

The Impact of Extending Sexual Orientation and Gender Identity Non-Discrimination Requirements to Federal Contractors



the
Williams
INSTITUTE

By M.V. Lee Badgett
February 2012

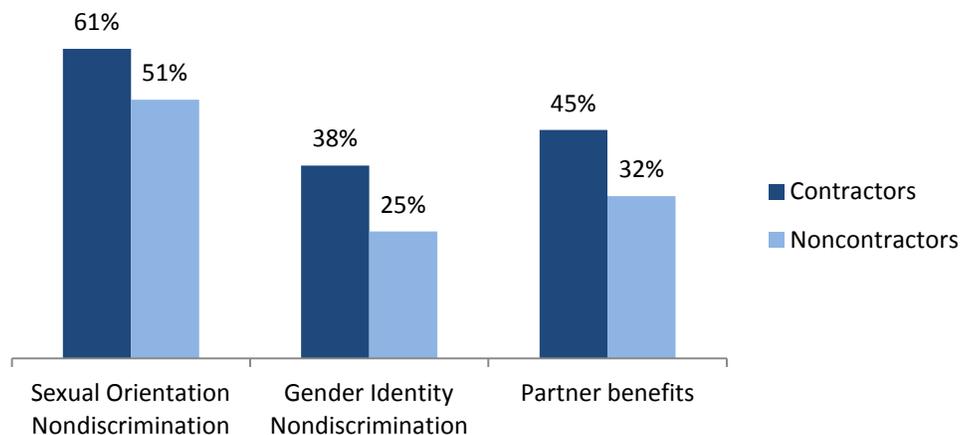
Executive Summary

This study estimates how many U.S. workers currently have protection against workplace discrimination based on sexual orientation and gender identity among private sector employers. We use these estimates to answer several questions about two sets of private sector employers: those that are federal contractors and those that are not federal contractors. In particular, we explore the potential impact of a public policy requiring federal contractors to have nondiscrimination policies that include sexual orientation and gender identity.

- What percentage of employees are currently covered by laws or company policies against discrimination based on sexual orientation? *Among federal contractors, 61% of employees are already covered; 51% of noncontractor employees are covered.*
- What percentage of employees are currently covered by laws or private policies against discrimination based on gender identity? *Among federal contractors, 41% of employees are already covered; 28% of noncontractor employees are covered.*
- What percentage of employees currently has access to health care coverage for a same-sex partner? *Among federal contractors, 45% of employees are already covered; 32% of noncontractor employees are covered.*
- If federal contractors were required to have policies against sexual orientation and gender identity discrimination, how many more employees would be covered? *For sexual orientation, 11 million more would be covered; for gender identity, up to 16.5 million more would be covered.*
- If federal contractors were required to provide health care benefits to same-sex domestic partners of employees, how many more employees would have such access? *An additional 14.3-15.3 million more employees would have access to coverage for a same-sex partner. However, only 40,000 to 136,000 of these employees would sign up a same-sex partner for coverage, and they would be spread out across tens of thousands of federal contractors.*
- Are large defense contractors very likely to have these policies? *Among the largest private defense contractors, 95% of employees are covered by a sexual orientation policy or state law, 69% are covered by a gender identity policy or state law, and 81% have access to benefits for a same-sex partner by state law or private policy.*

- Would a federal contractor requirement have a bigger effect on small businesses? *Employees are equally likely to be covered already in small, medium, or large federal contractors, with the exception of higher rates of coverage for Fortune 1000 employees.*

Percent of all employees now covered by private corporate policy (Fortune 1000) or state law prohibiting discrimination



Introduction

As of early 2012, employees in 21 states and the District of Columbia, covering 44% of the United States population, are covered by statewide laws that prohibit employment discrimination based on sexual orientation. In 16 states, 33% of the population is covered by a statewide law prohibiting discrimination based on gender identity. Furthermore, many employees work for firms that have voluntarily adopted such nondiscrimination policies. However, millions more Americans live and work in places that provide no protection against discrimination based on sexual orientation or gender identity.

In this study, we assess the impact of an alternative policy approach to either state nondiscrimination laws or voluntary policies: prohibiting federal contractors from discrimination based on sexual orientation and gender identity. We

estimate that 11 million additional employees would gain protection against sexual orientation discrimination and 16 million employees would be protected against gender identity discrimination. We also estimate that requiring federal contractors to offer domestic partner benefits to same-sex partners of employees would expand such coverage to companies that employ 14-15 million people.

In other words, a federal contractor requirement could significantly expand the right to equal employment opportunities for lesbian, gay, bisexual, and transgender (LGBT) workers. Since LGBT workers make up approximately 4% of the nation’s workforce, more than 400,000-600,000 LGBT people would gain nondiscrimination protections.¹ Approximately 40,000 to 136,000 LGBT employees might sign up a same-sex partner for coverage, a very small addition that would be barely noticeable to any single employer once spread out across tens of thousands of federal contractors.

In keeping with historical precedent, such a policy could be enacted by a presidential executive order. For more than 60 years, Presidents have used executive orders to advance workplace protections against discrimination. For example, Title VII of the Civil Rights Act was passed in 1964. But more than two decades earlier in 1940, President Roosevelt issued an executive order prohibiting discrimination in federal government employment on the basis of race, religion, or political affiliations.² Presidents Truman, Eisenhower, and Kennedy all expanded these protections before the Civil Rights Act was passed in 1964.³ Similarly, Presidents Carter and Clinton issued executive orders prohibiting discrimination in federal government employment on the basis of disability, age, sexual orientation and parenthood, before Congress passed any law prohibiting discrimination on those bases.⁴

Presidents have also issued executive orders mandating that federal contractors have non-discrimination policies well before the passage of corresponding federal legislation regulating private employers. In 1941, President Franklin Roosevelt issued an executive order that required companies receiving government defense contracts and vocational training programs “not to discriminate against any worker because of race, creed, color, or national origin.”⁵ This executive order was the first attempt by the federal government to prohibit discrimination by private employers – two decades before Congress passed the Civil Rights Act.

Below we outline the data, methods, and findings of this study of the impact of such an executive order on federal contractors with respect to sexual orientation and gender identity. In the final sections, we show that defense contractors and small- to medium-sized businesses are well-

represented among firms that already have these equality policies. We show that a requirement for federal contractors would, therefore, place no disproportionate burden on defense contractors or on small- or medium-sized businesses.

Data and Methods

To assess the impact of a federal contractor requirement, we count up the number of employees who work for a federal contractor but who are not already covered by a nondiscrimination or domestic partner policy. First, we matched data on employment by private sector firms, or companies, classified by federal contractor status, to data on nondiscrimination and partner benefit policies. We then use data on individual company policies, or “firms” as they are known in the EEOC data, and on state-level nondiscrimination laws to categorize a firm’s individual establishments, or locations, as being covered by a nondiscrimination or partner benefit policy. Note that the number and percentage of employees covered includes *all* employees of an establishment or firm, whether heterosexual, lesbian, gay, bisexual, or transgender, except where noted.

Employment data: Employment data from 2009 come from the Equal Employment Opportunities Commission (EEOC). The EEOC’s EEO-1 reports are required for private sector federal contractors with 50 or more employees and a contract of at least \$50,000, and for noncontractor employers with 100 or more employees. If any establishment within a firm reported that they were a federal contractor, we counted the firm and all of its establishments in the contractor category.⁶

All together, the more than 67,000 firms filing EEO-1 forms in 2009 reported a total of 59 million employees on their

consolidated reports.⁷ The usefulness of this dataset to estimate nondiscrimination policy coverage for employees is clear from its extensive coverage of relevant employment.

- *This dataset captures more than half of all private sector employees:* In 2009, the Current Population Survey reported 108 million private sector employees, so EEO-1 employment accounts for 54.5% of all private sector employment in the United States.
- *This dataset includes firms that receive the majority of federal contracting dollars:* More than half (51%) of all dollars awarded in federal contracts went to the top 100 private for-profit contractors in FY10, and 92 of the 100 are included in the EEO-1 data, along with more than 24,000 additional federal contractors.⁸

Policy data: The policy data come from two sources. For Fortune 1000 firms, we match the EEO-1 data to individual firm policies from the Human Rights Campaign database as of November 2010.⁹ That database covers more than 84% (848) of the 2009 Fortune 1000 (F1000) list of the largest companies in the U.S. and is based primarily on survey responses from those companies.

For companies not in the Fortune 1000, we look at the location of each reporting establishment to identify whether it was located in a state that outlawed employment discrimination based on sexual orientation or gender identity in 2010, or that allowed same-sex couples to enter into a legal status that might be recognized by most employers when providing employment benefits.¹⁰ To be clear, all establishments of non-F1000 firms are classified by state-level policy only. We also use state location to identify policy coverage for F1000 employers for which

policy data was missing in the HRC database and for those firms in the HRC database that do not have a nondiscrimination policy.

For purposes of our calculations below, any firm or establishment that has no known policy, either because they were not included in the HRC database or were not in a state with a nondiscrimination or partnership law, is counted as not having the policy of interest. However, some of those firms might either have voluntary policies that we do not know about or are bound by local-level nondiscrimination laws, so the estimates of coverage below are conservative estimates.

Nondiscrimination Policies

Fortune 1000: Among all Fortune 1000 (F1000) companies that are federal contractors, 75% of those firms report having EEO policies against discrimination based on sexual orientation. The companies with those policies are relatively large, so an even higher percentage of employees of F1000 companies work for a company forbidding sexual orientation discrimination. Overall, 92% of employees of F1000 federal contractors are already protected by a company-wide sexual orientation nondiscrimination policy.¹¹ The coverage rate for employees of noncontractors among the F1000 is lower, with 60% of firms having a sexual orientation nondiscrimination policy that covers 82% of employees.

Looking only at F1000 companies shows that 32% include gender identity in their EEO policies. Among employees of federal contractors that are in the Fortune 1000, 58% are already protected by a gender identity nondiscrimination policy. The rates for noncontractors are much lower, with 20% offering gender identity nondiscrimination policies that cover 30% of employees of F1000 noncontractors.

Figure 1 compares the percentage of Fortune 1000 firms that offer coverage by nondiscrimination policies (and domestic partner benefits—see discussion below) in 2009. Figure 2 compares the percentages of employees covered by those policies.¹²

Figure 1: Percentage of Fortune 1000 firms with policies

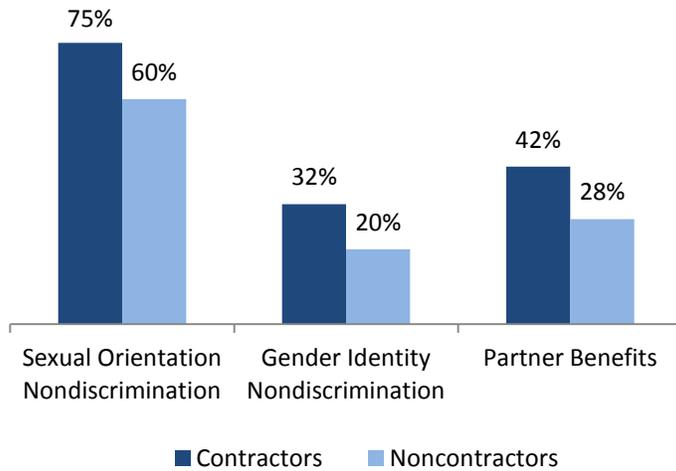
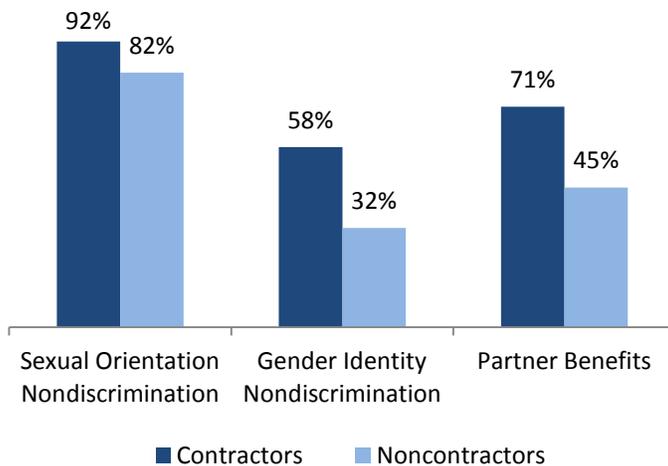


Figure 2: Percentage of employees working in Fortune 1000 firms with policies



Non-Fortune 1000: For other firms in the EEO-1 database that are not in the F1000, we have no data on their nondiscrimination

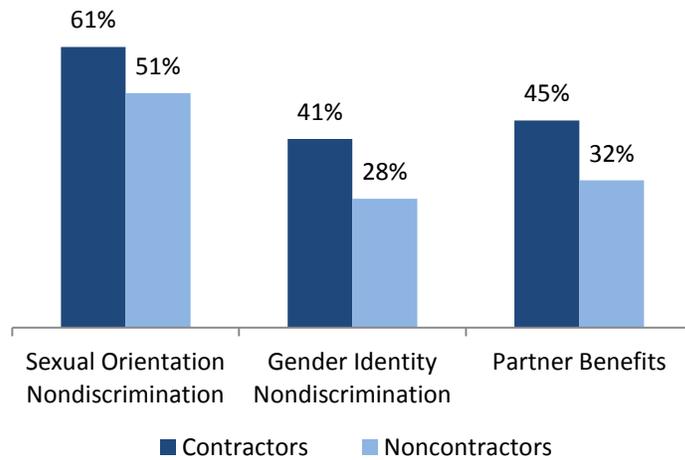
policies. However, we can observe which firms have establishments in states that prohibit discrimination based on sexual orientation or gender identity, and those figures are presented in Table 1.

All firms combined: Table 1 presents the number of employees covered by a nondiscrimination or partner policy. For example, the first line of figures shows that 16.9 million workers work for federal contractors that have policies against sexual orientation discrimination by law or company policy. Just over 10 million of those workers are in F1000 firms with their own explicit policy (line 2 of figures) and 7 million work in establishments in states that have outlawed sexual orientation discrimination (line 3).

In Table 2 and Figure 3, we express that number as a percentage of all employees of federal contractors or noncontractors.¹³ The first line of figures in Table 2 shows that among employees of federal contractors, at least 61% work in places that do not allow sexual orientation discrimination. F1000 firm-level policies contribute 37% of the federal contractor workforces, and establishments in states with nondiscrimination laws cover 24% of federal contractor employees, summing to the 61% overall. For noncontractors, 51% of employees are covered. (As noted earlier, these figures are a conservative estimate of the number of employees actually covered, since some

smaller firms will have voluntary policies, and some will be in cities or counties with nondiscrimination ordinances.) Fewer employees are protected against gender identity discrimination: 41% of employees of federal contractors and 28% of employees of noncontractors.

Figure 3: Percentage of all employees covered by policies



Finally, Table 1 provides an answer to the question about how many more employees might be covered by nondiscrimination policies if federal contractors were required to have such policies. With such a requirement, as many as 11 million more employees would gain protection against sexual orientation discrimination. These estimates are an upper bound, since some of those employees work for non-F1000 firms with sexual orientation nondiscrimination policies, and others are in locations covered by local ordinances.

Table 1 shows that 16.5 million workers would gain protection against gender identity discrimination. However, since these data were collected, four additional states have outlawed employment discrimination based on gender identity: Massachusetts, Nevada, Hawaii, and Connecticut. If all employees of federal

contractors in these states were covered by corporate policies that already prohibit gender identity discrimination, then the number of new employees covered by a contractor requirement would not change with the new laws. But it is more likely that these new state laws provide coverage for some additional employees of contractors, reducing the number affected by a federal contractor requirement.

Accordingly, we estimate a range of new employees covered by adjusting the 16.5 million downward. These four states account for 5.2% of the 108,252,000 private sector employees in the U.S in 2009.¹⁴ To adjust the estimate of 16.5 million employees for those who work in these four states, we assume that in these states the percentage of employees of federal contractors is the same

as for the private sector as whole. Thus, we deduct 5.2% of employees from our estimate of newly covered employees to create an estimate of 15.6 to 16.5 million additional workers who would be covered by a policy requiring federal contractors to not discriminate on the basis of gender identity.

Domestic Partner Benefits

Fortune 1000: Among all F1000 firms, 37% are known to provide domestic partner (DP) benefits to same-sex partners of employees. The rate is higher for federal contractors, 42% of whom offer DP benefits, which cover 71% of employees of federal contractors in the F1000. Only 28% of noncontractors offer DP benefits, covering 45% of employees of noncontractors. These percentages of firms

and of employees are compared by contractor status in Figures 1 and 2.

Non-Fortune 1000: Unfortunately, we do not know how many employees working for non-F1000 companies have access to DP benefits. We can, however, estimate coverage using state law, since many establishments operate in states that allow same-sex couples to marry or to register as domestic partners or civil unions. In some of those states (California, Massachusetts, Vermont, New Hampshire, Connecticut, Iowa, Hawaii, Illinois, Nevada, New Jersey, Oregon, Washington and District of Columbia), same-sex couples taking advantage of those legal statuses are likely to be treated the same way as married couples by employers. Therefore, in those states, if employees' spouses are covered by health care benefits, we assume that same-sex civil union partners or spouses would also be eligible for coverage. Among non-F1000 federal contractors and non-contractors alike, 24% of employees are employed in states that would likely give same-sex couples the ability to access spousal benefits.

However, this estimate based on state law comes with three offsetting caveats. (1) Some non-F1000 firms outside of the recognition states might voluntarily offer DP benefits, but here they are counted as not having a policy, which would increase coverage. The second and third factors would tend to reduce coverage, though: (2) Some firms reporting here might not offer health care benefits at all, leading to an over-count of covered employees. But in that case, employees with same-sex partners are treated in the same way as employees with married different-sex partners, so the number covered should give a reasonable estimate of employees getting equal treatment. (3) In states requiring equal treatment of same-sex spouses or partners, firms might not be

required to comply. Self-insured firms' health care plans, for instance, are governed by ERISA, a federal law. The federal Defense of Marriage Act likely precludes compelling self-insured employers to provide equal benefits to same-sex partners or spouses, although many might voluntarily comply. While current data sources do not allow us to confidently predict whether these factors cancel each other out, they are likely to do so to at least some extent, and Tables 1 and 2 do not make adjustments for these issues.

All firms combined: Table 1 estimates that 12.7 million workers in federal contractor firms and 9.9 million workers in noncontractor firms would have access to benefits for a same-sex partner through a company policy or state law. Adding together both sources of potential coverage in Table 2 (and shown in Figure 3) shows that 45% of employees of federal contractors have access to domestic partner coverage, while only 32% of noncontractors have access to domestic partner coverage.

The last line of Table 1 estimates that a requirement that federal contractors provide domestic partner benefits would provide access to equal benefits for a same-sex partner to an additional 15.3 million people. However, since these data were collected, two more states have allowed same-sex couples to enter into marriage (New York) or civil unions (Delaware). As before, we create a range that captures the possibility that federal contractors in those states already offered benefits to same-sex partners and the possibility that more employees are covered, pulling the estimate of those covered by a contractor requirement downward. Those two states account for 6.8% of the 108,252,000 private sector employees in the U.S in 2009.¹⁵ To create the low end of the range, we assume that the percentage of federal contractors

in those states is the same as the percentage of private employment. We deduct 6.8% of newly covered employment to estimate that 14.3 to 15.3 million additional workers would be covered by a federal contractor requirement related to domestic partner coverage.

Of course, not all of those employees are likely to have a same-sex partner, and even those with same-sex partner might not choose to sign the partner up for benefits.¹⁶ Research on take-up of domestic partner benefits for same-sex partners suggests that 0.3% to 1% of employees will sign up a partner at a typical firm.¹⁷ Given that pattern, we might expect only 40,000 (0.3% of 13.6 million) to 136,000 thousand (1% of 13.6 million) to enroll a partner. These newly covered partners would be spread across tens thousands of firms, so most firms would see few or no additional enrollees, demonstrating that the cost to businesses of this requirement would be minimal.

Defense Contractors

Since defense contractors make up a large percentage of all federal contractors, we also examined whether defense contractors are different from other types of contractors with respect to the policies considered in this memo. We identified 25 of the top private sector defense contractors from the usaspending.gov website. According to FY10 data from usaspending.gov, these 25 firms collectively accounted for more than \$160 billion in federal spending, or 44% of all Department of Defense contracting dollars.

Nineteen of these firms have a policy against sexual orientation discrimination (five firms have missing data on policies).¹⁸ Collectively, the EEO-1 employment data on these firms suggests that those policies and

state-level laws already cover 95% of these defense contractors' employees.

Ten firms have policies against gender identity discrimination. Those firms, plus establishments in states forbidding gender identity, provide coverage against gender identity discrimination for 69% of employees in these defense sector firms.

Thirteen firms also provide benefits to same-sex domestic partners of employees, covering 75% of the defense sector employees. Another 6% has access to coverage via a state marriage or partnership law, bringing the total to 81% with coverage.

As these figures suggest, coverage for all policies is even more common among the defense sector, as represented by these twenty-five defense firms that account for much of federal defense spending, than it is for federal contractors as a whole.

Policies by Firm Size

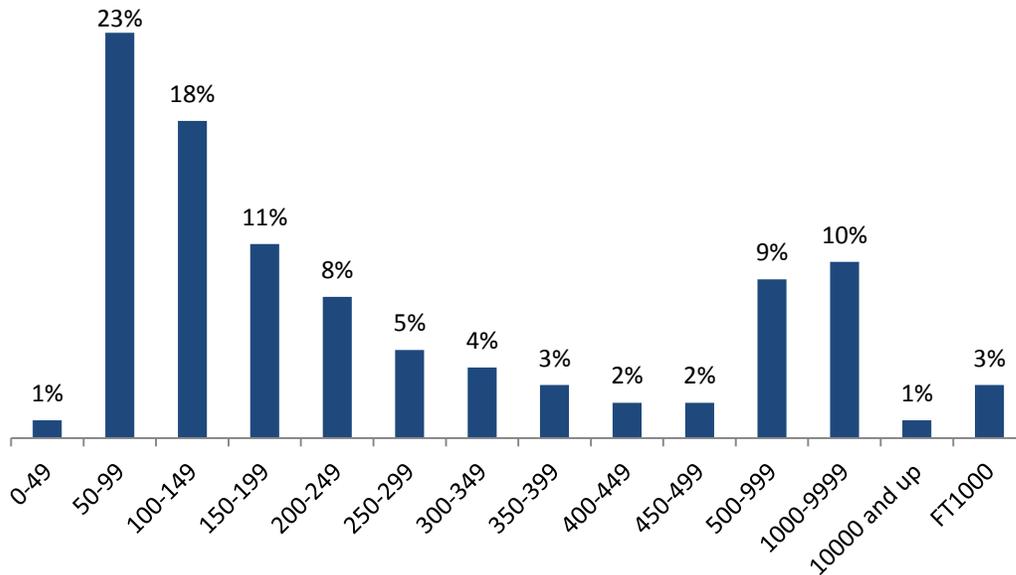
We also broke down the coverage of policies by firm size for federal contractors to see whether a federal contractor requirement would have a disproportionate impact on employees of small- or medium-sized firms. Because federal contracting firms are only required to file EEO-1 forms if they have at least 50 employees and a contract of \$50,000 or more, the EEO-1 data leaves out most such very small firms, regardless of contractor status. Not surprisingly, then, only about 150 federal contractors reported having fewer than 50 employees on their consolidated reports. The number of firms reporting jumps considerably for the categories capturing 50-9,999 employees, with thousands of firms reporting in each subcategory. There were 219 firms with more than 10,000 employees that were not Fortune 1000 firms, and there were 649 firms from the

Fortune 1000 that were contractors appearing in the EEO-1 data.

Figure 4 below presents the distribution of federal contractor firm sizes among the EEO-1 reporting firms. Most contractors that report on the EEO-1 form are relatively small, suggesting that this study is not just capturing effects on large firms. Firms with fewer than 200 employees make up half of all firms. Almost a quarter of EEO-1 reporting contractors, or 23%, has 50-99 employees, the largest category.

The fourth, fifth, and sixth columns of Table 3 report the percentage of employees in each size category covered by sexual orientation nondiscrimination, gender identity nondiscrimination, and partner benefits, respectively. For all three kinds of policies, the percentage of employees already covered by employer or state policies is very similar except for the very smallest firms and for the F1000 firms.

Figure 4: Percentage of federal contractor firms in EEO-1 in firm size category



However, looking at the second and third columns of Table 3 below shows that the employment in small firms accounts for a small proportion of employment among all federal contractors. Firms with fewer than 500 workers employ only 12% of the contractor workforce. In other words, the vast majority of employees of federal contractors work for large firms. After adding together F1000 firms and other firms with 1000 or more employees, firms in the three largest categories collectively employ 83% of the contractor workforce.

In Table 3, employees of the F1000 firms can be covered either because we know they have a company-wide policy, or because some establishments of those firms are in states with such policies. For the other firms, though, we can only measure coverage through state law, perhaps at least partially explaining the smaller percentages for non-F1000 firms.

The lower coverage rate for employees of the smallest firms (fewer than 50 employees) may be a result of the nature of

the EEO-1 data. As noted earlier, the EEO-1 database does not capture many firms smaller than 50 employees, so the estimate for that category in Table 3 is not very reliable.

With the exception of those two categories, there is little variation in coverage levels for small and large employers. Employees of small, medium, and large contractors are equally likely to be currently covered. Another way of putting this is that small- and medium-sized businesses would not be disproportionately affected by a federal contractor requirement.

Comparisons with Other Studies

Overall, the findings of this memo related to domestic partners benefits are generally consistent with new findings in several surveys. The National Compensation Survey, which is conducted by the U.S. Bureau of Labor Statistics, found that 29% of all workers in the private sector have access to domestic partner benefits for same-sex partners. We estimated that 38% of employees in EEO-1 reporting firms had access to domestic partner health care benefits. The higher rate derived from the EEO-1 data might result from the fact that the NCS included the smallest firms but the EEO-1 does not, as well as the fact that the NCS did not account for states laws that might give same-sex couples the same right to employer-provided coverage as different-sex couples.

The NCS data show a correlation between coverage and firm size that is less similar to our pattern, though: 17% of employees in firms with 1-49 employees have coverage, compared with 23% of those in firms with 50-99 employees, 34% of those in firms with 100-499 employees, and 54% of those in firms with 500 or more employees. Our

findings in this memo showed little correlation between firm size and coverage, other than much higher rates for Fortune 1000 firms, since the geographic distribution of EEO-1 employees is fairly even across states with and without partner recognition laws.

The high rates for the largest firms are also consistent with the Kaiser Family Foundation's 2009 surveys of Employer Health Benefits, but that survey does not separately report data for federal contractors (nor does the NCS). The Kaiser Family Foundation survey shows that 20% of firms with fewer than 200 employees offer partner benefits to same-sex partners, while 30%-33% of firms with 200-4,999 employees offer partner benefits. The big jump is to firms of 5,000 or more employees, 56% of which offer partner benefits. However, many small employers (with fewer than 200 employees) – but virtually no larger employers – report that they had “not encountered” the issue, implying that they had not been asked by employees to offer partner benefits. Given the small numbers of same-sex couples, about 600,000 nationally, and the large number of small firms, it is very unlikely that a small firm would employ someone with a same-sex partner.

Some recent data for domestic partner coverage by small firms comes from a survey of small businesses by the Center for American Progress. They find that 51% of small businesses that offer health insurance also provide that coverage to domestic partners, and more would offer it if asked by employees. Since most small businesses do not provide health insurance benefits, that figure is not directly comparable to the other studies, but it does demonstrate that many small businesses are moving in the direction of offering partner coverage.¹⁹

Conclusions

policies would provide additional coverage for 11 – 16 million additional workers.

Overall, many firms and states currently have public or private policies of equal treatment of people regardless of sexual orientation or gender identity. But many federal contractors do not currently have those policies, and they employ millions of workers. An executive order requiring companies doing business with the federal government to have nondiscrimination

Table 1: Numbers of employees covered by EEO and DP policies, by contractor status

	Federal Contractor	Non Contractor	Missing Contractor Status	Total
Sexual orientation	16,945,320	15,803,856	29,312	32,778,488
F1000 -- firm policy	10,345,535	7,189,856	-	17,535,391
State level law	6,599,785	8,614,000	29,312	15,243,097
NO KNOWN ACCESS	11,014,531	15,129,080	35,362	26,178,973
Gender identity	11,493,885	8,571,412	14,591	20,079,888
F1000 -- firm policy	6,601,622	2,627,391	-	9,229,013
State level law	4,892,263	5,944,021	14,591	10,850,875
NO KNOWN ACCESS	16,465,966	22,361,524	50,083	38,877,572
Access to DP benefits	12,667,006	9,919,957	17,769	22,604,732
F1000 -- firm policy	8,058,717	3,937,346	-	11,996,063
State level law	4,608,289	5,982,611	17,769	10,608,669
NO KNOWN ACCESS	15,292,845	21,012,979	46,905	36,352,729

Table 2: Percentage of employees covered by EEO and DP Policies, by contractor status

	Federal Contractor	Non Contractor	Missing Contractor Status	Total
Sexual orientation	60.6%	51.1%	45.3%	55.6%
F1000 -- firm policy	37.0%	23.2%	0.0%	29.7%
State level law	23.6%	27.8%	45.3%	25.9%
Gender identity	41.1%	27.7%	22.6%	34.1%
F1000 -- firm policy	23.6%	8.5%	0.0%	15.7%
State level law	17.5%	19.2%	22.6%	18.4%
Access to DP benefits	45.3%	32.1%	27.5%	38.3%
F1000 -- firm policy	28.8%	12.7%	0.0%	20.3%
State level law	16.5%	19.3%	27.5%	18.0%

Table 3: Percentage of federal contractor employees covered by EEO and DP policies, by firm size

Number of employees	Total Employment	% of Total Employment	DP coverage	Sexual orientation EEO coverage
0-49	5,163	0.0%	15.1%	27.4%
50-99	409,763	1.5%	23.6%	38.6%
100-199	991,572	3.5%	24.0%	38.5%
200-499	1,806,363	6.5%	23.4%	38.1%
500-999	1,573,875	5.6%	24.5%	38.9%
1,000-9,999	6,654,054	23.8%	23.6%	38.3%
10,000 and up	5,217,050	18.7%	24.9%	37.5%
Fortune 1000	11,302,011	40.4%	76.6%	93.8%
All firms	27,959,851	100.0%	45.3%	60.6%

Acknowledgements

The author thanks the Equal Employment Opportunity Commission research staff for access to and assistance with the data. Also, thank you to the Human Rights Campaign Foundation, Inc., and the HRC Workplace Project for making their data available. Thanks to Samantha Schenck for her outstanding research assistance. Finally, thanks to Brad Sears, Christy Mallory, and Jennifer Pizer for their comments and assistance.

About the Author

M.V. Lee Badgett is the Research Director at the Williams Institute, and Director of the Center for Public Policy and Administration at the University of Massachusetts Amherst, where she is also a Professor of Economics. She studies family policy and employment discrimination related to sexual orientation.

For more information

The Williams Institute, UCLA School of Law
 Box 951476
 Los Angeles, CA 90095-1476
 (310)267-4382

williamsinstitute@law.ucla.edu

<http://williamsinstitute.law.ucla.edu>

Endnotes

¹ Mosher, William D., Anjani Chandra, and Jo Jones, Division of Vital Statistics, CDC. 2005. "Sexual Behavior and Selected Health Measures: Men and Women 15–44 Years of Age, United States, 2002." *Advance Data from Vital and Health Statistics* 362. LGBT people likely constitute a somewhat higher proportion of the workforce than of the adult population, since studies show that labor force participation of lesbians is higher than that of heterosexual women. Leppel, Karen. 2008. "Labour Force Status and Sexual Orientation." *Economica*, Vol. 76, Issue 301 (February), pp. 197–207; Tebaldi, Edinaldo and Bruce Elmslie. 2006. "Sexual Orientation and Labour Supply." *Applied Economics*, Vol. 38, No. 5 (March), pp. 549-562.

² Exec. Order 8,587, 5 Fed. Reg. 4445 (Nov. 7, 1940).

³ Exec. Order 9,830, 3 C.F.R. 606 (1943-1948); Exec. Order 9,980, 3 C.F.R. 720 (1943-1948); Exec. Order 9,981, 3 C.F.R. 722 (1943-1948); Exec. Order 10,590, 3 C.F.R. 237 (1954-1958); Exec. Or. 10,925, 3 C.F.R. 448 (1959-1963).

⁴ Exec. Or. 12,106, 3 C.F.R. 263 (1978); Exec. Or. 13,087, 3 C.F.R. 191 (1998); Exec. Or. 13,152, 3 C.F.R. 264 (2000).

⁵ Exec. Order No. 8,802, 3 C.F.R. 957 (1938-1943).

⁶ A firm is a private company. An "establishment" is a location of a firm. In other words, a firm may have multiple establishments or locations. Firms also file "consolidated" reports that would capture employment in any smaller establishments of that firm.

⁷ These totals include establishments that filed separate EEO-1 forms and those establishments of the firm that were not required to file EEO-1 forms, as captured in the consolidated report. Published EEOC figures are based on establishment-level reports, so they are not directly comparable with figures presented in this study.

⁸ This dataset also accounts for a meaningful number of federal contractors subject to the requirements of Executive Order 11246, which requires contractors to take affirmative action to end discrimination. The list of FY10 federal contractors shows 160,901 separate firms contracting with the federal government for \$10,000 or more in FY10, the threshold for EO 11246 coverage. The EEO-1 data include 24,162 firms, or 15% of contractors with contracts of \$10,000 or more. One reason the EEO-1 data includes a small percentage of such firms is that only 88,043 of contractors in FY10 had contracts of \$50,000 or more, meeting one of the tests for the need to file an EEO-1 form. The remaining 64,000 contractors most likely had fewer than 50 employees, so they would not be required to file an EEO-1 form. Another possibility is that some federal contractor firms did not report their contractor status on the EEO-1 forms, pushing them into the noncontractor category. That form of measurement error would tend to reduce any differences between findings for contractors and noncontractors.

⁹ We thank the Human Rights Campaign Foundation, Inc., and the HRC Workplace Project for making this data available to us.

¹⁰ In 2010, California, Colorado, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia outlawed employment discrimination based on sexual orientation and gender identity. In 2010, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Nevada, New Hampshire, New York, and Wisconsin outlawed employment discrimination based on sexual orientation. In 2010, the District of Columbia, Connecticut, Iowa, Massachusetts, New

Hampshire, and Vermont allowed same-sex couples to marry. In addition, California, Hawaii, Illinois, Nevada, New Jersey, Oregon, and Washington gave same-sex couples substantial rights through civil unions or similar legal statuses.

¹¹ In this paragraph and the next, as well as Figures 1 and 2, the numerator is the number of F1000 employees with nondiscrimination coverage in each contractor category, and the denominator is the total number of F1000 employees in each contractor category.

¹² These percentages of employees will not be the same as percentages of the population presented in the introduction for several reasons, most obviously because the population is different from the number of people employed. Also, the EEOC data used here covers a (large) subset of private sector employers, not economy-wide employment.

¹³ In Table 2 the percentages are calculated as follows: the numerator is covered employment from consolidated reports for F1000 firms and establishment level reports for non-F1000 firms (and establishment reports for F1000 firms with missing data on policies); the denominator is total employment from consolidated reports for both F1000 and non-F1000 firms of each contractor status.

¹⁴ For total employment, see U.S. Bureau of Labor Statistics, "Establishment Data, Table B-1. Employees on nonfarm payrolls by major industry sector, 1962 to date," <ftp://ftp.bls.gov/pub/suppl/empstat.ceseeb1.txt>, last accessed 1/31/12. State level data from online data tool available at <http://www.bls.gov/sae/>. These states accounted for 6% of federal contracting dollars spent in FY10: USASpending.gov, "Prime Award Spending Data," <http://www.usaspending.gov/explore?carryfilters=on> (filter by "By Location," "FY2010," "Contracts"), accessed 2/3/12.

¹⁵ For total employment, see U.S. Bureau of Labor Statistics, "Establishment Data, Table B-1. Employees on nonfarm payrolls by major industry sector, 1962 to date," <ftp://ftp.bls.gov/pub/suppl/empstat.ceseeb1.txt>, last accessed 1/31/12. State level data from online data tool available at <http://www.bls.gov/sae/>. These two states accounted for 4.4% of federal contract dollars in FY10, however: USASpending.gov, "Prime Award Spending Data," <http://www.usaspending.gov/explore?carryfilters=on> (filter by "By Location," "FY2010," "Contracts"), accessed 2/3/12.

¹⁶ The literature suggests several possible reasons: many partners are employed and receive their own employer-provided coverage, employer spending on partner benefits is considered taxable income, and employees might fear discrimination if their partnership status was revealed.

¹⁷ Ash, Michael A. & M.V. Lee Badgett. 2006. "Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Same-Sex and Unmarried Different-Sex Couples." *Contemporary Economic Policy*, Vol. 24, No. 4 (October), pp. 582-599.

¹⁸ One firm did not cover sexual orientation, and five others had no data in the HRC policy database.

¹⁹ Crosby Burns & Jeff Krehely, "Equal Benefits for Gay Couples Are Inexpensive," Center for American Progress, http://www.americanprogress.org/issues/2011/10/enda_benefits.html, accessed 1/30/12.