

Employment Discrimination Based on Sexual Orientation and Gender Identity in Pennsylvania



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Amira Hasenbush and Christy Mallory

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Executive Summary

More than four percent of the American workforce identifies as lesbian, gay, bisexual, or transgender (LGBT). Approximately 174,000 of these workers live in Pennsylvania. Pennsylvania does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in employment.¹

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 Pennsylvania, and estimates the administrative impact of passing a law prohibiting employment discrimination based on these characteristics in Pennsylvania.

Key findings of this report include:

- In total there are approximately 276,000 LGBT adults in Pennsylvania², including over 174,000 who are part of the Pennsylvania workforce.
- Lawsuits document that a number of Pennsylvania employees have faced discrimination because of their sexual orientation or gender identity; these include reports from a teacher, a state prison guard and a factory worker.
- Disparities in wages are also a traditional way that discrimination has been measured. Census data show that in Pennsylvania, the median income of men in same-sex couples is almost 20% lower than men in different sex marriages.
- Campus climate surveys from Pennsylvania universities also reflect negative attitudes toward LGBT people. A 2011 survey at Penn State, University Park found that 49% of LGBT students surveyed reported hiding their sexual orientation or gender identity at least some of the time to avoid harassment. Additionally, a 2012 campus climate survey at Bloomsburg University found that the most common basis for behavior that created an exclusionary, intimidating, offensive, and/or hostile working or learning environment was sexual orientation.
- 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.
- Currently, 33 localities in Pennsylvania provide protection from sexual orientation and gender identity employment discrimination by local ordinance.

- Approximately 69% of Pennsylvania’s workforce is not covered by a local ordinance that prohibits employment discrimination based on sexual orientation or gender identity.
- Even Pennsylvanians who live in localities with such local ordinances are not always as protected as they would be by state law. Some localities offer more explicit or extensive protection for gender identity than others. Moreover, Pennsylvania state law provides stronger remedies than some local ordinances.
- 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 82 additional complaints being filed with the Pennsylvania Human Relations Commission each year.
- Enforcing complaints of sexual orientation or gender identity discrimination is likely to have no impact or a negligible impact on the state budget. Estimates that include the highest possible figures indicate that the additional complaints could cost up to \$228,000 annually; which represents 2.4% of the Pennsylvania Human Relations Commission’s budget in fiscal year 2011-2012.

Evidence of Discrimination

Survey Data and Specific Examples of Sexual Orientation and Gender Identity Discrimination in Pennsylvania

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.³ 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.⁴ 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.⁵

Campus climate surveys from Pennsylvania universities also reflect negative attitudes that can result in discrimination against LGBT people. A 2011 survey at Penn State, University Park, the largest campus in the state, found that 57.4% of a randomly sampled group of students and 77.3% of a purposefully sampled group of LGBT students reported hearing insensitive or disparaging remarks because of someone’s sexual orientation.⁶ Additionally, 49% of the purposely sampled group of LGBT students reported hiding their sexual orientation or gender identity at least some of the time to avoid harassment.⁷ A 2012 campus climate survey at Bloomsburg University found that nearly 30% of respondents had reported seeing conduct towards someone on campus that “created an exclusionary,

intimidating, offensive, and/or hostile working or learning environment.”⁸ Of those respondents, the most common basis for the behavior was sexual orientation, which was reported in 23% of the occurrences observed.⁹

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.¹⁰

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

- In 2010, a fifth grade teacher at a private school was fired after her son came out as gay.¹¹ The school suspended her son after they learned of his sexual orientation and terminated her at the end of the academic year when she refused to take a year-long medical leave of absence.¹²
- In 2010, the State of Pennsylvania settled a case brought by a state prison guard who was discriminated against because he was perceived to be gay.¹³ Other guards subjected the victim to rumors, innuendo, and other ill treatment based on their perception of his sexual orientation.
- In 2009, a federal appellate court held that a Pennsylvania factory worker had a plausible claim for sex stereotyping discrimination, but dismissed all claims with respect to sexual orientation, because he had no legal protection for discrimination based on sexual orientation.¹⁴ He was allegedly verbally harassed and alienated by co-workers for seven years before being laid off by his company because of his effeminacy and sexual orientation.¹⁵
- In 2008, a transgender applicant for a state agency database analyst position was not hired because of his gender identity.¹⁶

Wage Inequity

Census data show that men in same-sex couples in Pennsylvania earn less than men married to different-sex partners. On average, men in same-sex couples in Pennsylvania earn \$37,916 each year, significantly less than the \$48,706 for men married to different-sex partners.¹⁷ The median income of men in same-sex couples in Pennsylvania is \$31,000, or almost 20% less than that of married men (\$38,500).¹⁸ 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,¹⁹ 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.²⁰

Women in same-sex couples earn less than married men as well as men in same-sex couples.²¹ Women in same-sex couples in Pennsylvania earn an average of \$35,474 per year (with a median of \$29,000), which is more than married women, whose earnings average \$25,200 (with a median of \$20,100).²²

These findings are not unique to Pennsylvania. 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.²³ Surveys of transgender people find that they have high rates of unemployment and very low earnings.²⁴

Current Protections from Discrimination

Pennsylvania does not have a statewide law that prohibits discrimination based on sexual orientation and/or gender identity in private employment.²⁵ Efforts were made to pass such a law in the Pennsylvania House of Representatives in 2009 and 2011 and in the Pennsylvania Senate in 2011.²⁶ In August 2013, the Pennsylvania House and Senate introduced similar bills, H.B. 300 and S.B. 300.²⁷ Both bills have been referred to their respective State Government Committees.²⁸ Through these bills, the Pennsylvania Legislature 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 Pennsylvania Human Relations Act (PHRA).²⁹

The Pennsylvania Human Relations Act

Currently, the PHRA prohibits employment discrimination by any employer with more than four employees³⁰ on the bases of race, color, familial status, religious creed, ancestry, handicap or disability (including use of guide or support animals), age, sex, and national origin.³¹ The PHRA applies to both public sector and private sector employers.³²

The PHRA exempts religious corporations or associations from coverage to the extent that such organizations may give employment preference “on the basis of sex in those certain instances where sex is a bona fide occupational qualification because of the religious beliefs, practices, or observances” of the organization.³³ Additionally, religious organizations (including charitable and education organizations operated in connection with a religious organization) may give hiring preference to “persons of the same religion or denomination or...to promote the religious principles...for which it is established or maintained.”³⁴

The Pennsylvania Human Relations Commission (PHRC) enforces the PHRA. The PHRC has the power to intake, investigate, and prosecute specific instances of employment discrimination, and to study and report on discrimination statewide.³⁵ An employee must file a complaint with the Commission within 180 days after the discriminatory practice occurred.³⁶

During the fiscal year 2011-2012, the PHRC received 3,414 new complaints of employment discrimination, resulting in 2,341 docketed cases for which an investigation was pursued.³⁷ Cases found to be non-jurisdictional, filed in error or withdrawn prior to an investigation are not included in this number. The PHRC also does intake and investigations regarding claims of discrimination in housing, public accommodations, education and commercial property, although this represents a small proportion of the PHRC’s complaints each year (14% in fiscal year 2011-2012).³⁸

Local-Level and Private Protections from Discrimination

Thirty-three localities in Pennsylvania explicitly prohibit private and/or public sector employment discrimination based on sexual orientation and gender identity by local ordinance. They are: the boroughs of Bristol,³⁹ Conshohocken,⁴⁰ Doylestown,⁴¹ Jenkintown,⁴² Lansdowne,⁴³ New Hope,⁴⁴ Newtown,⁴⁵ State College,⁴⁶ Swarthmore⁴⁷ and West Chester,⁴⁸ the cities of Allentown,⁴⁹ Bethlehem,⁵⁰ Easton,⁵¹ Erie,⁵² Harrisburg,⁵³ Lancaster,⁵⁴ Philadelphia,⁵⁵ Pittsburg,⁵⁶ Pittston,⁵⁷ Reading,⁵⁸ Scranton⁵⁹ and York,⁶⁰ the townships of Abington,⁶¹ Cheltenham,⁶² East Norriton,⁶³ Haverford,⁶⁴ Lower Merion,⁶⁵ Springfield,⁶⁶ Susquehanna,⁶⁷ Upper Merion,⁶⁸ Whitemarsh⁶⁹ and the counties of Allegheny⁷⁰ and Erie.⁷¹ Approximately 69% of Pennsylvania's workforce is not covered by a local ordinance that prohibits discrimination based on sexual orientation and gender identity.⁷²

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 Philadelphia will investigate complaints that are filed within 300 days of the date of the alleged discrimination,⁷³ complainants in many other localities, including Allegheny County,⁷⁴ Erie County⁷⁵ and Allentown⁷⁶ only have 180 days to file a complaint. Also, while most municipalities explicitly include sexual orientation and gender identity as protected classes in their laws, certain places, like Harrisburg⁷⁷ and Erie County⁷⁸ only include some explanation of gender identity within the definition of sex or sexual orientation, leaving the law open to potential arguments that there may be holes in the actual coverage for transgender individuals. Also, the remedies available to aggrieved people vary. For example, Allentown does not authorize their enforcement body, the local Human Relations Commission, to provide punitive damages to complainants,⁷⁹ and Philadelphia caps punitive damages at \$2,000,⁸⁰ while Allegheny County,⁸¹ Erie County⁸² and Allentown⁸³ provide for compensation as allowed in the Commonwealth of Pennsylvania's Human Relations Act, which does not specify a cap on punitive damages.⁸⁴ In addition to the concerns about the patchwork of laws that exists, local ordinances may potentially be subject to legal challenges.⁸⁵

Some of Pennsylvania'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 139 companies headquartered in Pennsylvania prohibit discrimination based on sexual orientation, including 37 Fortune 1000 companies,⁸⁶ and at least 40 companies headquartered in Pennsylvania prohibit discrimination based on gender identity.⁸⁷ Additionally, all state agencies that are under the governor's jurisdiction are prohibited from discriminating in hiring or employment based on sexual orientation, gender identity or gender expression.⁸⁸

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.⁸⁹ 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.⁹⁰

We estimate that approximately 82 complaints of sexual orientation or gender identity discrimination would be filed with the Pennsylvania Human Relations Commission each year. To reach this estimate, we drew on Gallup polling data and Census data from Pennsylvania 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, South Carolina, South Dakota, Texas, Utah, and West Virginia.⁹¹

Results from a 2012 Gallup poll show that 2.7% of people in Pennsylvania identify as LGBT.⁹² Applying this percentage to the number of people in Pennsylvania's workforce (6,456,527⁹³) indicates that there are 174,326 LGBT workers in Pennsylvania.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in Pennsylvania 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.⁹⁴ 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 LGBT workers.⁹⁵ There is not sufficient data to make a similar calculation of the average rate of complaints filed on the basis of gender identity.⁹⁶ 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 Pennsylvania (174,326) suggests that 82 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 Pennsylvania Line Item Budget (fiscal year 2011-2012),⁹⁷ we can estimate the cost associated with handling the additional 82 complaints that would be filed if sexual orientation and gender identity were added to the Pennsylvania Human Relations Act.

In fiscal year 2011-2012, the Pennsylvania Human Relations Commission launched investigations of 3,988 illegal discrimination complaints, 3,414 of which were employment discrimination complaints.⁹⁸ That year, the Commonwealth of Pennsylvania allocated the PHRC a budget of \$9,491,000.⁹⁹ Dividing

the PHRC's budget by the number of complaints received suggests that enforcement costs an average of \$2,780 per complaint filed. Based on this assumption, if 82 complaints of sexual orientation or gender identity discrimination were filed each year, it would cost the state approximately \$228,000, or 2.4% of its current budget, to enforce them.

This estimate is likely to be conservatively high. Annual fluctuations in the number of complaints filed with the Commission have been greater than 82. From fiscal year 2008-2009 to fiscal year 2011-2012, the number of complaints filed from year to year varied by 510, on average. There was no corresponding impact on the Commission's budget. This information suggests that the additional complaints could be absorbed into the existing budget with no noticeable impact on the budget.

Fiscal Year	Number of Complaints Handled	Budget
2008-2009	3,922 ¹⁰⁰	\$10,623,000 ¹⁰¹
2009-2010	3,922 ¹⁰²	\$ 10,262,000 ¹⁰³
2010-2011	3,190 ¹⁰⁴	\$ 9,780,000 ¹⁰⁵
2011-2012	3,988 ¹⁰⁶	\$9,491,000 ¹⁰⁷

Conclusion

Documented evidence shows that LGBT people face employment discrimination across the country, including in Pennsylvania. There is currently no law that prohibits employment discrimination based on sexual orientation or gender identity in Pennsylvania. Adding these characteristics to the Pennsylvania Human Relations Act would provide protection from discrimination to approximately 174,000 LGBT workers in the state. Based on data from other state administrative enforcement agencies, we estimate that approximately 82 complaints of sexual orientation or gender identity employment discrimination would be filed in Pennsylvania annually if the law were amended. A conservatively high estimate based on data from the Pennsylvania Human Relations Commission suggests that it would cost the state approximately \$228,000 to enforce these complaints each year; which represents 2.4% of the Pennsylvania Human Relations Commission's budget in fiscal year 2011-2012. This amount represents a small percentage of the Commission's 2011-2012 budget; and given fluctuations in the annual budget and the number of complaints filed, it is likely that 82 additional complaints would have no noticeable impact on the Commission's budget.

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.

For more information

The Williams Institute, UCLA School of Law

Box 951476

Los Angeles, CA 90095-1476

(310)267-4382

williamsinstitute@law.ucla.edu

www.law.ucla.edu/williamsinstitute

Endnotes

¹ The Pennsylvania Human Relations Act prohibits employment discrimination based on race, color, sex, age, national origin, ancestry, familial status, religious creed and disability. 43 PA. CONS. STAT. ANN. § 953 (West 2013).

² This estimate was reached by applying the percentage of people in Pennsylvania that are LGBT (2.7%) to the population of Pennsylvania aged 16 years and older (10,209,810). 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.

³ *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/>.

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

⁵ 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.

⁶ PENN STATE PULSE DIVISION OF STUDENT AFFAIRS, SEXUAL ORIENTATION AND GENDER IDENTITY, 5 (Fall 2011), available at <http://studentaffairs.psu.edu/assessment/pdf/167.pdf>.

⁷ *Id.*

⁸ Heather Feldhaus et al., Bloomsburg Univ. of Pa., *The Campus Climate at Bloomsburg University: A Snapshot From 2012*, 40 (Fall 2013), available at <http://www.bloomu.edu/documents/president/CampusClimateReport.pdf>.

⁹ *Id.* at 41.

¹⁰ SEARS & MALLORY, *supra* note 4.

¹¹ Erin McAuley, *Mom Whose Gay Son Came Out Claims Christian School Fired Her*, COURTHOUSE NEWS SERVICE, June 26, 2012, <http://www.courthousenews.com/2012/06/26/47810.htm>.

¹² *Id.*

¹³ *Pa. Prison Guard Settles Sex Perception Bias Suit*, CBS3, May 6, 2010, <http://cbs3.com/wireapnewspa/Western.Pa.prison.2.1678589.html> (last visited May 12, 2010).

¹⁴ *Prowel v. Wise Business Forms*, 579 F.3d 285, 293 (3rd Cir. 2009).

¹⁵ *Id.* at 287-88.

¹⁶ E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute). This incident is especially notable, because it was in direct violation of the governor's executive order, which prohibited employment discrimination in state government agencies based on sexual orientation and gender identity. Pa. Exec. Order No. 2003-10 (July 28, 2003), available at http://www.portal.state.pa.us/portal/server.pt?open=512&objID=708&PageID=224602&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/cop_general_government_operations/oa/oa_portal/omd/p_and_p/executive_orders/2000_2009/items/2003_10_equal_employment_opportunity.html.

¹⁷ ADAM P. ROMERO, AMANDA K. BAUMLE, M.V. LEE BADGETT & GARY GATES, CENSUS SNAPSHOT: PENNSYLVANIA 2 (2007), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/PennsylvaniaCensus2000Snapshot.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 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>.

²¹ ROMERO, BAUMLE, BADGETT & GATES, *supra* note 13 at 2.

²² *Id.*

²³ 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).

²⁴ *Id.*

²⁵ 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.

²⁶ H.B. 300, 2009 Gen. Assemb., Reg. Sess. (Pa. 2009); H.B. 300, 2011 Gen. Assemb. (Pa. 2011); S.B. 910, 2011 Gen. Assemb., Reg. Sess. (Pa. 2011); S.B. 1050, 2011 Gen. Assemb., Reg. Sess. (Pa. 2011).

²⁷ H.B. 300, 2013 Gen. Assemb., Reg. Sess. (Pa. 2013); S.B. 300, 2013 Gen. Assemb., Reg. Sess. (Pa. 2013).

²⁸ *Id.* See also *Bill Information House Bill 300*, PENNSYLVANIA GENERAL ASSEMBLY, <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2013&ind=0&body=H&type=B&BN=300> (last visited September 17, 2013); *Bill Information Senate Bill 300*, PENNSYLVANIA GENERAL ASSEMBLY, <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2013&ind=0&body=S&type=B&BN=300> (last visited September 17, 2013) (both include most recent information on the Bill).

²⁹ 43 PA. CONS. STAT. ANN. § 953 (West 2013).

³⁰ 43 PA. CONS. STAT. ANN. § 954(b) (West 2013).

³¹ 43 PA. CONS. STAT. ANN. § 953 (West 2013).

³² 43 PA. CONS. STAT. ANN. § 954(b) (West 2013).

³³ 43 PA. CONS. STAT. ANN. § 955(a) (West 2013).

³⁴ 43 PA. CONS. STAT. ANN. § 955(h)(10) (West 2013).

³⁵ 43 PA. CONS. STAT. ANN. § 959 (West 2013).

³⁶ *File a Complaint*, PENNSYLVANIA HUMAN RELATIONS COMMISSION, http://www.phrc.state.pa.us/portal/server.pt/community/file_a_complaint/18976 (last visited September 18, 2013).

³⁷ PA. HUMAN RELATIONS COMM'N, 2011-2012 ANNUAL REPORT, 6, 15 (2013), available at http://www.portal.state.pa.us/portal/server.pt/community/publications___faq/18983/annual_report/709209.

³⁸ *Id.*

³⁹ BRISTOL BOROUGH, PA., CODE §§ 1-421.1; 1-421.2; 1-423.C (2013). See also Josh Middleton, *Bristol Passes LGBT Non-Discrimination Ordinance*, PHILLY MAGAZINE, Sept. 10, 2013 <http://www.phillymag.com/g-philly/2013/09/10/bristol-passes-lgbt-non-discrimination-ordinance/>.

⁴⁰ CONSHOHOCKEN BOROUGH, PA., CODE §§ 6-702; 6-703 (2011).

⁴¹ DOYLESTOWN BOROUGH, PA., CODE §§ 1-357; 1-358 (2010).

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- ⁴² JENKINTOWN BOROUGH, PA., CODE §§ 47-2; 47-3; 47-10 (2011).
- ⁴³ LANSDOWNE BOROUGH, PA., CODE §§ 38-1A; 38-3 (2006).
- ⁴⁴ NEW HOPE BOROUGH, PA., CODE §§ 129-1 – 129-4 (2002).
- ⁴⁵ NEWTOWN BOROUGH, PA., CODE §§ 97.1; 97.2 (2011), *available at* https://imageserv.team-logic.com/mediaLibrary/466/Anti-discrimination_1.pdf.
- ⁴⁶ STATE COLLEGE BOROUGH, PA., CODE §§ 5-901; 5-902; 5-903 (2007).
- ⁴⁷ SWARTHMORE BOROUGH, PA., CODE §§ 207.01 – 207.05 (2006).
- ⁴⁸ WEST CHESTER BOROUGH, PA., CODE §37A-1 (2006).
- ⁴⁹ ALLENTOWN, PA., CODE §181.02(6) (2002).
- ⁵⁰ *See* Daryl Nerl, *Council Adopts Civil Rights Law*, BETHLEHEM PATCH, June 22, 2011, <http://bethlehem.patch.com/groups/politics-and-elections/p/council-adopts-civil-rights-law>.
- ⁵¹ EASTON, PA., CODE §79-2A (2006).
- ⁵² ERIE, PA., CODE §79-2A (2006).
- ⁵³ HARRISBURG, PA., CODE §§ 4-101.2; 4-101.6 (1983).
- ⁵⁴ LANCASTER, PA., CODE §§125-4; 125-8 (2002).
- ⁵⁵ PHILA., PA., CODE §9-1103 (2002).
- ⁵⁶ PITTSBURG, PA., CODE §§ 651.04; 659.02 (1997).
- ⁵⁷ *See* *Pittston Adopts Nondiscrimination Ordinance*, PA. STUDENT EQUAL. COAL., May 28, 2013, <http://pennsec.org/pittston-ordinance/>.
- ⁵⁸ READING, PA., CODE §23-506 (2009).
- ⁵⁹ SCRANTON, PA., CODE §296-3 (2003).
- ⁶⁰ YORK, PA., CODE §185.05 (1998).
- ⁶¹ ABINGTON TWP., PA., CODE §99-3 (2012).
- ⁶² CHELTENHAM TWP., PA., CODE §26-2(B) (2012).
- ⁶³ EAST NORRITON TWP., PA., CODE §11A-3 (2012).
- ⁶⁴ HAVERFORD TWP., PA., CODE §183-2 (2011).
- ⁶⁵ LOWER MERION TWP., PA., CODE §93-2 (2010).
- ⁶⁶ SPRINGFIELD TWP., PA., CODE §47-3A (2011).
- ⁶⁷ SUSQUEHANNA TWP., PA., CODE ch. 1 p. 12 §1-1202 (2011).
- ⁶⁸ UPPER MERION TWP., PA., CODE ch. 101 §100-2 (2012), *available at* <http://sarapennsylvania.org/wp-content/uploads/2013/03/Upper-Merion-Ord-2012-808.pdf>.
- ⁶⁹ WHITEMARSH TWP., PA., CODE §3-55.1 (2011).
- ⁷⁰ ALLEGHENY CNTY., PA., CODE §215-32 (2009).
- ⁷¹ ERIE CNTY., PA., ORD. §39-IV (2007).

⁷² 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 September 12, 2013).

⁷³ PHILA., PA., CODE §9-1112(3) (2002).

⁷⁴ ALLEGHENY CNTY., PA., CODE §215-37(B) (2009).

⁷⁵ ERIE CNTY., PA., ORD. §39-VI(N) (2007).

⁷⁶ ALLENTOWN, PA., CODE §181.08(A)(3) (2002).

⁷⁷ HARRISBURG, PA., CODE § 4-101.6 (1983) (“Sex - The gender, male or female, of a person, including those persons who are changing or have changed their sex.”).

⁷⁸ ERIE CNTY., PA., ORD. §39-IV(FF) (2007) (“‘Sexual Orientation’ means male or female heterosexuality, homosexuality, bisexuality, or any other gender identity, excluding any activity of a sexual nature prohibited by Title 18 of the Pennsylvania Consolidated Statutes or any other law of the Commonwealth of Pennsylvania.”).

⁷⁹ ALLENTOWN, PA., CODE §181.08(G) (2002).

⁸⁰ PHILA., PA., CODE § 9-1105(1)(d) (2002).

⁸¹ ALLEGHENY CNTY., PA., CODE §215-37(I) (2009).

⁸² ERIE CNTY., PA., ORD. §39-VI(L) (2007)

⁸³ ALLENTOWN, PA., CODE §181.08(G) (2002).

⁸⁴ The Third Circuit affirmed a lower court’s award of \$750,000 under the Commonwealth of Pennsylvania’s Human Relations Act. *Griffiths v. Cigna Corp.*, 60 F.3d 814 (3d Cir. 1995) *aff’g* 857 F. Supp. 399 (E.D. Pa. 1994).

⁸⁵ 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.

Pennsylvania follows both Dillon’s Rule (*Warner Cable Commc'ns Inc. v. Borough of Schuylkill Haven*, 784 F. Supp. 203, 211 (E.D. Pa. 1992)) and Home Rule (PA. CONST. art. IX, § 2). At least nine of the thirty-three localities that have nondiscrimination laws that cover sexual orientation and gender identity have their own Home Rule charters. Additionally, under legislatively granted authority, the Pennsylvania Human Relations Act gives local legislatures “authority to grant to local commissions powers and duties similar to those now exercised by the Pennsylvania Human Relations Commission under the provisions of this act.” 43 PA. STAT. ANN. § 962.1 (West 2013).

⁸⁶ *Corporate Employer Database*, HUMAN RIGHTS CAMPAIGN, http://asp.hrc.org/issues/workplace/search.asp?form=private_detailed_search.aspx (last visited September 18, 2013) (search for Headquarters State: Pennsylvania; Key Policies: Sexual Orientation in Non-discrimination Policy; and Includes Policy: Yes).

⁸⁷ *Corporate Employer Database*, HUMAN RIGHTS CAMPAIGN, http://asp.hrc.org/issues/workplace/search.asp?form=private_detailed_search.aspx (last visited September 18, 2013) (search for Headquarters State: Pennsylvania; Key Policies: Gender Identity in Non-discrimination Policy; and Includes Policy: Yes).

⁸⁸ 4 PA. CONS. STAT. ANN. § 1.161 (West 2013).

⁸⁹ M.V. LEE BADGETT, CHRISTOPHER RAMOS & BRAD SEARS, WILLIAMS INST., 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-Emply-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).

⁹⁰ BADGETT, RAMOS, & SEARS, *supra* note 88.

⁹¹ CHRISTY MALLORY & SARAH LIEBOWITZ, THE WILLIAMS INST., EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN MISSOURI (forthcoming 2013); NAOMI G. GOLDBERG, M.V. LEE BADGETT, & CHRISTOPHER RAMOS, WILLIAMS INST., 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 & GREGORY K. DAVIS, THE WILLIAMS INST., EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN SOUTH CAROLINA (forthcoming 2013); CHRISTY MALLORY & M.V. LEE BADGETT, WILLIAMS INST., 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; CHRISTY MALLORY & SARAH LIEBOWITZ, THE WILLIAMS INST., EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN UTAH (forthcoming 2013); CHRISTY MALLORY & SARAH LIEBOWITZ, THE WILLIAMS INST., EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN WEST VIRGINIA (forthcoming 2013).

⁹² 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>.

⁹³ *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.

⁹⁴ "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 88.

⁹⁵ 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 88.

⁹⁶ BADGETT, RAMOS & SEARS, *supra* note 88, at 5.

⁹⁷ PA. OFFICE OF THE BUDGET, 2011-2012 ENACTED BUDGET LINE ITEM APPROPRIATIONS 1 (2011), *available at* http://www.portal.state.pa.us/portal/server.pt/community/past_budgets/4571.

⁹⁸ PA. HUMAN RELATIONS COMM'N, 2011-2012 ANNUAL REPORT, 6 (2013), *available at* http://www.portal.state.pa.us/portal/server.pt/community/publications___faq/18983/annual_report/709209.

⁹⁹ PA. OFFICE OF THE BUDGET, 2011-2012 ENACTED BUDGET LINE ITEM APPROPRIATIONS 1 (2011), *available at* http://www.portal.state.pa.us/portal/server.pt/community/past_budgets/4571.

¹⁰⁰ PA. HUM. RELATIONS COMM'N, 2008-2009 ANNUAL REPORT, 7 (2010), *available at* http://www.portal.state.pa.us/portal/server.pt/community/publications___faq/18983/annual_report/709209.

¹⁰¹ PA. OFFICE OF THE BUDGET, 2009-2010 ENACTED BUDGET LINE ITEM APPROPRIATIONS 1 (2009), *available at* http://www.portal.state.pa.us/portal/server.pt/community/past_budgets/4571.

¹⁰² PA. HUM. RELATIONS COMM'N, 2009-2010 ANNUAL REPORT, 11 (2011), *available at* http://www.portal.state.pa.us/portal/server.pt/community/publications___faq/18983/annual_report/709209.

¹⁰³ PA. OFFICE OF THE BUDGET, 2010-2011 ENACTED BUDGET LINE ITEM APPROPRIATIONS 1 (2010), *available at* http://www.portal.state.pa.us/portal/server.pt/community/past_budgets/4571.

¹⁰⁴ PA. HUM. RELATIONS COMM'N, 2010-2011 ANNUAL REPORT, 6 (2012), *available at* http://www.portal.state.pa.us/portal/server.pt/community/publications___faq/18983/annual_report/709209.

¹⁰⁵ PA. OFFICE OF THE BUDGET, 2011-2012 ENACTED BUDGET LINE ITEM APPROPRIATIONS 1 (2011), *available at* http://www.portal.state.pa.us/portal/server.pt/community/past_budgets/4571.

¹⁰⁶ PA. HUM. RELATIONS COMM'N, 2011-2012 ANNUAL REPORT, 6 (2013), *available at* http://www.portal.state.pa.us/portal/server.pt/community/publications___faq/18983/annual_report/709209.

¹⁰⁷ *Pa. Office of the Budget*, 2012-2013 ENACTED BUDGET LINE ITEM APPROPRIATIONS 1 (2012), *available at* http://www.portal.state.pa.us/portal/server.pt/community/past_budgets/4571.