, but my supervisor and director didn't want me to exhaust all my personal time. So, they sought and received permission from our board of directors 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, the transition was very smooth and 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

THE BROKEN BARGAIN: DISCRIMINATION WITH LIMITED LEGAL PROTECTION

Workplace Barriers for Transgender People

Adequate income. Safety. Fair treatment. Opportunities to advance and succeed. These are some of the fundamental factors that define a good job in America today—goals so important that government has enacted laws to try and ensure that good jobs are within every worker's reach.

While laws were passed to protect other groups of workers from discrimination and unfair treatment, federal and most state nondiscrimination laws do not include explicit protections for transgender workers. This is in significant conflict with American values. A recent poll from the Center for American Progress shows that nearly three-fourths of American voters support workplace protections for gay and transgender workers. Workplace fairness is such a strong American value that most Americans (87%) incorrectly believe that LGBT workers are already protected (see *Figure 7*).²²

In addition to the lack of explicit legal protections, inconsistent federal, state and local regulations and laws may make it difficult or impossible for transgender workers to consistently update their identity documents. When a worker presents IDs with conflicting names and gender markers, it can raise unnecessary red flags for employers and result in “outing” a worker who might otherwise not be identifiable as transgender.

Adding to these challenges is a general lack of awareness among employers and the broader population of what it means to be transgender and of the various barriers that transgender Americans face in daily life. According to poll data from 2008, only 8% of Americans said they worked with or personally knew someone who is transgender, compared to 78% who said they worked with or knew someone who is lesbian or gay (see *Figure 8*). The lack of understanding of transgender people has serious implications for how transgender people are treated by society. In fact, researchers and advocates identify transgender people as one of the most heavily stigmatized, marginalized and at-risk populations in the U.S. For transgender people of color and those who are poor or immigrants, the level of discrimination and marginalization can be extreme.

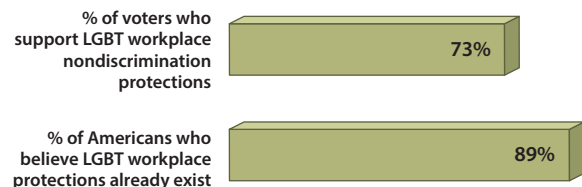
I was a respected lawyer before all of this, but lost my practice and clients and have not been able to attract any new clients or get referrals or even get a job in my field for the past eight years. [This is] very frustrating because I don't feel any less intelligent or less qualified, but others, both the public and lawyers, perceive me that way.

—Survey respondent

National Transgender Discrimination
Survey, 2011

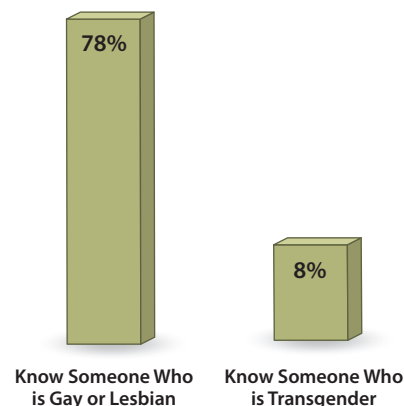


Figure 7: Support for LGBT Workplace Protections



Sources: 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 8: Percent of Americans Who Know Someone Who Is Gay or Lesbian vs. Transgender



Source: Harris Interactive. November 2008. <http://www.glaad.org/files/HarrisPoll120308.pdf>.

DISCRIMINATION

MAKES IT HARDER TO FIND AND KEEP A GOOD JOB



THE SOLUTION



ENHANCED LEGAL AND WORKPLACE PROTECTIONS

Pass federal, state and local employment protections for transgender workers; employers can institute nondiscrimination policies

ACCURATE IDENTITY DOCUMENTS

Revise laws/policies to ensure transgender people can update their identity documents

THE IMPACT

MAKING IT HARDER FOR TRANSGENDER WORKERS TO:

- Receive Equal Pay
- Find and Keep Good Jobs

THE PROBLEM

LACK OF EXPLICIT WORKPLACE PROTECTIONS UNDER FEDERAL AND MOST STATE LAW

DIFFICULTIES UPDATING IDs CAN LEAVE CONFLICTING NAMES AND GENDER MARKERS

As illustrated in the infographic on page 12, continued and often unchecked discrimination against transgender workers, combined with identity document challenges, makes it harder for transgender workers to find and keep good jobs, receive fair wages and secure equal opportunities to succeed.

The section that follows explores the workplace barriers facing transgender workers. It also offers policy recommendations for strengthening workplace protections at the federal, state and local levels—as well as recommendations for partnering with employers to develop strong policies and practices to foster diverse and inclusive workplaces, regardless of the law.

Barrier: Hiring Bias and On-the-Job Discrimination

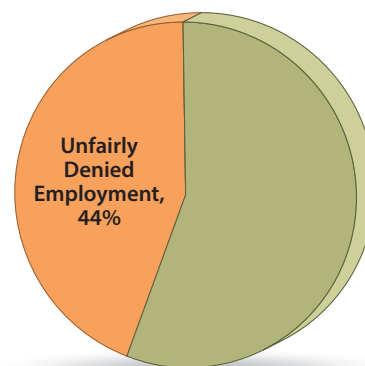
People who feel the need to resist their birth-assigned gender or to live as a member of another gender have tended to encounter significant forms of discrimination and prejudice—even religious condemnation. ... Such people are often shunned and may be denied such basic needs as housing or employment.

— Susan Stryker, Ph.D., *Transgender History*, 2008, pages 5–6.

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. For transgender workers, this bargain is in tatters. In fact, 44% of transgender respondents in the National Transgender Discrimination Survey said they were unfairly denied employment simply because they were transgender (see *Figure 9*).²³ These numbers were higher for transgender people of color, with 47% of Latino/a respondents, 48% of black respondents and 56% of multiracial respondents reporting being unfairly denied a job.

Depending on whether an applicant “passes,”⁹ he may experience challenges at different points in the job application process. For example:

Figure 9: Percent of Transgender People Who Have Been Unfairly Denied Employment



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *National Transgender Discrimination Survey*, 2011. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

- Transgender people who are “visually nonconforming” may face discrimination and obstacles in initial interviews, despite having outstanding qualifications.
- Transgender applicants who “pass” may worry what will happen if the prospective employer discovers their transgender status by checking ID or through a routine check of prior work experience.
- Gaps in work history, as a result of employment discrimination, can be a barrier to securing employment, and applicants may not be given an opportunity to explain gaps.
- Professionals who are licensed under a different name and/or gender, or whose professional reputation and job history are connected to a prior name and gender, can face challenges as prospective employers review their accreditations and work history.
- All transgender and gender-nonconforming applicants may face additional concerns about how to dress and what pronouns to use during job interviews.

Adding to these challenges, a transgender applicant who is not open about his gender identity and history may be unable to ask whether he will be fully covered under the company healthcare plan. Yet, deciding *not* to share this information up front can pose its own risks, especially because the application and hiring process commonly involves verification of identity documents.

⁹ When used in discussing transgender people, the term “passing” refers to an individual’s ability to be recognized and treated in accordance with their internal sense of gender, or their gender identity.

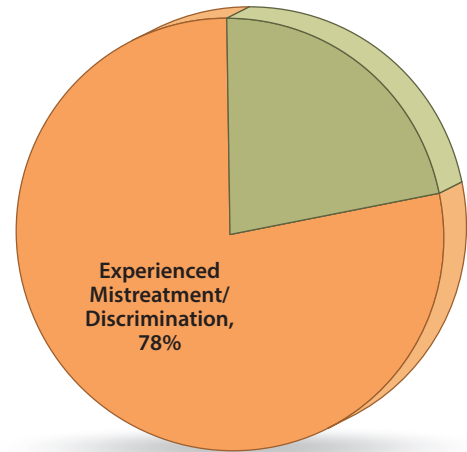
Consider a transgender woman who has a good interview and whom the employer asks for employment references. In conducting reference checks, the employer finds out that two jobs prior, the candidate lived as a man. One employer may think that the candidate is trying to commit fraud, while another might realize that the candidate is transgender. In either case, the candidate might immediately be excluded from consideration.

Few studies exist about hiring based on gender identity. However, in 2009 researchers conducted surveys of transgender and gender-nonconforming individuals across all job sectors about their experiences in the job market. Of those surveyed, 49% had never been offered a job while living openly as a transgender person.²⁴

As a result of this hiring bias, transgender workers on average have twice the unemployment rate of non-transgender workers²⁵ and may also face hiring bias because of long-term unemployment.²⁶

Even when transgender candidates secure a job, they often face uncomfortable workplaces where anti-transgender slurs, jokes and verbal harassment are commonplace. As shown in *Figure 10*, the National Transgender Discrimination Survey found that 78% of transgender and gender-nonconforming employees experienced mistreatment or discrimination on the job. Transgender people of color reported even higher rates of workplace harassment and mistreatment. A Movement Advancement Project review of 12 different studies on transgender populations found similar results, with an average of 40% of respondents saying they faced job discrimination.²⁷

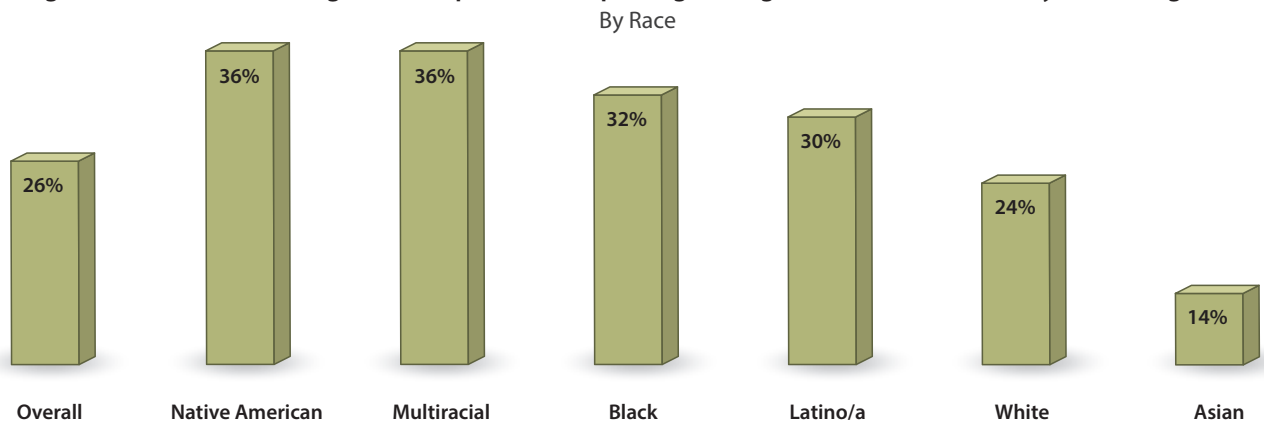
Figure 10: Percent of Transgender People Experiencing Mistreatment/Discrimination



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *National Transgender Discrimination Survey*, 2011. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

Discrimination against transgender workers can also result in negative performance evaluations, missed promotions and unfair firing. In the National Transgender Discrimination Survey, 23% of respondents said they were denied a promotion because they were transgender, and 26% of transgender workers said they had lost a job because they were transgender. Transgender women were more likely to report job loss (36%) compared to transgender men (19%). Once again, rates of unfair firing were particularly high for transgender people of color (see *Figure 11*). Transgender respondents who reported having lost a job due to bias were four times more likely

Figure 11: Percent of Transgender Respondents Reporting Having Lost a Job Because They Are Transgender



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *National Transgender Discrimination Survey*, 2011. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

to be unemployed than the general population (26% vs. 7% at the time of the survey), suggesting these workers may face great difficulties finding new employment after being unfairly fired.

Employment discrimination may also impact how coworkers interact with transgender employees, limit how a transgender person can appear at work, and restrict access to restrooms and other facilities. As shown in *Figure 12*, the National Transgender Discrimination Survey included the following findings about the daily challenges of transgender workers:

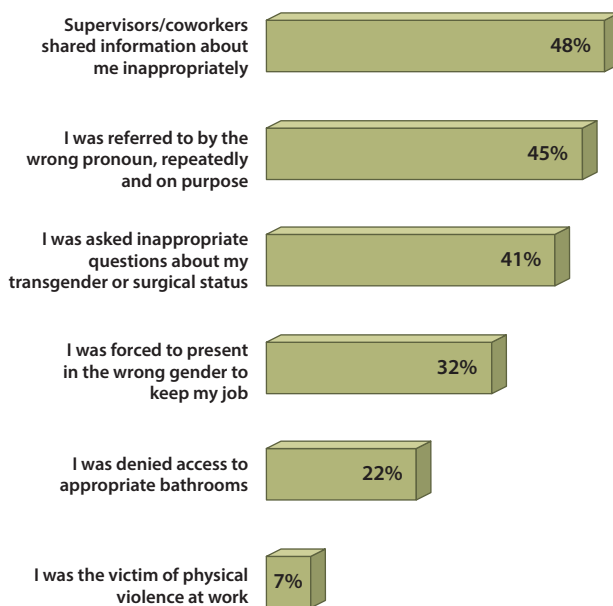
- 48% faced supervisors and coworkers who inappropriately shared information about them; another 41% faced inappropriate questions.
- 45% were referred to by the wrong pronoun, repeatedly and on purpose.
- About one-third (32%) were forced to present in the wrong gender to keep their jobs.
- About one-fifth (22%) were denied access to the appropriate bathroom.
- One in 14 (7%) were the victims of physical violence at work.

To avoid or prevent discriminatory treatment, many transgender workers make life choices that may not be in their best long-term interests. For example, 57% have delayed a gender transition, 45% have stayed in jobs they prefer to leave, 42% have changed jobs for a less hostile work environment, and 30% kept a low profile and avoided seeking a promotion or raise (see *Figure 13*).

When workers are harassed or discriminated against on the job, they are less productive and, in the worst circumstances, may actually fear for their safety. Workplace bias not only harms transgender workers, it can also negatively affect supportive coworkers who are uncomfortable with how a transgender colleague is being treated, ultimately reducing workplace morale and productivity.

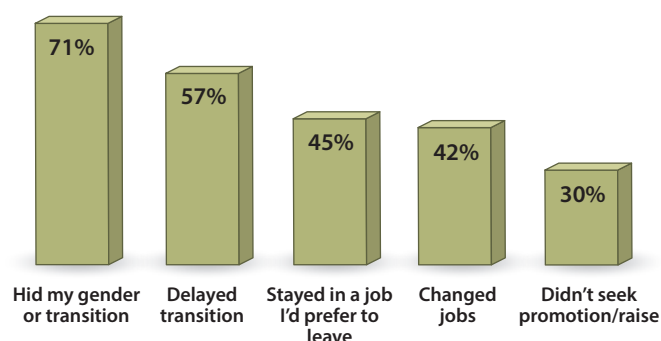
The importance of workplace protections for transgender and lesbian, gay and bisexual workers is not lost on employers, who increasingly are speaking out in favor of laws to fix the broken bargain. In the 2013 survey of small business owners, over two-thirds (67%) said they support legislation that would prohibit employers from discriminating based on sexual orientation and gender identity.²⁸

Figure 12: Percent of Transgender People Experiencing Different Types of Mistreatment/Discrimination Due to Bias



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *National Transgender Discrimination Survey*, 2011. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

Figure 13: Discrimination-Avoidant Behaviors Reported by Transgender People



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *National Transgender Discrimination Survey*, 2011. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

Out or Not? Either Way, Transgender Employees Can Lose

Given the hostility and discrimination that transgender workers face, many may choose not to be open about being transgender, or “out.” As shown in *Figure 14*, the National Transgender Discrimination Survey found that just 38% of transgender workers told their colleagues that they are transgender or gender-nonconforming, a percentage that varies little by race or ethnicity. Workers who had transitioned—either by using hormones or through other medical procedures—were more likely to be out to their coworkers; 50% of workers who had transitioned said that they were out to “most” or “all” of their coworkers.

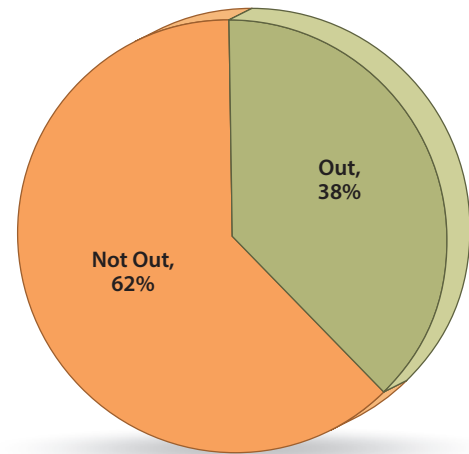
Of course, the degree to which coworkers and supervisors know whether an employee is transgender is not based solely on that person being out at work. It also depends in part on whether or not the employee is visually transgender. One in five respondents in the National Transgender Discrimination Survey said that they are “visual conformers,” meaning that usually people can’t tell that they are transgender. Slightly more than half of the respondents said that they are “somewhat visually conforming,” meaning that others can tell they are transgender sometimes or occasionally, while 22% said that people can always tell that they are transgender (see *Figure 15*).

The stress of hiding at work takes a deep emotional toll. During the workweek, adults spend about half of their waking hours at work.²⁹ For many transgender workers, this means they are spending a significant portion of their lives in a world where they cannot be themselves.

A recent study by the Center for Talent Innovation examined the impact of staying closeted in the workplace on all LGBT employees.³⁰ LGBT employees who were not out at work were 40% less likely to trust their employers, and 75% more likely to feel isolated from their coworkers than those employees who were out at work. Closeted employees also were 73% more likely to say they planned to leave their jobs in the next three years, compared to LGBT employees who were out at work.

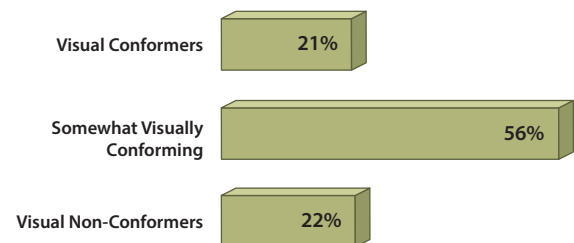
The fact that large numbers of transgender workers still feel the need to hide who they are (even though this can negatively affect their relationships and job satisfaction) underscores that significant numbers of U.S. workplaces still do not provide welcoming climates.

Figure 14: Percent of Transgender People Who Are Out at Work



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *National Transgender Discrimination Survey*, 2011. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

Figure 15: Degree to Which Transgender Workers Are Visually Conforming



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *National Transgender Discrimination Survey*, 2011. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

I was fired from my job after 18 years of loyal employment after a fellow employee saw me dressed while attending counseling and reported me to the boss. I was forced on to public assistance to survive.

—Survey respondent

National Transgender Discrimination Survey, 2011



Dana's Story



I am transgender, and although I suffer from extreme anxiety as a result of being closeted, I've still chosen not to be out at work. I don't live in fear of being fired, but I have a visible and highly responsible, demanding job and have risen quite far in the organization. Since I understand how human nature and professional decision making impact leaders, I think that over time there would be a perception that somehow

I'm just not right for certain jobs and this will slow down my career progression and ultimately make me vulnerable to layoffs. In the meantime, I stay closeted, keeping to myself and allowing very few people to know me personally.

— Dana, California

Transgender Employees and Transitioning at Work

"Transitioning" refers to the process during which a person stops living according to the sex assigned to him at birth and starts living as the gender he knows himself to be. It is often a gradual process that occurs over many years, and may include multiple inflection points along the way. For instance, at some point a person's outward appearance may change to reflect the way she identifies. This could be seen in changes in gender expression like those related to clothing choices, makeup or hairstyle. Or, a person's physical appearance may change as a result of hormone treatments or surgery. Each person's transition is unique.

Transgender workers who live their lives according to the gender they feel and know themselves to be—both at work and outside of work—are happier, healthier, and more successful. In self-reports to researchers at Rice University and Pennsylvania State University, three out of four transgender workers said they felt more comfortable and their performance at work improved when they were able to live "24/7" in accordance with their gender identity.³¹ The study also found that employees who were open about their identity as a transgender person were more satisfied with their jobs, happier, and more committed to their employers. Additionally, openly transgender employees reported far less workplace anxiety.

I was fired from a good job

because I tried to transition on the job. I then lived on a menial employment for over three years before finally landing another good one that was a full-time job and had benefits. At one point, I had an offer of employment withdrawn after the would-be employer found out I was transgender.

—Survey respondent

National Transgender Discrimination Survey, 2011



Yet transitioning can be very difficult in many workplaces. The National Transgender Discrimination Survey found that one in five transgender workers reported being denied access to a restroom that was appropriate for their gender.³² Significant numbers of transgender individuals lose their jobs during gender transition. It can then be very difficult to find new work, particularly for transgender workers who were unfairly fired.

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, business cards or security badges; how the employer and employee will communicate with coworkers; and when an employee will begin using sex-segregated facilities, like bathrooms, in accordance with her gender identity. These changes can be accompanied by a statement about the company's nondiscrimination policies, as well as resources and guidance for employees.

In most cases, solutions can be relatively simple. In fact, 79% of respondents in the National Transgender Discrimination Survey reported that employers were able to accommodate their needs.³³

Consider, for example, the issue of facilities. The best and fairest answer for most employers is to permit transgender employees simply to use the restroom that matches their lived gender. Some workplaces also designate existing single-occupancy restrooms for all-

gender employee use so anyone may use those restrooms if they desire enhanced privacy (such as nursing mothers or the one out of every 10 workers who has “shy bladder syndrome”). In addition, employers can ensure adequate privacy dividers between urinals, install flaps to cover gaps in stall doors and walls, or extend stall doors and walls to enhance privacy in existing gender-specific restrooms.

Unfortunately, these kinds of changes rarely happen unless transgender workers step forward as their own advocates in the workplace. Very few human resource associations have provided specific guidance about how to create policies to support transgender

employees in their transition at work. The Human Rights Campaign’s “Workplace Gender Transition Guidelines” (<http://www.hrc.org/resources/entry/workplace-gender-transition-guidelines>) provides employers and human resource departments with specific guidance about navigating these questions to appropriately support transgender employees in their transition at work. In addition, the federal Office of Personnel Management’s guidance on the employment of transgender individuals in the federal workforce is useful. It discusses facilities and other issues, and can be followed by any employer seeking to treat its transgender employees fairly.³⁴

Camryn Anderson’s Story: Comprehensive Plan + Senior Management Support = Engaged Employee



When I left New York for Pennsylvania, Harrisburg topped my list of potential places to live. The city boasts a thriving and vibrant LGBT community, and since 1992 has prohibited discrimination based on sexual orientation and gender identity in the workplace. I soon found a great job at a psychiatric hospital, and started work as a behavioral health specialist.

I didn’t tell anyone that I identified as transgender or that I intended to transition to become a woman. I didn’t want to rush the process—either at work, or in making the many changes in my day-to-day life. Even though Harrisburg has a nondiscrimination ordinance, I had heard stories from other transgender friends about losing their jobs. One, a senior manager at an advertising firm, was fired after coming out as transgender (this friend now works as a sales clerk at a clothing store).

I also wondered: Would my physical appearance be a distraction at work? What if everyone stared at me? Would it get in the way of my ability to do the job I loved?

After four years on the job, it seemed like the right time to complete my transition. I met with the senior management at work and told them that I would soon be living as a woman. We worked together to develop a comprehensive plan. Education was the cornerstone. We added an information sheet and FAQ about transgender people to our online employee handbook and resource page. Another staff member, a well-respected and transgender physician, presented an information session drawing more than 100 people—the most to attend such an event at our hospital.

The hospital leadership also took time to identify potential points of conflict and discussed ways to address them. For example, if a patient asked about me, the staff was advised to answer frankly and honestly, sharing that my name was Camryn and I am a transgender woman. The leadership made it clear they would stand by me if patients or colleagues took issue with me.

Since coming out at work, I have felt incredibly supported. The hospital has become an even more open place. This openness means that employees are not only more comfortable being themselves, but also we are more equipped to care for the diversity of clients that our hospital serves.

—Camryn Anderson, Pennsylvania

Aidan's Story: A Company's Upsetting Response to a Transgender Colleague



One day at work, the gossip around the office was that one of our coworkers was transgender. I'd actually known this for quite a while. She was a great colleague—good at her job, easy to work with, a fun person to be around. I didn't understand why everyone was making such a big deal about it.

My coworker came into my office later that day and officially came out as transgender. I told her that I already knew; it wasn't an issue. To be honest, I saw her decision to live life the way she needed to as a sign of fortitude, and I deeply respected her for it.

A few days later, one of the company's attorneys came to my office and asked me how I felt about my coworker. He asked leading questions such as, "Does she make you uncomfortable?" and "Does working with her make you feel ill at ease or otherwise make it harder for you to do your job?" His approach shocked and disappointed me. The underlying message was clear: If enough people were put off by my transgender coworker, she'd be let go.

I couldn't believe our company was handling the situation this way. I explained to the attorney that LGBT people are human beings, that I didn't see any reason to treat them differently at work or anywhere else, and that the company's focus on my coworker—rather than the gossiping and intolerant members of our staff—upset me greatly.

In the end, my coworker wasn't let go. Given the company's response, however, I couldn't feel as comfortable at work as I'd been before the incident. I can't imagine that she could, either.

— Aidan, New York

Deja Greenlaw's Story: Workplace Transition Handled Casually—and Well



By 2007, I had been living full time as a woman for two years, except when I was at work for 3M, where I worked as a supply chain analyst. Most of my coworkers had seen me dressed as a woman at Halloween parties or after work while performing in my band, so they already knew me as "Deja" outside of work.

I finally asked myself, "What are you waiting for?," and decided it was time to fully transition. I started hormone therapy, and worked with a counselor to make legal changes to my name and gender. At about the same time, I approached human resources about creating a personal transition plan. I was lucky because 3M is a large and diverse company. Several employees had transitioned earlier, and the corporate office in St. Paul had been through it all before.

For me, it was no big deal. We had a female plant manager, and most of the people I worked with were women who were already my friends. Corporate HR hooked me up with someone in Minneapolis who had transitioned earlier so that I had a support system, and our local HR rep handled it very casually. She simply lengthened an all-staff presentation on another topic to include an announcement that I would be transitioning. She discussed when to begin using my new name and preferred pronouns, and gave people a chance to ask questions.

When it came to my direct colleagues, the HR rep let them know, "Deja will use the ladies' room closest to her work station. If you aren't comfortable with that, you may use a different restroom."

There were one or two people who were nervous to start, either because this was new to them or because they were afraid they would use the wrong pronouns and get in trouble. But I'm really outgoing, so that only lasted a short time, and now we're all friends.

— Deja Nicole Greenlaw, Connecticut

Tracy's Story



I was fairly nervous about coming out at work and I still am. While my immediate supervisors know that I am transgender, I am reluctant to be out because of hostility from the HR department. If and when I make it public, HR won't let us have anyone come in to brief my coworkers and answer questions or dispel people's fears. Instead, what they want me to do is simply show up dressed as a woman one day and then deal with fallout as it happens. They are essentially creating the conditions for a very difficult transition, and it has caused my transition to stall.

— Tracy, Missouri

Spotlight on the Transgender Economic Empowerment Initiative

The Transgender Economic Empowerment Initiative is a collaborative program of the San Francisco LGBT Community Center; San Francisco Transgender Empowerment, Advocacy and Mentorship (SF TEAM); Jewish Vocational Services (JVS); and the Transgender Law Center. It is designed to help members of the San Francisco Bay Area transgender community achieve financial self-sufficiency through secure stable employment in safe jobs that provide a living wage and benefits. Services include:

- One-on-one job search supports and workshops, including résumé development, interviewing practice, and networking opportunities.
- Job fairs with pre-screened, transgender-friendly companies and organizations, and coaching to support job fair follow-up.
- Peer-based mentoring from transgender and allied successful professionals in the community who can share their job experiences.
- Free legal advice that focuses on rights in the workplace.

For more information, see <http://www.tteesf.org/>.

Barrier: Wage Inequities

In the United States, wages account for 70% of total compensation for private-sector employees and 65% of total compensation for state and local government employees.³⁵ U.S. workers rely on their paychecks to cover the costs of transportation, housing expenses, food and clothing, retirement savings and more. Over time, policymakers have enacted various laws aiming to abolish unfair disparities in pay. An example is the Equal Pay Act, which prohibits sex-based discrimination among employees who work in “equivalent jobs.”³⁶ To date, however, no federal laws have been passed to address documented pay disparities based on gender identity/expression.

As described in the report introduction, transgender workers are much more likely than the general population to have very low incomes. In fact, 15% of transgender respondents in the National Transgender Discrimination Survey had household incomes under \$10,000 per year, compared to just 4% of the population as a whole.

Barrier: Inadequate Nondiscrimination Protections

Limited Federal Protections

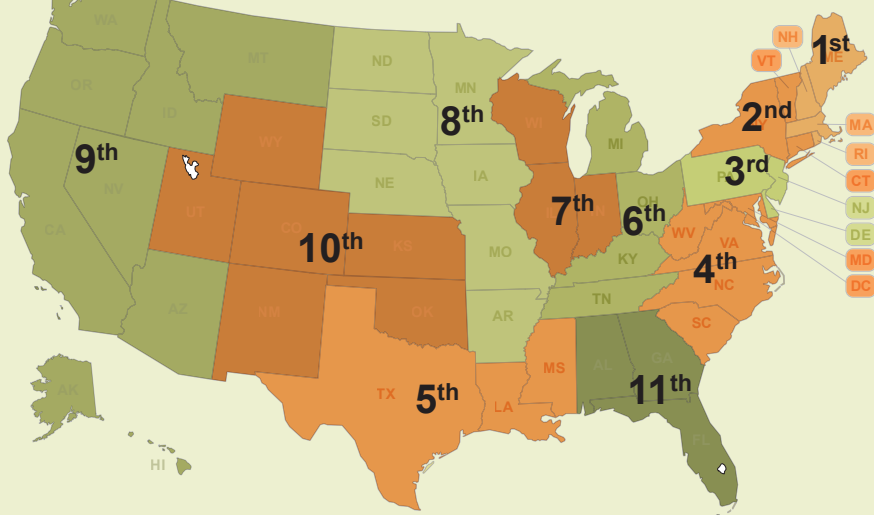
Several federal laws protect workers from discrimination and unfair firing based on race, ethnicity, religion, national origin, age, sex, disability, veteran status, and genetic information. Frequently referred to as *nondiscrimination laws*, these statutes apply to federal, state and local government employers; private employers with 15 or more employees; and educational institutions.^h Unfortunately, no federal law explicitly protects workers from discrimination or harassment based on gender identity/expression.

However, transgender workers do have some legal protection through the Equal Employment Opportunity Commission (EEOC) and federal courts. Title VII of the Civil Rights Act prohibits discrimination against workers based on their “sex.” In 2012, the EEOC issued an opinion in *Macy v. Holder* that found that discrimination against a transgender worker based on gender identity or gender expression is sex-based discrimination and therefore illegal under Title VII.

^h Not all employers are covered by these federal laws. Some laws exempt federally recognized Native American tribes, private nonprofit membership organizations, and religious organizations.

All Over the Map: Federal Appellate Case Law Offers Varying Protections for Transgender Workers

Geographic Boundaries of U.S. Circuit Courts of Appeals



Relying in large part on the U.S. Supreme Court’s 1989 decision in *Price Waterhouse v. Hopkins*, many federal appellate courts across the country have issued decisions that provide some recourse for transgender and gender-nonconforming workers (including some gay and lesbian workers). These decisions create binding legal precedent for all states that fall within the federal court’s circuit (see map). Unfortunately, they also create an inconsistent patchwork of protections nationwide, with decisions varying by court.

- In 1999, the **8th U.S. Circuit Court of Appeals** concluded that, even though Title VII of the Civil Rights Act does not explicitly address sexual orientation, the harassment experienced by a male employee who was perceived by other employees as “homosexual” met the standard for asserting sex-based harassment under Title VII.³⁷
- In 2000, the **9th U.S. Circuit Court of Appeals** heard the case of a transgender prisoner who sued after being assaulted by a guard.³⁸ In part, the court concluded that “[d]iscrimination because one fails to act in the way expected of a man or a woman is forbidden under Title VII,” and that a transgender person who is targeted on this basis is entitled to protection. Just a year later, the same court ruled that a male employee was entitled to legal recourse because of the discrimination he faced for failing to adhere to stereotypes of how a man should act or dress.³⁹
- The **6th U.S. Circuit Court of Appeals**, in both 2004 and 2005, ruled in favor of transgender workers alleging sex discrimination under Title VII. In 2004, the court ruled that a transgender firefighter could not be suspended because of her “failure to conform to sex stereotypes by expressing less masculine and more feminine mannerisms and appearance.”⁴⁰ The following year, the court held that, under Title VII, a police officer had been unfairly denied a promotion to sergeant for failing conform to sex stereotypes while dressing as a man at work and as a woman when off duty.⁴¹
- In 2009, the **3rd U.S. Circuit Court of Appeals** reviewed a case about a man who was harassed and ultimately fired from his job because of his lack of adherence to male gender stereotypes. The court ruled that an employee may allege sex discrimination, regardless of his or her sexual orientation, as long as he or she can prove gender stereotyping.⁴²
- In 2011, the **11th U.S. Circuit Court of Appeals** heard the case of Vandy Beth Glenn who was fired after informing her supervisor that she planned to transition from male to female. The court found that a transgender person is “defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes.”⁴³ Therefore, the court ruled that Ms. Glenn was fired illegally and that the discrimination she faced based on her status as a transgender woman constituted sex-based discrimination under the Constitution, in a ruling also applicable to claims brought under Title VII.

These cases demonstrate a broadening in the interpretation of Title VII’s prohibition against sex-based discrimination.

Note: Cases in which LGBT workers were not protected have been omitted.

In 2010, while still living as a man, Mia Macy applied for a job with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Macy had previously worked as a police detective in Phoenix. She had extensive, relevant experience. In fact, upon meeting Macy, the ATF's hiring manager was extremely enthusiastic about her candidacy. While under consideration for the position, Macy informed the agency that she was changing her name and would be transitioning to living as a woman. Macy subsequently was told that the position had been eliminated, when in reality it had been filled by someone else. Macy filed a complaint with the EEOC. In April 2012, the EEOC board of commissioners unanimously found that Macy was protected by Title VII, and the case was remanded for further consideration. Ultimately, it was determined that Macy had been illegally discriminated against.

The EEOC ruling is immeasurably helpful for transgender workers—yet it is far from a panacea. As the gatekeeper for most workplace discrimination charges, the EEOC has a significant case backlog, with more than 70,000 pending investigations⁴⁴ and delays often exceeding nine months.⁴⁵ EEOC rulings are often persuasive to courts interpreting Title VII for state, local and federal government employers (except the military) as well as private employers with more than 15 employees. However, these rulings only serve as the final rule of law for discrimination claims against the federal government. Other employers may refuse to go through EEOC mediation or choose not to act on an EEOC ruling, leaving the EEOC and/or employee with no option but to drop the case or file a federal lawsuit.

The federal court system is separate from the EEOC and is not bound by the *Macy* decision, though federal courts may rely on the reasoning of the EEOC to inform their own investigations. At time of writing, no federal appellate court has yet used the *Macy* decision as a basis for its own decision. However, since Title VII still prohibits harassment and discrimination based on sex, transgender workers have had some success in federal courts. When an employee is fired or discriminated against based on how they express their gender, or because they are living as the “opposite sex”—such discrimination is often seen as sex stereotyping.

The sidebar on page 21 provides a detailed explanation of the current case law related to “sex stereotypes” in each federal circuit where LGBT plaintiffs have had some success. The first case to significantly expand the notion of sex-based workplace discrimination

was decided by the U.S. Supreme Court in 1989. In that case, Ann Hopkins, a non-transgender woman, sued her employer, accounting firm Price Waterhouse, alleging that she was denied partnership in the firm because she was not “feminine” enough. She alleged that she was told she should “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.”⁴⁶ The U.S. Supreme Court ruled that Title VII prohibited discrimination based not just on biological sex, but also “the entire spectrum” of discrimination based on sex, including sex stereotypes.

Unfortunately, only one federal circuit (the 11th U.S. Circuit Court of Appeals) has determined that a worker who is discriminated against because they are transgender is generally protected under Title VII's prohibitions against sex-stereotyping. In federal court, being discriminated against for being transgender is not in and of itself proof of sex stereotyping—and the success of transgender workers in filing and winning employment discrimination cases varies by district. In fact, some transgender plaintiffs have lost cases they brought under Title VII.⁴⁷

Finally, transgender workers have some employment protections through the federal government. For example, in 2011 the federal government demonstrated its commitment to transgender employees when the U.S. Office of Personnel Management issued written guidance designed to support federal workers who transition while employed.⁴⁸ However, the federal government's track record when it comes to protecting its own transgender employees is mixed. Transgender Americans are still barred from military service.

As of the writing of this report, advocates continue to push for a federal executive order explicitly mandating that federal contractors have employment policies that prohibit discrimination on the basis gender identity/ expression and sexual orientation. Since a previous executive order (Executive Order 11246) bars federal contractors from discrimination based on sex, legal analysis concludes that, under *Macy v. Holder*, federal contractors are now also barred from discriminating against transgender workers.⁴⁹ However, the Department of Labor has yet to confirm that it officially agrees with this legal interpretation, and it has yet to issue guidance to federal contractors to that effect.

To clear up the uncertainty facing transgender workers, a federal legislative solution that explicitly

provides or extends nondiscrimination protections on the basis of gender identity/expression and sexual orientation is sorely needed. Such legislation would eliminate the current patchwork of protections and replace it with consistent and clear protections against discrimination for transgender workers nationwide. Federal legislation would also ensure uniform understanding of the law among American employers and workers alike. This, in turn, would trigger employers to update nondiscrimination policies and train workers to follow them, something that rarely occurs in response to an EEOC ruling or lower-level case law. Most importantly, when transgender employees do face workplace harassment, federal legislation would provide a clear path to legal recourse. To date, Congress has failed to provide these crucial protections for transgender workers.

In summary, transgender workers still very much need the clarity and security of explicit nondiscrimination protections under federal law. Until this happens, transgender workers who experience workplace discrimination can file a complaint with the EEOC with the expectation that the EEOC will take their complaint seriously.¹

Uneven State-Based Protections

In the absence of strong federal action, some states have stepped in to protect transgender workers from discrimination and from being unfairly fired. Even if Congress were to pass a federal nondiscrimination law that protects transgender workers, state nondiscrimination laws still have an important role

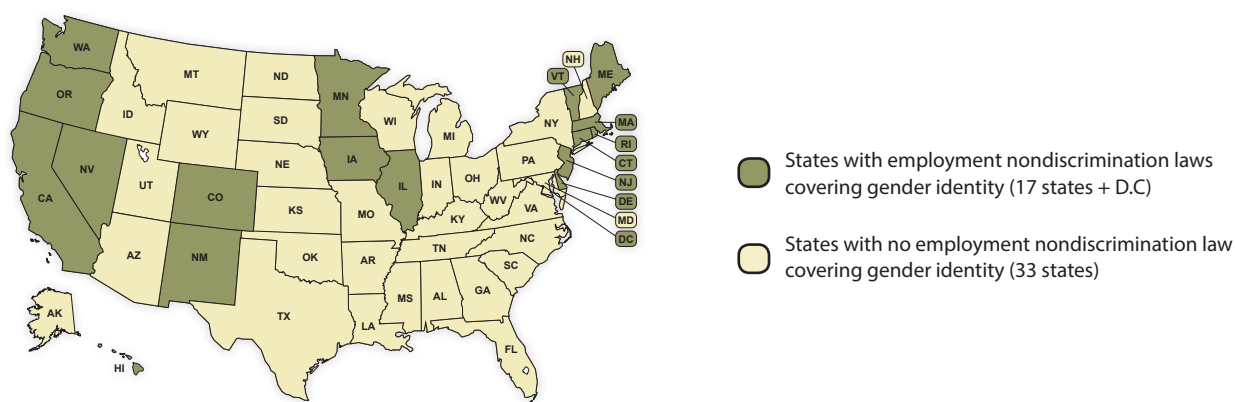
to play. States can extend workplace protections to employers that are not covered by the federal law, make it easier to file complaints and collect data, provide access to state courts in addition to federal courts, and broaden penalties against discriminatory employers. States that provide these nondiscrimination protections do so either through laws or executive policies.⁵⁰

To date, only 17 states and the District of Columbia have expanded their laws to include explicit nondiscrimination protections for workers based on their gender identity/expression, while 21 states and the District of Columbia explicitly prohibit discrimination based on sexual orientation (see *Figure 16*).⁵¹ In the states that have nondiscrimination protections, transgender workers faced with discrimination can seek legal recourse in state courts. But when these same workers cross state lines to work for a new employer or to take a new job with the same employer, their rights and protections can change dramatically.

Some states have also provided protection to transgender workers through executive policies.⁵² These policies can provide some transgender workers (usually limited to state employees) with the ability to file complaints within the state agency or department in which they work (though generally not through the courts). Unfortunately, in addition to their limited scope, another significant drawback of executive policies is that they can be rescinded at any time.

¹ Following *Macy v. Holder*, a transgender woman in Maryland filed a discrimination complaint with the EEOC against her employer. In September 2012, the EEOC issued a letter with a determination of reasonable cause to believe the company violated Title VII of the Civil Rights Act. See http://www.lambdalegal.org/news/us_20130715_eEOC-complaint-resolved (accessed August 9, 2013).

Figure 16: State-Level Nondiscrimination Laws That Include Gender Identity



There are countless more transgender Delawareans who live in fear of or face discrimination on a daily basis. As a lifelong Delawarean, I'm convinced this is not the Delaware I know and love. As a father, I know that all our children should be treated fairly. And as Governor, I'm determined to make Delaware a safe and welcoming state for all to live, work, and raise a family.

Governor Jack Markell, "Fairness for All: It's Time to Pass Gender Identity Nondiscrimination," *The Huffington Post*, June 11, 2013. Governor Markell signed a transgender nondiscrimination bill into law on June 19, 2013.



county executive. In some states, a city or county must obtain permission from the state legislature if it wishes to pass a law or ordinance that is not already specifically permitted under state legislation.⁵⁴

Local nondiscrimination ordinances that include protections based on gender identity/expression strive to deliver much-needed protection to transgender workers, while at the same time generating awareness about the lack of state-level protections. Yet, some poorly framed ordinances may fail to provide effective legal remedies for individual workers who experience discrimination. For example, ordinances may not include a mechanism for filing a complaint, or they may not provide city or county Human Rights Commissions or attorneys' offices with sufficient funding to investigate and resolve complaints.

Uneven Protections Based on Local Laws and Policies

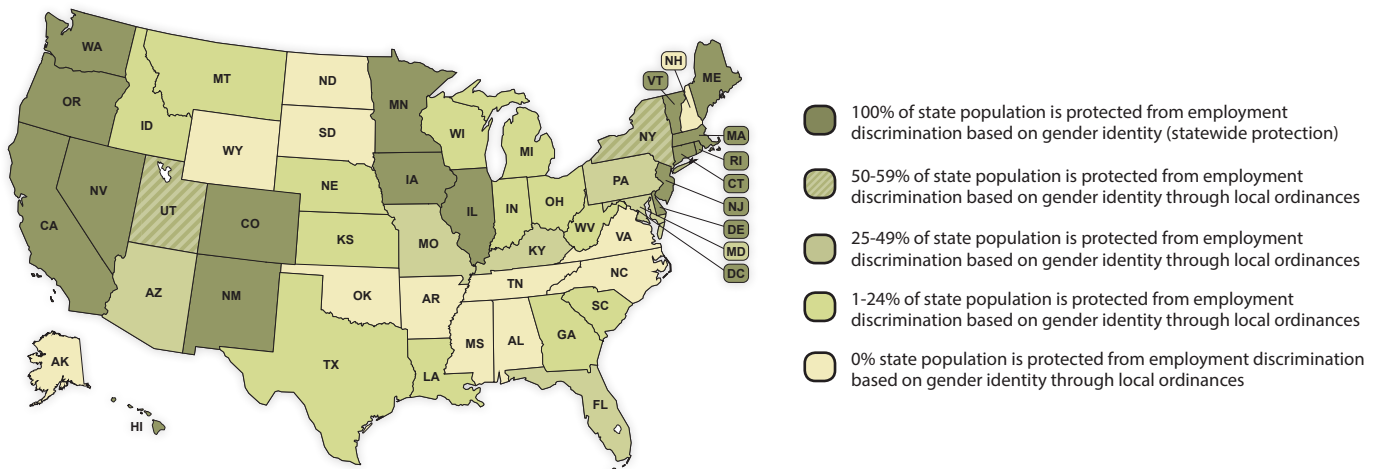
In the absence of transgender-inclusive federal and state workplace laws, many cities and counties have passed their own nondiscrimination ordinances (see *Figure 17*).⁵³ In many communities across the country, comprehensive local ordinances provide the sole source of legal protection for transgender municipal employees, transgender employees of municipal contractors, and/or transgender employees of local private employers.^j Depending on local and state laws, these protections may be included in legislation approved by the city or county council, or may be implemented through executive order by a mayor or

Barrier: Inability to Update Identity Documents

Official identity documents—particularly drivers' licenses, birth certificates, Social Security cards and passports—are essential to everything from boarding an airplane to obtaining a job. When these documents do not match a transgender individual's gender presentation, it can greatly complicate that person's life, particularly in a post-9/11 world. Non-matching identification can obstruct employment and expose transgender people to harassment, violence, job loss, and more.

^j For employees in states with state-level protections, local ordinances may also expand avenues for filing complaints to include local enforcement offices.

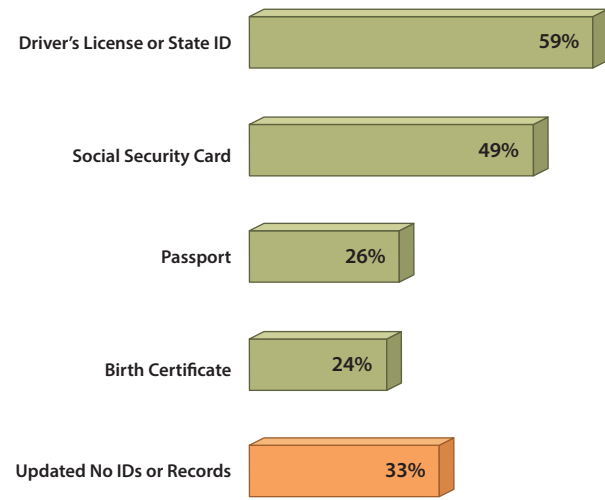
Figure 17: Local Employment Nondiscrimination Protections That Cover Gender Identity



Within modern bureaucratic society, many kinds of routine administrative procedures make life very difficult for people who cross the social boundaries of their birth-assigned genders. Birth certificates, school and medical records, professional credentials, passports, drivers licenses, and other such documents provide a composite portrait of each of us as a person with a particular gender, and when these records have noticeable discrepancies or omissions, all kinds of problems can result—inability to marry, for example, or to cross national borders, or qualify for jobs, or gain access to needed social services, or secure legal custody of one’s children.

— Susan Stryker, Ph.D., *Transgender History*, 2008, pages 5–6.

Figure 18: Percent of Transgender People Who Have Successfully Updated Identity Documents



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.

Historically, state and federal governments have imposed intrusive and burdensome requirements on transgender people seeking new identity documents—such as proof of sex reassignment surgery. Transgender people may not need, want, or be able to afford sex reassignment surgery—making it impossible for many transgender people to obtain accurate and consistent ID.

As a result, only one-fifth (21%) of transgender people who told the National Transgender Discrimination Survey that they had transitioned were able to update all of their IDs and records with their new gender at the time of the survey; and fully one-third (33%) had updated none of their IDs or records. According to the survey, only 59% had been able to update their gender on their driver’s licenses or state IDs; 49% had updated their Social Security records; 26% their passports; and just 24% their birth certificates (see *Figure 18*).

The processes involved in changing government-issued identity documents can be onerous, requiring filing of various applications, payment of filing fees, published notices of the name change, court appearances, and, in some states, background checks. These processes also vary by state and even between agencies within a state.

Name changes. Often an early part of transitioning is choosing a name that corresponds with a person’s

lived gender and using that name in public. To obtain a legal name change, applicants usually must go before a court, pay a fee, and publish notice of the name change in local newspapers. Getting identity documents to correspond with an individual’s preferred name can be challenging, particularly if the individual has an arrest record. Even if a person does not have an arrest record, judges have denied name changes based on their perceptions that transgender people are somehow fraudulent or inappropriate. Once an individual has obtained a legal name change, it is much easier to have other identity documents changed to match.

Social Security cards. Changes to Social Security records are often required before someone can get a new driver’s license or another government-issued form of identification. Getting one’s Social Security card updated can also be useful to make sure that a worker’s financial information matches, including paperwork for employer benefits such as 401(k) forms, employment verification forms, and bank account and tax information. In June 2013, the Social Security Administration eliminated the surgical requirement for updating a Social Security card. Social Security records can now be updated so long as applicants provide documentation from a physician that they have received clinical treatment associated with a gender transition.

New or amended birth certificates. In the U.S., each of the states (plus the District of Columbia and New York City) issues its own birth certificates. States vary in their policies about changing a birth certificate. In many states, it is necessary for applicants to prove that they have had surgery related to gender transition, while in others, documentation that an individual is under the care of a physician is sufficient. Some states provide a new birth certificate; others amend the old one so that the change is clearly visible. In 26 states and the District of Columbia, transgender people can obtain a new birth certificate, while in 21 states it is only possible to get an amended birth certificate.^k Finally, three states (Idaho, Ohio and Tennessee) will not change gender markers on birth certificates (see *Figure 19*).

Driver's license or other government-issued IDs. The process by which transgender people can update the gender marker on their driver's license varies widely by state. Roughly half of states accept a doctor's letter as sufficient to change a driver's license, while other states require proof of sex reassignment surgery.

Passports. In 2010, the U.S. State Department eliminated the surgical requirement for updating passports. Passports can now be updated so long as applicants provide documentation that they have received clinical treatment by a doctor associated with a gender transition.

Stuart's Story



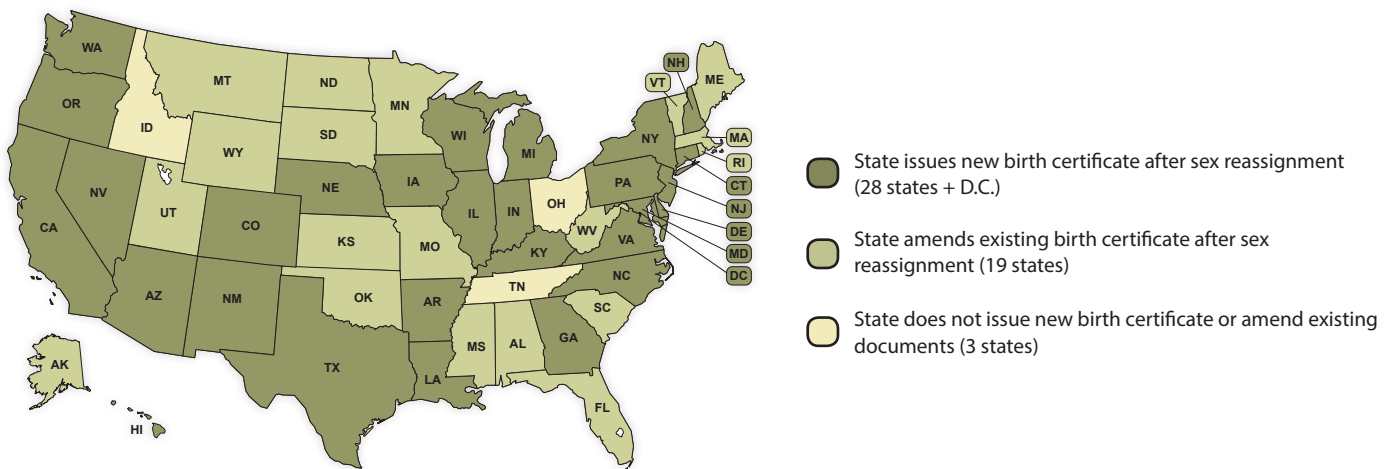
I've been turned away from being hired by various employers when I fill out the I-9 [employment eligibility] forms and show my state-issued ID, which still has my assigned birth sex on it (though it has my new name). I've been told, 'We don't hire *your kind*' when my ID outs me as transgender.

At my current employer (where I am underemployed), for the first year only the HR person and the owner knew of my trans status. Then, one of the other men at my company found out and started making rude jokes and crude comments and I feared for my safety and my job. That man has since been fired for other reasons, but I am still afraid.

— Stuart, Missouri

^k From http://lgbtmap.org/equality-maps/birth_certificate_laws.

Figure 19: Birth Certificate Laws



Source: Movement Advancement Project, Equality Maps, current as of August 31, 2013. For updates see http://www.lgbtmap.org/equality-maps/birth_certificate_laws.

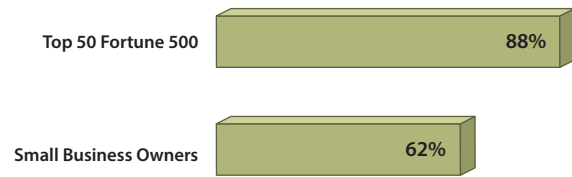
Strong Support for Equal Treatment from Private Employers and Unions

While policymakers at all levels of government continue to defy American values by blocking legal protections for transgender workers, America's most successful corporations recognize that creating transgender-inclusive workplaces is not only good for business, it is also 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 transgender workers in their workplaces (see *Figure 20*)—and the number that are doing so is growing rapidly. For example:

- As of 2013, a strong majority (88%) of the top 50 Fortune 500 companies and 67% of the top 50 federal contractors include gender identity/expression in their workplace nondiscrimination policies. This is up from 70% and 44%, respectively, just two years before.
- The majority of small business owners support federal legislation that would prohibit employment discrimination against gay and transgender people (67%).

Transgender employees in some unionized workplaces may have additional protections thanks to collective bargaining agreements between unions and employers. Unions, for example, can negotiate wage scales that help eliminate inequities for transgender workers. In addition, bargaining agreements often specify that union workers can be fired only for good reason (often called “just cause”). Separately, unions can bargain with employers for explicit

Figure 20: Businesses with Nondiscrimination Policies for Transgender Employees




Source: Sears, Brad; Hunter, Nan; Mallory, Christie. Williams Institute, “More Companies Adopt Gender Identity Non-Discrimination Policies,” April 2013. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/SOGI-policies-update-mar-2013.pdf>.

nondiscrimination protections based on gender identity/expression. Unions may also be able to formalize union-supported grievance and arbitration processes for discrimination should it occur.^{1,55}

Employer nondiscrimination policies are a critical component of creating a truly welcoming workplace. If an employer tolerates workplace harassment and discrimination, it may persist even when federal or state nondiscrimination laws and policies are in place. On the other hand, 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.

¹ 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.”

Recommendations

Recommendations to Eliminate or Reduce Bias, Discrimination and Wage Gaps for Transgender Workers	
 Federal Solutions	
<p>Congress should ban public and private employment discrimination nationwide on the basis of gender identity/ expression and sexual orientation.</p>	<p>Congress should pass federal employment nondiscrimination legislation such as the Employment Non-Discrimination Act (ENDA) to ban discrimination based on actual or perceived gender identity/ expression and sexual orientation.</p> <ul style="list-style-type: none"> • A federal ban on discrimination against LGBT workers would extend workplace protections that already exist for race, color, religion, sex, national origin, pregnancy, disability, age, and genetic information. • The goal of federal action would be to prohibit public and private employers, employment agencies and labor unions from using a worker’s gender identity/expression or sexual orientation as a factor in employment decisions including hiring, compensation, promotion and firing.
<p>The President should mandate that federal contractors prohibit discrimination on the basis of gender identity/expression and sexual orientation.</p>	<p>The President should issue a federal executive order mandating that federal contractors have employment policies that prohibit discrimination on the basis of actual or perceived gender identity/expression and sexual orientation.</p> <ul style="list-style-type: none"> • A mandate that federal contractors adopt policies that protect LGBT workers does not require an act of Congress. • The order could also ensure that smaller employers who receive at least \$10,000 in federal contracts are covered. • In some instances, the law would allow for proactive enforcement even when a particular employee has not filed a complaint, such as when an employee may be impacted by disparate wage practices. • The impact of an executive order would be immense and could, together with existing state-level protections, help ensure that a majority of the American workforce is covered by employment protections based on gender identity/expression and sexual orientation.
<p>The federal government should clarify that existing executive orders that protect based on sex also include protections for transgender employees.</p>	<p>The Office of Federal Contract Compliance and/or the Department of Labor, in the wake of the <i>Macy</i> decision described on pages 20-22, should clarify that courts follow the EEOC decision when enforcing Executive Order 11236, which bars contractors from discriminating based on sex.</p>
<p>Congress should increase protections against wage discrimination nationwide.</p>	<p>Congress should amend the Fair Pay Act or pass complementary legislation to expand existing protections against wage discrimination on the basis of race, color, religion, sex or national origin to include protections for gender identity/expression and sexual orientation.</p> <ul style="list-style-type: none"> • The Fair Pay Act allows workers who have been subjected to wage discrimination to file a claim with the EEOC within 300 days of any of the following: <ul style="list-style-type: none"> • A discriminatory compensation decision or other practice is adopted by an employer; • An individual is subjected to a discriminatory compensation decision or other practice; or • An individual is affected by the application of a discriminatory compensation decision, including each time compensation, wage, or benefits are paid resulting from such a decision or practice.

Recommendations to Eliminate or Reduce Bias, Discrimination and Wage Gaps for Transgender Workers	
<p>The federal government and its agencies should ensure efficient case processing by the EEOC.</p>	<p>The federal government and its agencies should put processes and procedures in place to ensure that the EEOC is able to address charges of discrimination adequately and swiftly.</p> <ul style="list-style-type: none"> • The EEOC’s 70,000-case backlog must be reduced so that workers who have faced discrimination and unfair firing no longer have to wait as long as nine months with no remedy. • The EEOC should continue to provide training as new federal nondiscrimination laws and policies are enacted or amended by agency and judicial interpretations, including recent interpretations of Title VII’s prohibitions against sex-based discrimination. • The EEOC should issue guidance on how Title VII applies to transgender people in the workplace. • The EEOC should expand existing field training to include all state agencies with which the commission has case-sharing agreements. <p>The EEOC’s 2013-2016 Strategic Enforcement Plan commits to a concentrated and coordinated approach to national issue priorities for discrimination. For the first time, the EEOC has identified coverage of LGBT workers under Title VII’s sex discrimination provisions as an emerging and developing issue. The EEOC should take steps to ensure that agency efforts result in early resolution of this unsettled area of the law.</p>
<p>The federal government and its agencies should work to make it easier for transgender people to update their identity documents to match their lived gender.</p>	<p>The National Center for Health Statistics should release Model State Vital Statistics legislation that includes modernized standards for gender change on birth certificates.</p> <p>All federal agencies should adopt policies on updating gender markers similar to those adopted by the Office of Personnel Management and the Veterans Administration, including the Department of Defense with regard to the DD-214 (discharge papers) and in its DEERS database.</p>
<p>The federal government and its agencies should work to make it easier for transgender people to secure good federal jobs.</p>	<p>The Department of Labor should issue guidelines for equal treatment of transgender people in all federal jobs programs, such as Job Corps and One-Stop Career Centers.</p> <p>The Department of Labor should identify, promote and fund best practices for helping transgender people enter the workforce.</p> <p>The Department of Defense should eliminate gender identity disorder diagnosis as an automatic disqualification from military service and should ensure that medical fitness standards treat transgender service members equally with all other service members. Until this policy is changed, transgender people should be granted medical waivers as allowed under the policy.</p>
<p>The federal Small Business Administration should ensure transgender entrepreneurs are eligible for funding reserved for socially and economically disadvantaged enterprises.</p>	<p>The Small Business Administration should include transgender people as eligible for the presumption of social and economic disadvantage with regard to the Small Business Administration’s Disadvantaged Business Enterprise. The U.S. Department of Transportation should update the Disadvantaged Business Entity regulations to align with the updated Small Business Administration regulations.</p>
<p>The federal government should issue guidance regarding an employer’s responsibility to provide facilities for transgender employees.</p>	<p>The Occupational Safety and Health Administration (OSHA) should issue guidance clarifying that employers must provide all workers with full access to sanitary facilities consistent with their gender identity.</p>
<p>The federal government and its agencies should expand research and data collection on transgender workers.</p>	<p>The Bureau of Labor Statistics and the Department of Labor should include questions about gender identity on surveys and in other data collection efforts to better understand the transgender workforce.</p>

Recommendations to Eliminate or Reduce Bias, Discrimination and Wage Gaps for Transgender Workers



State and Local Solutions

<p>State lawmakers should ban employment discrimination in states without current protections for gender identity/expression and/or sexual orientation.</p>	<p>In states that do not currently have explicit protections for LGBT workers, state lawmakers should amend existing laws or pass new ones to secure employment nondiscrimination protection on the basis of both gender identity/expression and sexual orientation.</p> <ul style="list-style-type: none"> • Thirty-three states do not have statewide employment protections based on gender identity/expression; 29 states fail to protect lesbian, gay and bisexual workers on the basis of sexual orientation. • Without comprehensive federal protections, state laws can serve as a crucial stopgap and provide the only source of protection and legal recourse to an LGBT employee who faces discrimination. • State laws may also extend workplace protections to employees who are not covered by federal law, enhance complaint processing and data collection, provide victims of discrimination with access to state courts in addition to federal courts, and expand upon available remedies such as compensatory and punitive damages.
<p>Governors should mandate that state employers and contractors prohibit discrimination on the basis of gender identity/expression and sexual orientation.</p>	<p>Governors should use their executive authority to extend nondiscrimination protections to their states' public employees. Governors also should issue executive orders mandating that state government contractors have employment policies that prohibit discrimination on the basis of sexual orientation and gender identity/expression. Note: These executive orders can be rescinded or ignored by future governors, which means that these protections are not as secure as law.</p>
<p>State and local lawmakers should ensure nondiscrimination laws include mechanisms for swift and effective claims processing.</p>	<p>In states and municipalities that protect workers from discrimination on the basis of sexual orientation and gender identity/expression, lawmakers should ensure implementation of investigation and enforcement mechanisms to quickly and effectively process, investigate and address workers' claims.</p>
<p>In the absence of nationwide and state-level protections, local lawmakers should take action to protect transgender workers.</p>	<p>Local municipalities, including cities and counties, should take action to prohibit workplace discrimination based on gender identity/expression and sexual orientation.</p> <ul style="list-style-type: none"> • As of August 31, 2013, at least 162 cities and counties in states lacking state-level protections prohibit employment discrimination on the basis of gender identity/expression via employment ordinances that govern all public and private employers in those municipalities.
<p>States should expand research and data collection on LGBT workers.</p>	<p>States should include questions about gender identity on state health, labor and other surveys and data collection tools to better understand the demographics and experiences of the transgender workforce.</p>
<p>States should adopt laws and policies that ensure transgender people can update their identity documents to match their lived gender.</p>	<p>In states that do not already have such laws or policies, state lawmakers should revise the policies of state motor vehicle and vital records offices to allow transgender people to receive an updated driver's license or birth certificate without proof of sex reassignment surgery.</p> <ul style="list-style-type: none"> • The District of Columbia, for example, allows transgender people to fill out a form and have it signed by a medical or social service professional indicating that an individual has reached the point in his gender transition where having an updated form of identification is appropriate. Similar policies have been adopted in many states, including Massachusetts, Nevada, New Mexico, New Jersey, Ohio, Pennsylvania, and Washington state.

Recommendations to Eliminate or Reduce Bias, Discrimination and Wage Gaps for Transgender Workers



Employer Solutions

<p>Employers should send a clear message that workplace discrimination against transgender workers will not be tolerated.</p>	<p>Employers should craft transgender-inclusive nondiscrimination policies and procedures designed to significantly reduce hiring bias, foster welcoming and inclusive work environments, and reduce discrimination.</p> <ul style="list-style-type: none"> • Employers can consider simple procedures such as using hiring panels instead of individual reviewers, or asking each hiring manager to review and sign the nondiscrimination policy prior to interviews. Interviewers should be given guidance on how to ask candidates to address gaps in resumes, which may be the result of previous employment discrimination. • Workplace policies should seek to ensure wage equity for individuals with similar job responsibilities and years of experience. In addition, all employees should be considered and evaluated for base pay, pay increases and promotions using objective, performance-related criteria. • Employers should ensure that both gender identity/expression and actual and perceived sexual orientation are explicitly included in nondiscrimination and anti-harassment policies. Specific education and training designed to ensure that policies are fully implemented are essential. • Employers should ensure that effective and responsive grievance systems are in place. • In unionized workplaces, unions can negotiate specific policy language and grievance procedures as part of collective bargaining agreements. • Employers also should consider specific activities to support transgender employees (such as transition plans, dress code/bathroom policies).
<p>Employers should dispel myths/stereotypes and increase awareness through workforce diversity training.</p>	<p>Employers should include transgender-specific workplace issues and concerns as a routine part of employer-provided or employer-sponsored diversity and cultural competency training.</p> <ul style="list-style-type: none"> • Trainings should be integrated with the employer’s existing diversity training systems, be delivered to all employees (including top-level managers), and include ongoing accountability and evaluation. • Training should address issues specific to transgender workers, but should also focus on issues common to LGBT workers and other sub-groups, including but not limited to bisexual workers and LGBT workers of color. For one example of existing training, see Out & Equal’s “Building Bridges Toward LGBT Diversity” training at http://outandequal.org/BuildingBridgesTraining.
<p>Employers should encourage employees to voice workplace issues, concerns, and opportunities.</p>	<p>Employers should provide both formal and informal opportunities for LGBT employees and allied colleagues to have a voice in workplace-related concerns.</p> <ul style="list-style-type: none"> • Formal measures may include employee satisfaction surveys, affinity groups, employee resource groups, business advisory groups, mentorship programs, and other networking opportunities. • At unionized workplaces, union leaders can supplement employer-based initiatives by creating regular opportunities for members to share concerns or issues.
<p>Employers should ensure support for transitioning transgender employees.</p>	<p>Employers should learn more about how to create supportive work environments for transitioning transgender workers. Good references include the federal Office of Personnel Management’s guide, “Diversity & Inclusion: Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace,” and the “Workplace Gender Transition Guidelines” by the Human Rights Campaign. http://www.hrc.org/resources/entry/workplace-gender-transition-guidelines</p>
<p>Employers should expand their talent pool by targeting outreach to potential LGBT employees.</p>	<p>Employers should boost diversity in the workplace and find highly qualified workers from previously untapped pools of candidates through targeted recruiting efforts.</p> <ul style="list-style-type: none"> • LGBT-specific job fairs and online career services can help connect employers with workers who are actively seeking new, challenging positions in transgender-inclusive workplaces. • Employers should consider partnering with community-based organizations that provide workforce development programs for unemployed and underemployed LGBT workers. Some of these programs provide government subsidies and other workplace supports for employees who are hired through these programs.

THE BROKEN BARGAIN: INEQUITABLE HEALTH AND LEAVE BENEFITS

Health and Medical Leave Barriers for Transgender People

In the same way that America is not holding up its end of the bargain with transgender workers when it comes to providing equal access to good jobs and opportunities to succeed, the nation also falls short in offering transgender workers the same job-related benefits available to other workers.

For most workers in the United States, a paycheck is only one of many important benefits that come with having a job. Among civilian workers, almost one-third of compensation (31%) comes from non-wage benefits, including health insurance (8.5%) and paid leave (6.9%).⁵⁶ Nine out of 10 workers (89%) report that benefits are important when choosing a job, and six out of 10 workers (58%) say that health insurance is the most important benefit.⁵⁷ To the extent that employers, insurance companies and medical providers unfairly limit transgender workers' access to these benefits, they are creating the conditions for lower productivity and employee morale, pronounced health disparities among workers, and an inability among transgender workers to care for themselves and their families.

Although transgender employees may have equal access to health insurance enrollment, they may still be denied appropriate coverage, care and medical leave. Among the major problems: employers, medical providers or health insurance companies often do not adequately understand transgender health needs, as shown in the infographic on the next page. For example, an employer may offer health insurance for individual workers, but a transgender employee may find that the insurance company refuses to cover a range of routine and medically necessary care because of coverage exclusions that directly or inadvertently target transgender people. Additionally, a transgender worker may be eligible for job-protected, unpaid leave under the federal Family and Medical Leave Act (see page 36), but be denied leave because his or her medical needs are inaccurately deemed not to be a "serious health condition."

As a result, transgender workers who do the same job as their coworkers may have to pay out-of-pocket for the same health care services that are covered for their coworkers. For example, the same hormone therapy used in gender transition is often

covered when provided to patients with endocrine disorders and to women with menopausal symptoms. This added expense means transgender workers may put off important care if they cannot afford to pay for it. Additionally, a transgender worker might have to choose between forgoing needed medical leave or losing his job if an employer denies his request for leave. The message to transgender workers: You don't deserve equal benefits for equal work—and your health is not as important as the health of other workers.

Barrier: Inequitable Healthcare for Transgender Workers

Health Disparities and Lack of Access to Healthcare

For transgender workers, the barriers to accessing health benefits are more than just stumbling blocks or inconveniences; they can jeopardize an individual's long-term health.⁵⁸ As described below, transgender workers have lower rates of health insurance, encounter discrimination when receiving healthcare, and experience significant health disparities when compared to other workers.⁵⁹

Lower rates of health insurance. Research shows that transgender adults have lower rates of health insurance when compared to other adults.⁶⁰ As shown earlier in this report, transgender people are more likely than the general population to be unemployed or to work in low-wage jobs that do not offer health insurance benefits. Since most Americans access health insurance through their employers, this puts transgender people at a disadvantage in finding affordable coverage. As in the broader population, people of color have the lowest access to insurance among transgender workers (see *Figure 21* on page 34).

Discrimination when receiving healthcare. Even when transgender workers have health insurance, research shows that they face pervasive discrimination from healthcare professionals. For example, 27% of transgender people say that a health professional has refused to provide them with care, while 21% report that a healthcare professional used harsh or abusive language toward them (see *Figure 22* on page 34).

Health disparities. Given the combination of reduced access to health insurance and the daily stress of stigma and discrimination, it is not surprising that a growing body of research finds that transgender Americans have poorer health outcomes than the overall population. This includes higher rates of chronic illnesses, greater incidence of psychological distress, and overall poorer health (see *Figure 23* on page 34).⁶¹

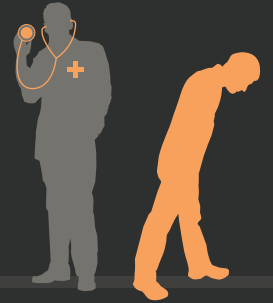
TRANSGENDER WORKERS

WORK AS HARD, DENIED HEALTHCARE & LEAVE

→ THE PROBLEM

LACK OF UNDERSTANDING OF TRANSGENDER HEALTH NEEDS

Employers and health insurance companies often discriminate and/or erroneously assume health care for transgender workers is not medically necessary



→ THE IMPACT

TRANSGENDER WORKERS DENIED NEEDED HEALTHCARE AND LEAVE:

DENIED HEALTH COVERAGE AND CARE



DENIED NEEDED MEDICAL LEAVE



→ THE SOLUTION

EQUAL ACCESS TO HEALTHCARE AND LEAVE

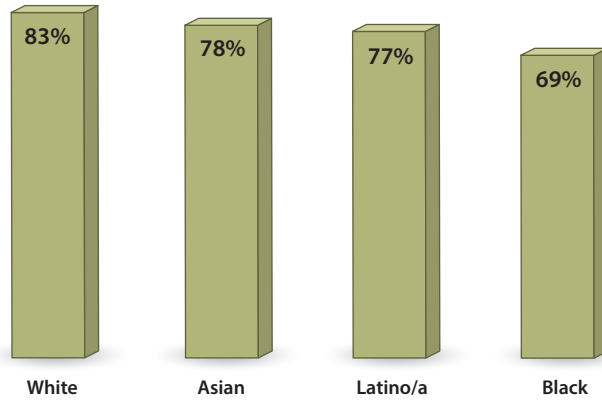
Pass laws or amend policies to end inappropriate healthcare and medical leave exclusions for transgender workers

EMPLOYER POLICIES

Employers can extend needed health insurance and leave to transgender workers

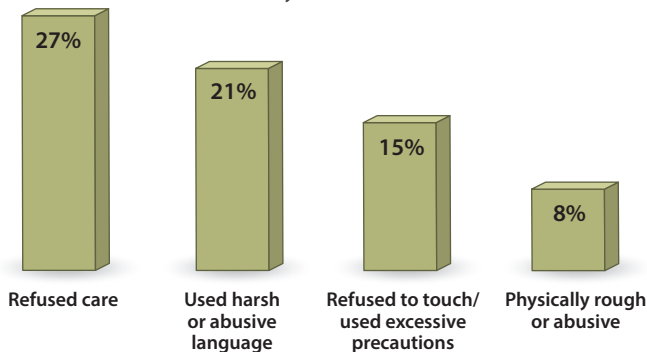


Figure 21: Transgender Adults with Insurance
By Race/Ethnicity



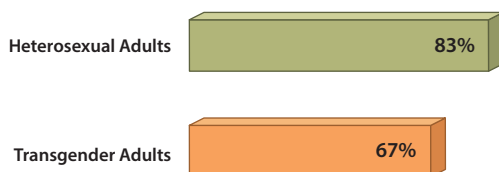
Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

Figure 22: Transgender People Experiencing Healthcare Discrimination from Healthcare Professionals
By Percent



Source: Lambda Legal. "When Health Care Isn't Caring: Lambda Legal's Survey of Discrimination Against LGBT People and People with HIV." 2010. <http://www.lambdalegal.org/publications/when-health-care-isnt-caring>.

Figure 23: 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>.

Inappropriate Healthcare Exclusions

In general, employers offering individual health coverage must extend coverage to transgender workers. For example, an employer cannot offer a dental insurance plan to its employees but deny a transgender employee access to the plan. However, even when transgender workers pay the same premiums for healthcare coverage that other workers pay, they often derive fewer benefits from that coverage. This is because transgender workers often face denials of coverage for medical care related to gender transition as well as many other medical needs.

Denial of gender-related preventive care. Insurance companies' classifications of members as male or female can result in inappropriate denial of gender-specific care for transgender workers. For example, if a transgender man submits paperwork as "male" with his insurance provider, he may be rejected for a screening test for ovarian cancer. Similarly, a transgender woman might be rejected for prostate cancer treatment. Even routine screenings like mammograms and prostate exams can be problematic.

Denial of any care, including routine care, related to gender transition. Transgender people require the same preventive and acute healthcare services as the rest of the population, but they may have problems accessing even routine healthcare. Among the key barriers to routine care for transgender workers is that insurers may create broad exclusions for care deemed to be "related" to gender transition. As a result, some insurance companies reject claims based solely on the fact that a person is transgender. These exclusions, especially if broadly worded, may result in sweeping denials of care that have nothing to do with whether a worker is transgender. For example, a transgender employee may be unable to receive mental health counseling, even when that counseling is not related to gender dysphoria or gender transition. One insurance company denied a claim for coverage of a transgender man's high blood pressure based on a medically unsupported argument that it was related to his testosterone treatment. The U.S. Department of Health and Human Services has confirmed that rejections and denials that discriminate on the basis of gender identity violate the nondiscrimination protections of the Affordable Care Act. This policy will apply to most individual and small group plans offered by fully insured employers beginning in 2014.⁶²

Denial of transition-related care. Transition-related care is essential to the health and well-being of many transgender people. Furthermore, there is a well-established consensus among medical associations (such as the American Medical Association) that gender identity is a deep-seated, inherent aspect of human identity, and that some transgender people require medically necessary, individualized medical treatment for gender dysphoria that may include counseling, hormone therapy, surgeries and other treatments.

Yet 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 for treatment of other medical conditions. Insurers also routinely exclude coverage for treatments such as psychological counseling and laboratory services for transgender patients undergoing hormone therapy. Other employer-based health insurance policies erroneously define transition-related care as “cosmetic” and therefore

refuse to cover this care as medically necessary, despite statements from professional medical organizations explicitly stating that transition-related care is medically necessary and non-cosmetic.^{m,63,64} Recently, state insurance regulators in four states and the District of Columbia have issued guidance designed to stop these discriminatory practices. These regulators clarified that state nondiscrimination laws prohibit the use of exclusions that target transgender people, and directed health insurance companies to comply with these laws by removing exclusionary language.

For most workers however, insurers or employers still refuse to cover transition-related and other care. In these cases, transgender employees must choose between forgoing needed medical care, or, if they can afford to do so, paying for it out-of-pocket.

^m Problems can also occur when a transgender individual seeks other gender-specific surgeries, such as a hysterectomy.

The American Psychiatric Association Updates How it References Transgender People

In 2013, the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* changed how it references transgender people. Specifically, the prior diagnostic label of “Gender Identity Disorder” is being updated to more accurately reference *Gender Dysphoria*, or a conflict between the gender a person feels they are and the gender assigned to them at birth.

Having a diagnostic label can open the door for insurance reimbursement and help define a “serious medical condition” for the purposes of medical leave from work. It can also help substantiate the medical necessity for, and insurance coverage of, transition-related care such as hormone treatment or sex reassignment surgery.

On the other hand, a catch-all diagnosis like “Gender Identity Disorder” can be inaccurately interpreted as indicating “mental illness”—which not only creates unwarranted stigma, but can also be used to exclude insurance coverage for related care and treatment under the rubric of “mental health” limitations or pre-existing condition exclusions.

Minimal Costs for Equal Health Benefits for Transgender Workers

The California Department of Insurance released an economic impact assessment in April 2012 comparing the costs and benefits of California's law prohibiting insurance discrimination against transgender people. The Department concluded that there was an “immaterial” impact on premium costs and that “the benefits of eliminating discrimination far exceed the insignificant costs.”⁶⁵

Additionally, removing transgender-specific exclusions and offering coverage for services related to gender transition improve the health of transgender people. The assessment found improved outcomes for some of the most significant health problems facing the transgender population, including reduced suicide risk, lower rates of substance abuse, improved mental health outcomes, and increased adherence to HIV treatment regimens.⁶⁶

Barrier: Denial of Family and Medical Leave

Even the most dedicated employees sometimes need to take time off of work for unexpected reasons. Employers acknowledge the inevitability of such things as jury duty, sudden illness or injury, doctor appointments, a sick child, a death in the family and other family emergencies—and many offer excused absences with pay and sick days.

From time to time, workers also may need extended leave due to a serious medical condition. Before 1993, American workers were not guaranteed time off—even without pay—to care for themselves or their families without fear of losing their jobs. Now, under the Family and Medical Leave Act (FMLA), eligible employees are entitled to up to 12 weeks of leave for a “serious health condition” that makes an employee unable to perform the functions of her job.

To be covered under the FMLA, employees need to have worked for their employer for at least a year; they also need to have worked at least 1,250 hours in the past 12 months (more than part-time). FMLA applies to all public agencies (including state, local and federal employers), public schools, and all private employers with at least 50 employees.

The term “serious health condition,” as defined under FMLA, includes 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 calendar days from work that involves continuing treatment by a healthcare provider.⁶⁷

For transgender workers, accessing FMLA-covered time off for transition-related care can pose several challenges. First, the FMLA allows employers to ask medical providers to verify that an employee requesting leave has a “serious health condition.” Some physicians and employers may not correctly categorize transition-related healthcare as a serious medical condition, despite professional opinions to the contrary, which means that a transgender employee could be unfairly denied FMLA-covered, job-protected time off.

Additionally, as part of the verification process, an employee may need to release protected health information to the employer. The release of this information, or even the simple request for FMLA leave, could result in an employee revealing his or her transgender status when the employee might otherwise choose to keep this information private. Given that transgender people lack explicit workplace protections in most states, this could pose a serious risk for transgender workers and may dissuade them from seeking FMLA time off or seeking needed medical care.

Other Barriers to Equal Benefits for Transgender Workers




The full report *A Broken Bargain: Discrimination, Fewer Benefits and More Taxes for LGBT Workers* identifies and discusses a range of barriers to equal job-related benefits faced by workers in same-sex relationships. These include denial of family medical leave to care for a same-sex spouse, denial of spousal retirement benefits, and a higher family tax burden. These barriers often affect transgender workers as well. In some cases, this is because transgender people may also be gay, lesbian or bisexual. In other cases, it is because even when transgender people are in an opposite-sex relationship, they may be incorrectly deemed to be in a same-sex relationship. This happens when an employer or the state or federal government only recognizes the worker’s sex at birth, rather than the worker’s lived gender. Please see the full report for more on these additional barriers to fair treatment that affect many transgender workers.




Recommendations

Equitable access to health and leave benefits for transgender workers requires action by federal, state, and local policymakers. However, fair-minded employers who want to do what they can to treat all their workers fairly and equally can also make changes to their health insurance and leave policies to ensure that transgender workers are treated fairly on the job. Implementing these recommendations will help transgender workers care for themselves and their families, while also improving productivity and boosting employee morale.

Recommendations to Eliminate Inequitable Health and Leave Benefits for Transgender Workers

Health Insurance

<p>Federal</p> 	<p>The Department of Health and Human Services should continue to clarify and enforce the nondiscrimination protections covering transgender people under the Affordable Care Act.</p>	<p>The Department of Health and Human Services should clarify and enforce federal standards for essential health benefits under the Affordable Care Act, including LGBT-inclusive nondiscrimination protections and a prohibition on arbitrary exclusions of essential benefits solely on the basis of medical diagnosis or condition.</p>
<p>State</p> 	<p>State lawmakers and/or policymakers should revise state insurance laws and/or policies to ensure that LGBT workers can obtain individual health insurance (whether purchased privately or provided through employers) that meets their healthcare needs.</p>	<p>Pass or amend state insurance laws or policies to ensure coverage parity and nondiscrimination protections for transgender health plan enrollees so that health insurance sold within the state is transgender-inclusive and minimizes exclusions for transgender-related diagnoses or treatments.</p> <p>Examples may be found in the four states and the District of Columbia that have addressed insurance laws, including:</p> <ul style="list-style-type: none"> • Colorado’s Department of Insurance issued a bulletin in March 2013 prohibiting differentials in premiums and “denying, excluding, or otherwise limiting coverage for medically necessary services, as determined by an individual’s medical provider.”⁶⁸ • In December 2012, Oregon’s Division of Insurance released guidance clarifying that insurers are prohibited from denying, limiting, or canceling insurance on the basis of gender identity, as well as prohibiting exclusions related to gender identity.⁶⁹ <p>Amend state government benefit plans to be transgender-inclusive and include coverage for transition-related care.</p> <p>Pass state-based nondiscrimination laws and/or policies that: (a) apply to insurance companies and healthcare providers; and (b) provide legal recourse for LGBT workers and their families should they experience discrimination when seeking reimbursement for medically necessary procedures or when seeking/receiving medical care.</p>
<p>Federal, State, Local</p>	<p>Federal, state and local lawmakers should extend equal health benefits to all government employees, including transgender workers.</p>	<p>Ensure government health insurance plans cover routine and transition-related care for transgender employees.</p>
<p>Employers</p> 	<p>Employers should offer affordable health insurance benefits, including routine and transition-related care for transgender employees.</p>	<p>Employers should ensure that insurance contracts and plan documentation affirm coverage in clear language and are available to employees.</p> <p>More details and specific criteria that should be included in health insurance plans are available at http://www.hrc.org/files/assets/resources/Transgender_Healthcare_White_Paper_4.pdf and http://www.americanprogress.org/issues/lgbt/report/2012/10/03/40334/faq-health-insurance-needs-for-transgender-americans/.</p>

Recommendations to Eliminate Inequitable Health and Leave Benefits for Transgender Workers		
Medical Leave		
Federal 	The Department of Labor should clarify that the federal FMLA allows leave for transgender workers seeking transition-related care.	Obtain clarification from the Department of Labor that the definition of “serious medical condition” includes leave for transition-related time off work that transgender workers need in order to seek medically and psychologically necessary care.
State 	State lawmakers and/or policymakers should revise or pass state medical and family leave laws and policies to explicitly include transgender workers	States should ensure that state medical leave laws and policies allow transgender workers to take leave for transition-related care.
Employers 	Employers should expand leave options beyond existing state and federal mandates.	Small employers should offer either FMLA-like leave or leave that is similar to that required of other employers under state law; employers should make clear that the leave they offer is accessible to transgender employees

CONCLUSION

Transgender workers live in every state in the country. They work for all types of employers and in all types of jobs. They share the same goals as other workers: to provide for themselves and their families, to advance in their careers, and to stay healthy and build a secure and happy future.

But transgender workers do not have the same rights and opportunities as other workers. As this report has shown, there is no federal law (and very few state laws) explicitly prohibiting employers from discriminating against transgender workers, and unequal medical and leave benefits can undermine their health and financial security. While some protections for these workers exist based on the federal prohibition against sex-based

discrimination, for many transgender people in the United States the workplace remains a minefield of harassment, discrimination, unjust firing, and unequal pay and benefits. This hurts transgender workers and their families, while also undermining the ability of employers to build the cohesive, positive and innovative work environments that spur success in today’s economy.

Fixing the broken bargain for transgender workers will help ensure that they 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 available to other workers to protect their health and livelihood. It is time to send transgender workers the message that they matter, and to show that our nation and our economy are stronger when we treat all workers fairly.

ENDNOTES

Introduction

- ¹ Human Rights Campaign and Greenberg Quinlan Rosner Research. "Americans Offer Strong Support for Anti-Discrimination Laws." December 9, 2011. http://www.hrc.org/files/assets/resources/ENDA_Polling_Memo_Dec_2011.pdf (accessed February 28, 2013).
- ² 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).
- ³ The National Transgender Discrimination Survey was conducted by the National Gay and Lesbian 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 (accessed February 28, 2013). Hereafter, Grant, J. et al., *National Transgender Discrimination Survey*.
- ⁴ National Center for Transgender Equality. "Transgender Terminology." May 2009. http://transequality.org/Resources/NCTE_TransTerminology.pdf (accessed March 1, 2013).
- ⁵ 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).
- ⁶ Grant, J. et al., *National Transgender Discrimination Survey*.
- ⁷ Grant, J. et al., *National Transgender Discrimination Survey*.
- ⁸ Grant, J. et al., *National Transgender Discrimination Survey*.
- ⁹ Movement Advancement Project. *Advancing Transgender Equality*. January 2009.
- ¹⁰ Hartzell, Eleanor, M. Somjen Frazer, Kristina Wertz, and Masen Davis. "The State of Transgender California: Results from the 2008 California Transgender Economic Health Survey." *Transgender Law Center*. 2009. <http://transgenderlawcenter.org/pubs/the-state-of-transgender-california> (accessed March 4, 2013).
- ¹¹ 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).
- ¹² Grant, J. et al., *National Transgender Discrimination Survey*.
- ¹³ Movement Advancement Project. "Employment Non-Discrimination Laws." http://lgbtmap.org/equality-maps/employment_non_discrimination_laws (accessed August 31, 2013). Hereafter, MAP, *Employment Non-Discrimination Laws*.
- ¹⁴ 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 (accessed March 4, 2013.) Hereafter, HRC, *CEI* 2013.
- ¹⁵ Small Business Majority. "Small Businesses Support Workplace Nondiscrimination Policies." June 4, 2013. Hereafter, SBM, *Small Businesses Support*.
- ¹⁶ HRC, *CEI* 2013.
- ¹⁷ PricewaterhouseCoopers. "2013 U.S. CEO Survey." 2013. <http://www.pwc.com/gx/en/ceo-survey/2013/pdf/us-ceo-survey-2013.pdf> (accessed March 1, 2013).
- ¹⁸ PricewaterhouseCoopers. "15th Annual Global CEO Survey 2012." 2012. <http://www.pwc.com/gx/en/ceo-survey/pdf/15th-global-pwc-ceo-survey.pdf> (accessed March 1, 2013).
- ¹⁹ Level Playing Field Institute. "The Corporate Leavers Survey: The Cost of Employee Turnover Due Solely to Unfairness in the Workplace." 2007. <http://www.lpfi.org/sites/default/files/corporate-leavers-survey.pdf> (accessed February 28, 2013). Hereafter, Level Playing Field Institute, *Corporate Leavers*.
- ²⁰ Level Playing Field Institute, *Corporate Leavers*.
- ²¹ Forbes Insights. "Global Diversity and Inclusion: Fostering Innovation Through a Diverse Workforce." July 2011. http://images.forbes.com/forbesinsights/StudyPDFs/Innovation_Through_Diversity.pdf (accessed March 2, 2013).

The Broken Bargain: Discrimination with Limited Legal Protection

- ²² Hunt, Jerome. "A History of the Employment Non-Discrimination Act." *Center for American Progress*. July 19, 2011. <http://www.americanprogress.org/issues/lgbt/news/2011/07/19/10006/a-history-of-the-employment-non-discrimination-act/> (accessed March 2, 2013). Hereafter, Hunt, J., *A History of ENDA*.
- ²³ Grant, J. et al., *National Transgender Discrimination Survey*.
- ²⁴ 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 (accessed August 9, 2013).
- ²⁵ Grant, J. et al., *National Transgender Discrimination Survey*.
- ²⁶ Singer, Stephen. "For Long-Term Unemployed, Hiring Bias Rears Its Head." *HuffPost: Business*. March 23, 2012. http://www.huffingtonpost.com/2012/03/23/long-term-unemployed-hiring-bias_n_1374735.html (accessed February 28, 2013).
- ²⁷ Movement Advancement Project. "Snapshot: Advancing Transgender Equality." April 2009. <http://lgbtmap.org/file/advancing-transgender-equality-snapshot.pdf> (accessed March 3, 2013).
- ²⁸ SBM, *Small Businesses Support*.
- ²⁹ U.S. Department of Labor, Bureau of Labor Statistics. "Table 4. Employed persons working and time spent working on days worked by full- and part-time status and sex, jobholding status, educational attainment, and day of week, 2011 annual averages, 2011 Time Use Survey." June 22, 2012. <http://www.bls.gov/news.release/atus.t04.htm> (accessed March 3, 2013); "Table 8. Time spent on primary activities for the civilian population 18 years and over by employment status, presence and age of youngest household child, and sex, 2011 annual averages, 2011 Time Use Survey." June 22, 2012. <http://www.bls.gov/news.release/atus.t08.htm> (accessed March 3, 2013).
- ³⁰ Hewlett, Sylvia Ann, and Karen Sumberg. The Power of "Out". *Center for Talent Innovation* (formerly Center for Work-Life Policy), 2011. <https://www.worklifepolicy.org/index.php/action/PurchasePage/item/347> (last accessed March 25, 2013).
- ³¹ 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.
- ³² Grant, J. et al., *National Transgender Discrimination Survey*.
- ³³ Grant, J. et al., *National Transgender Discrimination Survey*.
- ³⁴ The areas covered by the policy include confidentiality and privacy, dress and appearance, names and pronouns, sanitary and related facilities, recordkeeping, and insurance benefits. See U.S. Office of Personnel Management. "Diversity & Inclusion: Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace." <http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/> (accessed March 18, 2013). Hereafter, OPM, *Guidance Regarding Transgender Employees*.

- ³⁵ 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).
- ³⁶ U.S. Department of Labor. “Equal=Pay: An Employer’s Guide to Equal Pay.” <http://www.dol.gov/equalpay/equalpay-employer.pdf> (accessed March 4, 2013).
- ³⁷ Schmedding v. Tnemec Co., Inc., 187 F.3d 862 (8th Cir. 1999).
- ³⁸ Schwenk v. Hartford, 204 F.3d 1187 (9th Cir. 2000).
- ³⁹ Nicholas v. Azteca Restaurant Enterprises, Inc., 256 F.3d 864 (9th Cir. 2001).
- ⁴⁰ Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004).
- ⁴¹ Barnes v. City of Cincinnati, 401 F.3d 729 (6th Cir. 2005).
- ⁴² Prowel v. Wise Business Forms, 07-3997 (3d Cir. Aug. 28, 2009).
- ⁴³ Glenn v. Brumby, 665 F.3d 1312 (11th Cir. 2011).
- ⁴⁴ U.S. Equal Employment Opportunity Commission. “Performance and Accountability Report, FY 2012, Inspector General’s Statement.” http://www.eeoc.gov/eeoc/plan/2012par_ig_statement.cfm (accessed March 12, 2013).
- ⁴⁵ U.S. Senate. “Senate Report 112-158 – Departments of Commerce and Justice, and Science, and Related Agencies Appropriations Bill, 2013.” <http://www.gpo.gov/fdsys/pkg/CRPT-112srpt158/pdf/CRPT-112srpt158.pdf> (accessed March 25, 2013).
- ⁴⁶ *Price Waterhouse vs. Hopkins*, 490 U.S. 228 (1989).
- ⁴⁷ See *Etsitty vs. Utah Transit Authority*, 502 F.3d 1215 (2007) and *Oiler vs. Winn-Dixie Louisiana, Inc.*, Civil Action No. 00-3114 (2002).
- ⁴⁸ OPM, *Guidance Regarding Transgender Employees*.
- ⁴⁹ Hunter, Nan D., Christy Mallory, and Brad Sears. “The Relationship between the EEOC’s Decision that Title VII Prohibits Discrimination Based on Gender Identity and the Enforcement of Executive Order 11246.” *The Williams Institute*. May 2012. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Hunter-Mallory-Sears-EEOC-E011246-May-2012.pdf> (accessed August 9, 2013).
- ⁵⁰ 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 (accessed March 4, 2013). Hereafter Hunt, J., *A State-by-State Examination*.
- ⁵¹ MAP, *Employment Non-Discrimination Laws*.
- ⁵² Hunt, J., *A State-by-State Examination*.
- ⁵³ Movement Advancement Project. “Local Employment Non-Discrimination Ordinances.” http://www.lgbtmap.org/equality-maps/non_discrimination_ordinances (accessed March 4, 2013). Hereafter MAP, *Local Employment Non-Discrimination Ordinances*.
- ⁵⁴ National League of Cities. “Local Government Authority.” <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-powers/local-government-authority> (accessed March 4, 2013).
- ⁵⁵ 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).

The Broken Bargain: Inequitable Health and Leave Benefits

- ⁵⁶ 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).
- ⁵⁷ Fronstin, Paul. “Views on Employment-Based Health Benefits: Findings from the 2012 Health Confidence Survey.” *Notes*, Employee Benefit Research Institute. December 2012. http://www.ebri.org/pdf/notespdf/EBRI_Notes_12_Dec-12.HCS-Tenure1.pdf (accessed February 28, 2013).
- ⁵⁸ For a full discussion of the health disparities impacting LGBT workers, see Movement Advancement Project et al., *All Children Matter*, pp. 79-84; Movement Advancement Project, Family Equality Council and Center for American Progress, in partnership with National Coalition for LGBT Health. “Obstacles and Opportunities: Ensuring Health and Wellness for LGBT Families.” March 2012. <http://www.lgbtmap.org/file/obstacles-and-opportunities-ensuring-health-and-wellness-for-lgbt-families.pdf> (accessed March 25, 2013).
- ⁵⁹ See U.S. Substance Abuse and Mental Health Services Administration. “Top Health Issues for LGBT Populations Information & Resource Kit.” 2012. <http://store.samhsa.gov/shin/content/SMA12-4684/SMA12-4684.pdf> (accessed March 19, 2013).
- ⁶⁰ Grant, J. et al., *National Transgender Discrimination Survey*.
- ⁶¹ Krehely, Jeff. “How to Close the LGBT Health Disparities Gap: Disparities by Race and Ethnicity.” *Center for American Progress*. December 21, 2009. http://www.americanprogress.org/wp-content/uploads/issues/2009/12/pdf/lgbt_health_disparities_race.pdf (accessed March 1, 2013).
- ⁶² U.S. Department of Health and Human Services. “Final Rule: Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation, Prohibition on Discrimination.” 45 CFR §156.125, February 25, 2013. <http://www.gpo.gov/fdsys/pkg/FR-2013-02-25/pdf/2013-04084.pdf> (accessed March 19, 2013).
- ⁶³ See, for example, Lambda Legal. “Esquivel v. Oregon Summary.” <http://www.lambdalegal.org/in-court/cases/esquivel-v-oregon> (accessed March 1, 2013).
- ⁶⁴ American Medical Association. “Policy Statement on Care for Transgender Persons.” <http://www.gires.org.uk/assets/Medpro-Assets/AMA122.pdf> (accessed August 6, 2013).
- ⁶⁵ State of California Department of Insurance, “Economic Impact Assessment: Gender Nondiscrimination in Health Insurance” (File Number: REG-2011-00023) (2012).
- ⁶⁶ State of California Department of Insurance, “Economic Impact Assessment: Gender Nondiscrimination in Health Insurance.”
- ⁶⁷ For a full definition, see U.S. Department of Labor, Wage and Hour Division. “The Family and Medical Leave Act.” <http://www.dol.gov/whd/regs/compliance/1421.htm> (accessed March 4, 2013).
- ⁶⁸ Colorado Department of Regulatory Agencies, Division of Insurance. “Bulletin No. B-4.49 Insurance Unfair Practices Act Prohibitions on Discrimination Based Upon Sexual Orientation.” March 18, 2013. <http://www.one-colorado.org/wp-content/uploads/2013/03/B-4.49.pdf> (accessed August 9, 2013).
- ⁶⁹ Oregon Insurance Division. “Bulletin INS 2012-01 Application of Senate Bill 2 (2007 Legislative Session) to Gender Identity Issues in the Transaction and Regulation of Insurance in Oregon.” December 19, 2012. <http://www.cbs.state.or.us/ins/bulletins/bulletin2012-01.html>.

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