

# Employment Discrimination Based on Sexual Orientation and Gender Identity in Ohio



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## Executive Summary

More than four percent of the American workforce identifies as lesbian, gay, bisexual, or transgender (LGBT). Approximately 212,000 of these workers live in Ohio. Ohio does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in employment.<sup>1</sup>

This report summarizes evidence of sexual orientation and gender identity employment discrimination, explains the limited current protections from sexual orientation and gender identity employment discrimination in Ohio, and estimates the administrative impact of passing a law prohibiting employment discrimination based on these characteristics in Ohio.

Key findings of this report include:

- In total there are approximately 328,000 LGBT adults in Ohio,<sup>2</sup> including over 212,000 who are part of the Ohio workforce.
- Recent surveys from Ohio reflect discrimination and negative attitudes toward LGBT people in the workplace. For example, a 2008 survey at Miami University Ohio found that nonheterosexually-identified faculty reported discrimination at twice the rate of their heterosexually-identified counterparts. Disparities were also reported among feelings of safety and acceptance between gay and straight students and staff.
- Despite the state's lack of legal protections based on sexual orientation and gender identity, a 2013 opinion survey found that 68% of Ohioans supported such laws and 84% believed that they were already in place.
- National surveys also confirm that discrimination against LGBT workers persists. Most recently, a 2013 Pew Research Center survey found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.
- As recently as 2010, 78% of respondents to the largest survey of transgender people to date reported having experienced harassment or mistreatment at work, and 47% reported having been discriminated against in hiring, promotion, or job retention because of their gender identity.
- Lawsuits document that a number of Ohio employees have faced discrimination because of their sexual orientation or gender identity; these include reports from a teacher, a bus driver and a county child services employee.
- Disparities in wages are also a traditional way that discrimination has been measured. Census data show that in Ohio, the median income of men in same-sex couples is 24% lower than men in different sex marriages.

- Currently, 13 localities in Ohio provide protection from sexual orientation and gender identity employment discrimination by local ordinance. An additional 14 localities provide protections for government workers alone.
- Approximately 81% of Ohio's workforce is not covered by a local ordinance that prohibits private employment discrimination based on sexual orientation or gender identity.
- Even Ohioans who live in localities with such local ordinances are not always as protected as they would be by state law. Some localities offer more extensive protection or stronger remedies than others. Moreover, unlike many local ordinances, Ohio state law provides for a private right of action.
- Many of the state's top employers have internal corporate policies prohibiting sexual orientation discrimination, including 37 Fortune 1000 companies.
- Adding sexual orientation and gender identity to the state's current non-discrimination law would result in approximately 100 additional complaints being filed with the Ohio Civil Rights Commission each year.
- Estimates indicate that the additional complaints could cost up to \$214,500 annually; which represents 2.8% of the Ohio Civil Rights Commission's budget in fiscal year 2012.

## **Evidence of Discrimination**

### ***Survey Data and Specific Examples of Sexual Orientation and Gender Identity Discrimination in Ohio***

Research shows the existence of widespread and continuing discrimination against LGBT workers in the U.S. In response to surveys, LGBT workers consistently report having experienced discrimination, and non-LGBT people often report having witnessed discrimination against their LGBT co-workers. For example, a national survey conducted by Pew Research Center in 2013 found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.<sup>3</sup> Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians had experienced workplace harassment in the last five years, and 12% had lost a job because of their sexual orientation.<sup>4</sup> As recently as 2010, 78% of respondents to the largest survey of transgender people to date reported having experienced harassment or mistreatment at work, and 47% reported having been discriminated against in hiring, promotion, or job retention because of their gender identity.<sup>5</sup>

Campus climate surveys from universities also reflect negative attitudes that can result in discrimination against LGBT people. A 2008 survey from Miami University Ohio surveyed undergraduates, graduate students, faculty and staff about a variety of experiences and perceptions related to diversity on campus.<sup>6</sup> The survey found that 22.1% of heterosexually-identified faculty reported being discriminated against by administrators sometimes or frequently and 18.9% reported such discrimination at the hands of other faculty members.<sup>7</sup> On the other hand, nonheterosexually-identified faculty reported discrimination at double those rates: 45.0% reported discrimination sometimes or frequently by administrators, and 47.5% reported such discrimination by fellow faculty.<sup>8</sup> There were similar disparities

in perceptions of acceptance of lesbian and gay students on campus: 62.9% of heterosexual undergraduates<sup>9</sup> and 57.3% of heterosexual graduate students<sup>10</sup> somewhat or strongly agreed that lesbian and gay students were accepted and respected on campus, while only 41.3% of nonheterosexual undergraduates<sup>11</sup> and 10.9% of nonheterosexual graduate students<sup>12</sup> answered the same way. Similarly, 72.1% of heterosexual staff agreed that gay and lesbian staff members were accepted and respected on campus, while only 35.3% of their nonheterosexual counterparts agreed.<sup>13</sup> Finally, over 80% of straight undergraduates (86.3%),<sup>14</sup> graduate students (81.5%)<sup>15</sup> and faculty (83.5%)<sup>16</sup> somewhat or strongly agreed with the statement “I feel safe to be who I am at Miami University,” while less than 55% of their gay undergraduate (54.3%),<sup>17</sup> graduate (34.8%)<sup>18</sup> and faculty (47.5%)<sup>19</sup> counterparts felt similarly.

Despite the state’s lack of legal protections based on sexual orientation and gender identity, a 2013 opinion survey by the Public Religion Research Institute, a nonprofit, nonpartisan organization dedicated to research at the intersection of religion, values, and public life,<sup>20</sup> found that Ohioans both supported such laws and believed that they were already in place. Sixty eight percent of those surveyed favored laws protecting gay and lesbian people from employment discrimination, with only 25% opposing.<sup>21</sup> Majorities were found across political parties, with 61% of Republicans, 67% of independent voters and 75% of Democrats favoring nondiscrimination laws.<sup>22</sup> Ironically, 84% of Ohioans incorrectly believed that such laws already existed at the state level, and 80% incorrectly believed there were also such federal protections in place.<sup>23</sup>

Employment discrimination against LGBT people has also been documented in court cases, state and local administrative complaints, complaints to community-based organizations, academic journals, newspapers, books, and other media. Additionally, a number of federal, state, and local administrative agencies and legislative bodies have acknowledged that LGBT people have faced widespread discrimination in employment.<sup>24</sup>

Several recent instances of employment discrimination against LGBT people in Ohio have been documented in the media, court cases and reports to legal organizations:

- In 2013, an Ohio appellate court denied relief to a gay bus driver who claimed that he was harassed by his co-workers because of his sexual orientation.<sup>25</sup> The court held that sexual orientation is not a protected class under the state’s nondiscrimination law, and therefore, he had no remedy for any alleged harassment.<sup>26</sup>
- In 2013, a private school teacher was fired when the school became aware of her same-sex partner through her mother’s obituary.<sup>27</sup> The teacher had been with the school for 19 years.<sup>28</sup> The teacher and the school came to a confidential settlement in August.<sup>29</sup>
- In 2013, a worker at an auto parts warehouse in Ohio reported to the New York Times that he avoided socializing with co-workers and ate lunch in his car to prevent accidentally revealing any information that would indicate his sexual orientation.<sup>30</sup> Because he knew that he was not protected by state or federal law, and his co-workers used gay slurs on a regular basis, he chose to avoid any potentially volatile situations that could lead to the management firing him.

- In 2012, Ohio Bell Telephone Company settled a discrimination lawsuit alleging discrimination based on nonconformity with sex stereotypes.<sup>31</sup> An openly gay sales consultant for the company was fired after taking time off for his father's death. The consultant's supervisor had allegedly previously refused to call him by his married name, stating that she would not recognize his same-sex marriage.<sup>32</sup> When the consultant's father passed, despite his union representative's assurance that he was allowed to take the time off, his supervisor counted most of his absences as unexcused, which resulted in his subsequent firing.<sup>33</sup>
- In 2011, Cuyahoga County settled a lawsuit with a lesbian employee of the County Child Support Enforcement Agency for \$100,000.<sup>34</sup> The child support worker stated that she was passed over for at least 12 promotions only to learn that the positions were given to less qualified heterosexual applicants.<sup>35</sup>
- In 2009, a global industrial adhesives manufacturing company settled a sexual harassment lawsuit brought by one of their quality assurance managers.<sup>36</sup> The manager worked for the company for over 20 years and had received the Circle of Excellence honor six times when he transferred to a facility in a different city.<sup>37</sup> At the new facility, he faced severe and pervasive harassment from coworkers including being groped and humped, witnessing coworkers repeatedly watching the male-on-male rape seen from the movie *Deliverance* and having his car vandalized with spray paint on several occasions.<sup>38</sup> After the manager reported safety violations to OSHA, a newspaper clipping about gay marriage was left in his office with the words "DIE OSHA FAG," written across it in red letters.<sup>39</sup> After repeated failed attempts to resolve the harassment internally, the manager filed suit and was subsequently fired.<sup>40</sup> Despite his claims that the harassment was based on his nonconformance with gender stereotypes, the court dismissed the sexual harassment part of the lawsuit in 2008, claiming that the harassment was based on sexual orientation which is not protected under federal or state law.<sup>41</sup> The court allowed the manager's retaliation claims for his firing after filing suit to continue.<sup>42</sup>

### *Wage Inequity*

Census data show that men in same-sex couples in Ohio earn less than men married to different-sex partners. On average, men in same-sex couples in Ohio earn \$33,644 each year, significantly less than the \$48,226 for men married to different-sex partners.<sup>43</sup> The median income of men in same-sex couples in Ohio is \$30,000, or 24% less than that of married men (\$39,600).<sup>44</sup> Men with same-sex partners earn lower wages, despite the fact that they are more likely to have a college degree than men married to different-sex partners,<sup>45</sup> a comparison that supports the possibility that people in same-sex couples are not treated equally by employers. A 2009 study indicated that the wage gap for gay men is smaller in states that implement non-discrimination laws, suggesting that such laws reduce discrimination against LGBT people.<sup>46</sup>

Women in same-sex couples earn less than married men as well as men in same-sex couples.<sup>47</sup> Women in same-sex couples in Ohio earn an average of \$30,160 per year (with a median of \$24,600), which is more than married women, whose earnings average \$24,275 (with a median of \$20,000).<sup>48</sup>

These findings are not unique to Ohio. Analyses of national data consistently find that men in same-sex couples and gay men earn 10-32% less than similarly qualified men who are married to different-sex partners, or men who identify as heterosexual.<sup>49</sup> Surveys of transgender people find that they have high rates of unemployment and very low earnings.<sup>50</sup>

## **Current Protections from Discrimination**

Ohio does not have a statewide law that prohibits discrimination based on sexual orientation and/or gender identity in private employment.<sup>51</sup> Efforts were made to pass such a law in the Ohio General Assembly in 2003, 2005, 2007, 2009 and 2011.<sup>52</sup> In September, 2009, the Ohio House of Representatives passed the Equal Housing and Employment Act for the first time.<sup>53</sup> However, the bill was never voted on in the Senate.<sup>54</sup> Similar legislation in 2011 died without a vote in either chamber.<sup>55</sup> Currently, there are new bills in both houses.<sup>56</sup> The senate bill is currently in the Civil Justice Committee,<sup>57</sup> and the house bill is currently in the Commerce, Labor and Technology Committee.<sup>58</sup> Through these bills, the Ohio General Assembly sought to prohibit employment discrimination based on sexual orientation and gender identity and expression by adding the characteristics to its existing employment discrimination statute, the Ohio Fair Employment Practices Law.<sup>59</sup>

### ***The Ohio Fair Employment Practices Law***

Currently, the Ohio Fair Employment Practices Law prohibits employment discrimination by any employer with four or more employees<sup>60</sup> on the basis of race, color, religion, sex, military status, national origin, disability, age, or ancestry.<sup>61</sup> The Fair Employment Practices Law applies to both public sector and private sector employers.<sup>62</sup> The Fair Employment Practices Law exempts religious corporations, associations, educational institutions and associations from coverage “with respect to the employment of an individual of a particular religion to perform work connected with” the organization’s activities.<sup>63</sup>

The Ohio Civil Rights Commission (OCRC) enforces the Fair Employment Practices Law. The OCRC has the power to intake, investigate, and prosecute specific instances of employment discrimination, and to study and report on discrimination statewide.<sup>64</sup> An employee must file a complaint with the Commission within 6 months after the discriminatory practice occurred.<sup>65</sup> People have one year to file complaints with the Commission related to discriminatory housing practices.<sup>66</sup> All complainants also have the right to file a civil action in a court of competent jurisdiction.<sup>67</sup>

During the fiscal year 2012, the OCRC received 3,513 new complaints of discrimination.<sup>68</sup> The OCRC also does intake and investigations regarding claims of discrimination in housing, public accommodations, disability in higher education and credit, although this represents a small proportion of the OCRC’s complaints each year (23% of the cases closed in fiscal year 2012).<sup>69</sup>

## *Local-Level and Private Protections from Discrimination*

Thirteen localities in Ohio explicitly prohibit employment discrimination based on sexual orientation and gender identity by local ordinance. They are: Athens,<sup>70</sup> Bowling Green,<sup>71</sup> Canton,<sup>72</sup> Cincinnati,<sup>73</sup> Cleveland,<sup>74</sup> Columbus,<sup>75</sup> Coshocton,<sup>76</sup> Dayton,<sup>77</sup> East Cleveland,<sup>78</sup> Newark,<sup>79</sup> Oxford,<sup>80</sup> Toledo<sup>81</sup> and the village of Yellow Springs.<sup>82</sup> Approximately 81% of Ohio's workforce is not covered by one of these local ordinances that prohibits public and private employment discrimination based on sexual orientation and gender identity.<sup>83</sup> An additional 14 localities prohibit public employment discrimination based on sexual orientation and/or gender identity. They are: Akron,<sup>84</sup> Cleveland Heights,<sup>85</sup> Cuyahoga County,<sup>86</sup> Franklin County,<sup>87</sup> Gahanna,<sup>88</sup> Hamilton,<sup>89</sup> Hamilton County,<sup>90</sup> Lima,<sup>91</sup> Lucas County,<sup>93</sup> Montgomery County,<sup>94</sup> Oberlin,<sup>95</sup> Summit County<sup>96</sup> and Wood County.<sup>97</sup> Because they only prohibit discrimination against local government workers, and not the entire workforce, they were not included in the calculation of the number of workers protected by local ordinances.<sup>98</sup>

Even within the localities that provide discrimination protections based on sexual orientation and gender identity, the exact coverage varies from place to place, leaving a patchwork of protections. For example, while Columbus<sup>99</sup> and Cleveland<sup>100</sup> include in their employment protections all employers of four or more people (like the Ohio Fair Employment Practices Law<sup>101</sup>), Cincinnati's law only applies to employers with 10 or more employees,<sup>102</sup> and Yellow Springs requires at least 12 employees for its employment nondiscrimination provisions.<sup>103</sup> Also, while Cincinnati has a very broad exemption for "any religious corporation, organization, or association,"<sup>104</sup> Columbus's more narrow religious exemption only applies to their housing nondiscrimination ordinance; they have no religious exemption for employment.<sup>105</sup> Finally, many local ordinances do not provide as much protection as the state Fair Employment Practices Law. For example, the state law gives the state Civil Rights Commission the right to file for an immediate temporary or permanent injunction against a violator when appropriate, and in housing discrimination, allows for punitive damages up to \$50,000.<sup>106</sup> Additionally, the state law has a right of civil action, which is not provided for in many local ordinances.<sup>107</sup> In addition to the concerns about the patchwork of laws that exists, local ordinances may potentially be subject to legal challenges.<sup>108</sup>

Some of Ohio's top companies and employers have adopted internal corporate policies that prohibit sexual orientation and gender identity discrimination. According to the Human Rights Campaign, at least 108 companies headquartered in Ohio prohibit discrimination based on sexual orientation, including 37 Fortune 1000 companies,<sup>109</sup> and at least 36 companies headquartered in Ohio prohibit discrimination based on gender identity, including 21 Fortune 1000 companies.<sup>110</sup> Additionally, all Cabinet agencies and State of Ohio Boards and Commissions are prohibited by governor's executive order from discriminating in hiring or employment based on sexual orientation.<sup>111</sup>

## Administrative Impact

### *Complaint Estimate*

Despite the persistence and pervasiveness of employment discrimination against LGBT people, studies show that enforcing sexual orientation and gender identity provisions in non-discrimination laws has only a minimal burden on state agencies. Complaints of sexual orientation discrimination are filed by LGBT people at approximately the same rate as complaints of race and sex discrimination are filed by people of color and women, respectively.<sup>112</sup> However, because the LGBT population is so small, the absolute number of sexual orientation and gender identity complaints filed under state non-discrimination laws is very low.<sup>113</sup>

We estimate that approximately 100 complaints of sexual orientation or gender identity discrimination would be filed with the Ohio Civil Rights Commission each year. To reach this estimate, we drew on Gallup polling data and Census data from Ohio to estimate the size of the LGBT workforce in the state, and applied a national sexual orientation and gender identity complaint rate to that population. We have previously used this methodology to estimate the number of complaints that would be filed on the basis of sexual orientation and gender identity in other states, including Missouri, Pennsylvania, South Carolina, South Dakota, Texas, Utah, and West Virginia.<sup>114</sup>

Results from a 2012 Gallup poll show that 3.6% of people in Ohio identify as LGBT.<sup>115</sup> Applying this percentage to the number of people in Ohio's workforce (5,883,960<sup>116</sup>) indicates that there are 211,823 LGBT workers in Ohio.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in Ohio to determine how many complaints will be filed annually if these characteristics are added to the employment non-discrimination law. We used the national average complaint rate from a 2008 study that analyzed administrative complaint data from 17 states that prohibited sexual orientation discrimination at that time.<sup>117</sup> The study found that across these states, the average rate of complaints filed on the basis of sexual orientation was 4.7 per 10,000 LGB workers.<sup>118</sup> There is not sufficient data to make a similar calculation of the average rate of complaints filed on the basis of gender identity.<sup>119</sup> Therefore, we assume that this rate is also 4.7 per 10,000 transgender workers.

Applying the national complaint rate (4.7 per 10,000 LGBT workers) to the number of LGBT workers in Ohio (211,823) suggests that 100 complaints of sexual orientation and gender identity discrimination would be filed annually if these characteristics were added to the state's employment non-discrimination law.

## ***Cost of Enforcement***

Using Information from the most recent Ohio Civil Rights Commission Annual Report (fiscal year 2012),<sup>120</sup> we can estimate the cost associated with handling the additional 100 complaints that would be filed if sexual orientation and gender identity were added to the Fair Employment Practices Law.

In fiscal year 2012, the Ohio Civil Rights Commission received 3,513 new complaints of illegal discrimination and closed 3,637 cases.<sup>121</sup> That year, the Commission had a total budget of \$7,533,983 (which was a combined total of \$4,725,784 appropriated from the state general assembly and \$2,808,199 in federal money from cases that have dual jurisdiction with the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development).<sup>122</sup> Dividing the OCRC's budget by the number of complaints received suggests that enforcement costs an average of \$2,144 per complaint filed. Based on this assumption, if 100 complaints of sexual orientation or gender identity discrimination were filed each year, it would cost the state approximately \$214,460, or 2.8% of the Ohio Civil Rights Commission's current budget, to enforce them.

## **Conclusion**

Documented evidence shows that LGBT people face employment discrimination across the country, including in Ohio. There is currently no law that prohibits employment discrimination based on sexual orientation or gender identity in Ohio. Adding these characteristics to the Ohio Fair Employment Practices Law would provide protection from discrimination to approximately 212,000 LGBT workers in the state. Based on data from other state administrative enforcement agencies, we estimate that approximately 100 complaints of sexual orientation or gender identity employment discrimination would be filed in Ohio annually if the law were amended. Data from the Ohio Civil Rights Commission suggest that it would cost the state approximately \$214,500 to enforce these complaints each year; which represents 2.8% of the Ohio Civil Rights Commission's budget in fiscal year 2012.



## **About the Williams Institute**

The Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at UCLA School of Law advances law and public policy through rigorous, independent research and scholarship, and disseminates its work through a variety of education programs and media to judges, legislators, lawyers, other policymakers and the public. These studies can be accessed at the Williams Institute website.

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## Endnotes

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<sup>1</sup> The Ohio Fair Employment Practices Law prohibits employment discrimination based on race, color, religion, sex, military status, national origin, disability, age and ancestry. OHIO REV. CODE ANN. § 4112.02 (West 2013).

<sup>2</sup> This estimate was reached by applying the percentage of people in Ohio that are LGBT (3.6%) to the population of Ohio aged 16 years and older (9,110,226). Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP, Feb. 15, 2013, <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>; *American Community Survey, 2011 ACS Table DP03: Selected Economic Characteristics, 5-Year Estimates*, U.S. CENSUS BUREAU, AMERICAN FACTFINDER, available at [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_11\\_5YR\\_DP03](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_5YR_DP03).

<sup>3</sup> *A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times*, PEW RESEARCH CENTER, June 13, 2013, <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>.

<sup>4</sup> BRAD SEARS & CHRISTY MALLORY, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 2 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-20111.pdf>.

<sup>5</sup> JAMIE M. GRANT, LISA A. MOTTET, JUSTIN TANIS, JACK HARRISON, JODY L. HERMAN, & MARA KEISLING, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 51 (2011), [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf).

<sup>6</sup> MIAMI UNIV. OHIO, 2008 MIAMI UNIVERSITY CAMPUS CLIMATE SURVEY, (2008), available at [http://www.miamioh.edu/documents/about-miami/diversity/MU\\_Campus\\_Climate%20%20Survey\\_08.pdf](http://www.miamioh.edu/documents/about-miami/diversity/MU_Campus_Climate%20%20Survey_08.pdf).

<sup>7</sup> *Id.* at 25.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 16.

<sup>10</sup> *Id.* at 14.

<sup>11</sup> *Id.* at 16.

<sup>12</sup> *Id.* at 14.

<sup>13</sup> *Id.* at 18.

<sup>14</sup> *Id.* at 16.

<sup>15</sup> *Id.* at 14.

<sup>16</sup> *Id.* at 12.

<sup>17</sup> *Id.* at 16.

<sup>18</sup> *Id.* at 14.

<sup>19</sup> *Id.* at 12.

<sup>20</sup> PUBLIC RELIGION RESEARCH INST., *About Us*, <http://publicreligion.org/about/> (last visited Dec. 10, 2013).

<sup>21</sup> PUBLIC RELIGION RESEARCH INST., THE 2013 OHIO VALUES SURVEY, 7 (2013), available at [http://publicreligion.org/site/wp-content/uploads/2013/09/2013\\_OHIO\\_VALUES\\_SURVEY.V5.pdf](http://publicreligion.org/site/wp-content/uploads/2013/09/2013_OHIO_VALUES_SURVEY.V5.pdf).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 8.

<sup>24</sup> SEARS & MALLORY, *supra* note 4.

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<sup>25</sup> *Inskeep v. W. Reserve Transit Auth.*, 2013 WL 979054, \*6 (Ohio Ct. App. Mar. 8, 2013)

<sup>26</sup> *Id.* at \*4.

<sup>27</sup> Denise Yost, *Fired Bishop Watterson Teacher Carla Hale Reaches Agreement with Diocese*, NBC4I.COM, Aug. 15, 2013, available at <http://www.nbc4i.com/story/23148165/fired-bishop-watterson-teacher-carla-hale-reaches-agreement-with-diocese>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Tara Siegel Bernard, *Fired for Being Gay? Protections Are Piecemeal*, N.Y. TIMES, May 31, 2013, available at <http://www.nytimes.com/2013/06/01/your-money/protections-for-gays-in-workplace-are-piecemeal.html?pagewanted=1>.

<sup>31</sup> *Settlement, Koren v. Ohio Bell Tel. Co.*, No. 1:11CV02674 (N.D. Ohio Sept. 7, 2012).

<sup>32</sup> *Koren v. Ohio Bell Tel. Co.*, 894 F. Supp. 2d 1032, 1034 (N.D. Ohio 2012).

<sup>33</sup> *Id.* at 1034-35.

<sup>34</sup> *Settlement, Shari Hutchinson v. Cuyahoga Cnty. Bd. of Comm'rs, et al.*, No. 08-CV-02966, 2011 WL 7560489 (N.D. Ohio Sept. 28, 2011).

<sup>35</sup> *Id.*

<sup>36</sup> *Order Dismissing Case, Taylor v. H.B. Fuller Co.*, No. 1:06-cv-00854-MRB (S.D. Ohio Jan. 16, 2009).

<sup>37</sup> *Taylor v. H.B. Fuller Co.*, No. No. 06cv854, 2008 WL 4647690, at \*1 (S.D. Ohio Oct. 20, 2008).

<sup>38</sup> *Id.* at \*1-2.

<sup>39</sup> *Id.* at \*3.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at \*5-7.

<sup>42</sup> *Id.* at \*7-10.

<sup>43</sup> ADAM P. ROMERO, CLIFFORD J. ROSKY, M.V. LEE BADGETT & GARY GATES, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, CENSUS SNAPSHOT: OHIO 2 (2008), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Ohio2000CensusSnapshot.pdf>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> GARY J. GATES, CAL. CTR. FOR POP. RESEARCH, THE IMPACT OF SEXUAL ORIENTATION ANTI-DISCRIMINATION POLICIES ON THE WAGES OF LESBIANS AND GAY MEN (2009), <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2009-010/PWP-CCPR-2009-010.pdf>.

<sup>47</sup> ROMERO, ROSKY, BADGETT & GATES, *supra* note 43 at 2.

<sup>48</sup> *Id.*

<sup>49</sup> M.V. Lee Badgett, Holning Lau, Brad Sears & Deborah Ho, *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination 1998-2008*, 84 CHI.-KENT L. REV. 559, 559-60 (2009).

<sup>50</sup> *Id.*

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<sup>51</sup> See JEROME HUNT, CTR. AM. PROG. ACTION FUND, A STATE-BY-STATE EXAMINATION OF NONDISCRIMINATION LAWS AND POLICIES 4 (June 2012), available at [http://www.americanprogress.org/issues/2012/06/pdf/state\\_nondiscrimination.pdf](http://www.americanprogress.org/issues/2012/06/pdf/state_nondiscrimination.pdf).

<sup>52</sup> S.B. 77, 125th Gen. Assemb., (Ohio. 2003); H.B. 147, 125th Gen. Assemb., (Ohio. 2003); S.B. 331, 126th Gen. Assemb., (Ohio. 2005); H.B. 28, 126th Gen. Assemb., (Ohio. 2005); S.B. 305, 127th Gen. Assemb., (Ohio. 2007); H.B. 502, 127th Gen. Assemb., (Ohio. 2007); H.B. 176, 128th Gen. Assemb., (Ohio. 2009); H.B. 335, 129th Gen. Assemb., (Ohio. 2011); S.B. 231, 129th Gen. Assemb., (Ohio 2011).

<sup>53</sup> *Status Report of Legislation*, 128TH GENERAL ASSEMBLY, <http://lsc.state.oh.us/coderev/hou128.nsf/House+Bill+Number/0176?OpenDocument> (last visited Dec. 11, 2013).

<sup>54</sup> *Housing, Employment and Public Accommodations*, EQUALITY OHIO, <http://www.equalityohio.org/index.php/the-issues/housingemployment> (last visited Dec. 11, 2013).

<sup>55</sup> *ProgressOhio says Ohio lacks a law prohibiting employment and housing discrimination on the basis of sexual orientation*, POLITIFACTOHIO, <http://www.politifact.com/ohio/statements/2013/apr/02/progressohio/progressohio-says-ohio-lacks-law-prohibiting-emplo/> (Mar. 26, 2013).

<sup>56</sup> S.B. 125, 130th Gen. Assemb., (Ohio 2013); H.B. 163, 130th Gen. Assemb., (Ohio. 2013).

<sup>57</sup> *Status Report of Legislation*, 130TH GENERAL ASSEMBLY, <http://lsc.state.oh.us/coderev/sen130.nsf/Senate+Bill+Number/0125?OpenDocument> (last visited Dec. 11, 2013).

<sup>58</sup> *Status Report of Legislation*, 130TH GENERAL ASSEMBLY, <http://lsc.state.oh.us/coderev/hou130.nsf/House+Bill+Number/0163?OpenDocument> (last visited Dec. 11, 2013).

<sup>59</sup> OHIO REV. CODE ANN. § 4112 (West 2013).

<sup>60</sup> OHIO REV. CODE ANN. § 4112.01(A)(2) (West 2013).

<sup>61</sup> OHIO REV. CODE ANN. § 4112.02 (West 2013).

<sup>62</sup> OHIO REV. CODE ANN. § 4112.01(A)(2) (West 2013).

<sup>63</sup> OHIO REV. CODE ANN. § 4112.02(R) (West 2013).

<sup>64</sup> OHIO REV. CODE ANN. § 4112.04 (West 2013).

<sup>65</sup> OHIO REV. CODE ANN. § 4112.05(B) (West 2013).

<sup>66</sup> *Id.*

<sup>67</sup> OHIO REV. CODE ANN. § 4112.99 (West 2013).

<sup>68</sup> OHIO CIVIL RIGHTS COMM'N, 2012 ANNUAL REPORT, (2012).

<sup>69</sup> *Id.* at 12.

<sup>70</sup> ATHENS, OHIO, CODE § 3.07.62 (employment, public accommodations and housing) (2013).

<sup>71</sup> BOWLING GREEN, OHIO, CODE §§ 39 (employment, education, public accommodations); 153 (housing) (2009).

<sup>72</sup> CANTON, OHIO, CODE §§ 507 (public contracts); 515 (housing); 547 (private employment) (2012).

<sup>73</sup> CINCINNATI, OHIO, CODE §§ 325 (2013) (non-construction public contracts worth more than \$5,000); 914 (2006) (employment, housing, public accommodations).

<sup>74</sup> CLEVELAND, OHIO, CODE §§ 663 (employment); 665 (housing); 667 (public accommodations) (2009).

<sup>75</sup> COLUMBUS, OHIO, CODE §§ 2331.02 (housing); 2331.03 (employment); 2331.04 (public accommodations) (2008).

<sup>76</sup> COSHOCTON, OHIO, CODE § 159 (2007) (employment, housing and public accommodations).

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- <sup>77</sup> DAYTON, OHIO, CODE § 32.03 (2007) (employment, housing and public accommodations).
- <sup>78</sup> *Ohio Municipalities Chart*, EQUALITY OHIO, [http://www.equalityohio.org/images/PDFs/ohio\\_municipalities\\_chart.pdf](http://www.equalityohio.org/images/PDFs/ohio_municipalities_chart.pdf) (last visited Dec. 12, 2013).
- <sup>79</sup> NEWARK, OHIO, CODE §§ 632.01, 632.03 (2007) (employment, housing and public accommodations).
- <sup>80</sup> OXFORD, OHIO, CODE §§ 143.02 (housing); 143.03 (employment); 143.04 (public accommodations) (2008).
- <sup>81</sup> TOLEDO, OHIO, CODE §§ 554.02 (employment); 554.03 (real estate); 554.05 (public accommodations) (2012).
- <sup>82</sup> YELLOW SPRINGS, OHIO, CODE §§ 626 (housing); 632.01, 632.02 (employment) (2009).
- <sup>83</sup> Calculated by authors using data from the *American Community Survey, 2011 1-Year-Estimates & 5-Year-Estimates Tables*, U.S. CENSUS BUREAU, AMERICAN FACTFINDER, available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited December 12, 2013).
- <sup>84</sup> AKRON, OHIO, CODE §§ 34.03 (public contracts); 139.12 (housing) (2009); Akron, Ohio, Ordinance 514-2009 (Nov. 30, 2009) (public employment generally).
- <sup>85</sup> CLEVELAND HEIGHTS, OHIO, CODE §§ 144.02 (public employment); 749 (housing) (2009).
- <sup>86</sup> CUYAHOGA CNTY., OHIO, CHARTER § 12.07 (2010).
- <sup>87</sup> *Non-discrimination Policy*, FRANKLIN COUNTY HUMAN RESOURCES DEP'T, <https://www.franklincountyohio.gov/commissioners/hr/policies/non-discrimination-policy.cfm> (last visited Dec. 12, 2013).
- <sup>88</sup> GAHANNA, OHIO, CODE § 23.07 (2006).
- <sup>89</sup> HAMILTON, OHIO, CODE §§ 315.06 (nondiscrimination in police force hiring); 717.07 (granting permits or vending locations).
- <sup>90</sup> HAMILTON CNTY. BOARD OF CNTY. COMMISSIONERS, PERSONNEL POLICY MANUAL, § 6.1 (2013), *available at* <http://www.hamiltoncountyohio.gov/hr/PDF/BOCCPPM.pdf>.
- <sup>91</sup> *Ohio Municipalities Chart*, EQUALITY OHIO, [http://www.equalityohio.org/images/PDFs/ohio\\_municipalities\\_chart.pdf](http://www.equalityohio.org/images/PDFs/ohio_municipalities_chart.pdf) (last visited Dec. 12, 2013).
- <sup>92</sup> *Job Opportunities*, LIMA, OHIO OFFICIAL WEBSITE, <http://www.cityhall.lima.oh.us/index.aspx?nid=156> (last visited Dec. 13, 2013).
- <sup>93</sup> LUCAS COUNTY LAND BANK, CONTRACTOR PRE-QUALIFICATION VERIFICATION FORM, 5 (2012), *available at* [http://www.co.lucas.oh.us/documents/463/Contractor%20Pre-Qualify%20with%20\\_2.PDF](http://www.co.lucas.oh.us/documents/463/Contractor%20Pre-Qualify%20with%20_2.PDF) (neighborhood development contracts).
- <sup>94</sup> *Anti-Discrimination Ordinances*, AMER. CIVIL LIBERTIES UNION OF OHIO, (Aug. 2, 2012) <http://www.acluohio.org/issue-information/anti-discrimination-ordinances>.
- <sup>95</sup> OBERLIN, OHIO, CODE § 157.10 (2012).
- <sup>96</sup> SUMMIT CNTY., OHIO, CODE § 169.04 (2011).
- <sup>97</sup> WOOD CNTY., EMPLOYEE HANDBOOK, 5 (2011), *available at* <http://www.co.wood.oh.us/employee/handbook/2011%20Employee%20Handbook%2011-679.pdf>.
- <sup>98</sup> There are also an additional three localities that provide nondiscrimination laws that include housing, but not employment. They are: Lakewood (LAKEWOOD, OHIO, CODE § 516 (2010)), North Olmsted (NORTH OLMSTED, OHIO, CODE § 1901 (2000)) and Shaker Heights (SHAKER HEIGHTS, OHIO, CODE § 515 (2006)).
- <sup>99</sup> COLUMBUS, OHIO, CODE § 2331.01 (2008).

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<sup>100</sup> CLEVELAND, OHIO, CODE § 663.04 (2009).

<sup>101</sup> OHIO REV. CODE ANN. § 4112.01(A)(2) (West 2013).

<sup>102</sup> CINCINNATI, OHIO, CODE § 914-1-E1 (2013).

<sup>103</sup> YELLOW SPRINGS, OHIO, CODE § 632.02(e) (2009).

<sup>104</sup> CINCINNATI, OHIO, CODE § 914-15 (2013).

<sup>105</sup> COLUMBUS, OHIO, CODE § 2331.02(B) (2008).

<sup>106</sup> OHIO REV. CODE ANN. § 4112.05 (West 2013).

<sup>107</sup> *Id.* § 4112.99.

<sup>108</sup> A local ordinance's vulnerability may depend upon the state's interpretation of the power of localities to legislate. Many states follow Dillon's Rule, which holds that a locality's powers are limited to those expressly granted by the state, implied by those powers granted or indispensable to the locality's purposes. In those states, unless there has been a clear grant of authority through the state constitution or by the state legislature, local nondiscrimination ordinances may be found to have extended beyond the locality's legislative power. On the other hand, other states follow Home Rule, which grants localities legislative authority "as broad as the police power of the state, except as that power may be restricted by terms of the grant or by the state constitution." *D.C. v. John R. Thompson Co.*, 346 U.S. 100, 109 (1953). In states that follow Home Rule, unless there is an explicit restriction against localities establishing local nondiscrimination ordinances, each locality will have the authority to establish broad nondiscrimination ordinances as they see fit. Many states follow a combination of Dillon's Rule and Home Rule. In those states, the default rule is Dillon's Rule, limiting the power of localities; however, the state may also authorize localities to write their own Home Rule charters, which will then allow those localities to have the same broad police powers that the state does, limited only by the restraints that the locality places upon itself in their charter.

Ohio is a home rule state. Ohio Const. art. XVIII, § 3. The state constitution grants municipalities "authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." The state supreme court has held that ordinances that "affect[] only the municipality itself, with no extra-territorial effects," are not in conflict with general laws. *Vill. of Beachwood v. Bd. of Elections of Cuyahoga Cnty.*, 148 N.E.2d 921, 923 (1958). Using this reasoning, the Ohio Court of Appeals has upheld a local domestic partnership registry, holding that it was "a matter of local self-government." *Cleveland Hts. ex rel. Hicks v. Cleveland Hts.*, 832 N.E.2d 1275, 1278 (Ohio Ct. App. 2005).

<sup>109</sup> *Corporate Employer Database*, HUMAN RIGHTS CAMPAIGN, [http://asp.hrc.org/issues/workplace/search.asp?form=private\\_detailed\\_search.aspx](http://asp.hrc.org/issues/workplace/search.asp?form=private_detailed_search.aspx) (last visited Dec. 13, 2013) (search for Headquarters State: Ohio; Key Policies: Sexual Orientation in Non-discrimination Policy; and Includes Policy: Yes).

<sup>110</sup> *Corporate Employer Database*, HUMAN RIGHTS CAMPAIGN, [http://asp.hrc.org/issues/workplace/search.asp?form=private\\_detailed\\_search.aspx](http://asp.hrc.org/issues/workplace/search.asp?form=private_detailed_search.aspx) (last visited Dec. 13, 2013) (search for Headquarters State: Ohio; Key Policies: Gender Identity in Non-discrimination Policy; and Includes Policy: Yes).

<sup>111</sup> Exec. Order No. 2011-05K (2011), *available at* <http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/EO2011-05.pdf>. The previous governor of Ohio had prohibited discrimination in Cabinet agencies and State of Ohio Boards and Commissions based on both sexual orientation and gender identity for the first time in Ohio history. Exec. Order No. 2007-10S (2007), *available at* <http://epa.ohio.gov/Portals/36/documents/Executive%20Order%202007-10S.pdf>.

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<sup>112</sup> M.V. LEE BADGETT, CHRISTOPHER RAMOS & BRAD SEARS, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, EVIDENCE OF EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY: COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES 1999-2007 (2008), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Ramos-Empl-Discrim-1999-2007-Nov-08.pdf>; William B. Rubenstein, *Do Gay Rights Laws Matter?: An Empirical Assessment*, 75 S. CAL. L. REV. 66, 79-81 (2001).

<sup>113</sup> BADGETT, RAMOS, & SEARS, *supra* note 112.

<sup>114</sup> CHRISTY MALLORY, SARAH LIEBOWITZ & AMIRA HASENBUSH, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN MISSOURI (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/MissouriNDReport-Nov-2013.pdf>; AMIRA HASENBUSH & CHRISTY MALLORY, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN PENNSYLVANIA (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/PennsylvaniaNDReport-Nov-2013.pdf>; CHRISTY MALLORY & GREGORY K. DAVIS, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN SOUTH CAROLINA (forthcoming 2014); NAOMI G. GOLDBERG, M.V. LEE BADGETT, & CHRISTOPHER RAMOS, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, THE IMPACT OF EMPLOYMENT NON-DISCRIMINATION LEGISLATION IN SOUTH DAKOTA (2010), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Goldberg-Badgett-Ramos-SouthDakota-ENDA-Jan-2010.pdf>; CHRISTY MALLORY & M.V. LEE BADGETT, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, ADMINISTRATIVE IMPACT OF ADDING SEXUAL ORIENTATION AND GENDER IDENTITY TO TEXAS'S EMPLOYMENT NON-DISCRIMINATION LAW (2012), [http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory\\_Badgett\\_TX\\_Workplace\\_Dec-2012.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory_Badgett_TX_Workplace_Dec-2012.pdf); CHRISTY MALLORY & SARAH LIEBOWITZ, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN UTAH (forthcoming 2014); CHRISTY MALLORY, SARAH LIEBOWITZ & AMIRA HASENBUSH, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN WEST VIRGINIA (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/WestVirginiaNDReport-Dec-2013.pdf>.

<sup>115</sup> Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP, Feb. 15, 2013, <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>.

<sup>116</sup> *American Community Survey, 2011 ACS Table DP03: Selected Economic Characteristics, 5-Year Estimates*, U.S. CENSUS BUREAU AMERICAN FACT FINDER, *available at* [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_11\\_5YR\\_DP03](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_5YR_DP03).

<sup>117</sup> "National average" refers to the average of the complaint rates in 17 states across the country that prohibited sexual orientation discrimination in 2008. BADGETT, RAMOS & SEARS, *supra* note 112.

<sup>118</sup> The data gathered for the 2008 study included all employment discrimination complaints filed on the basis of sexual orientation; it was not limited to complaints filed by LGB employees. Heterosexual employees may also file complaints under sexual orientation non-discrimination laws if they were discriminated against because of their heterosexuality or because they were perceived to be LGB. However, we use the LGB workforce as the underlying population for purposes of our analysis because LGB employees likely file the vast majority of sexual orientation discrimination complaints. See Rubenstein, *supra* note 112.

<sup>119</sup> BADGETT, RAMOS & SEARS, *supra* note 112, at 5.

<sup>120</sup> OHIO CIVIL RIGHTS COMM'N, 2012 ANNUAL REPORT, (2012).

<sup>121</sup> *Id.* at 10, 12.

<sup>122</sup> *Id.* at 25.