

Employment Discrimination Based on Sexual Orientation and Gender Identity in West Virginia



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Executive Summary

More than four percent of the American workforce identifies as lesbian, gay, bisexual, or transgender (LGBT). Approximately 25,500 of these workers live in West Virginia.¹ West Virginia does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in employment.²

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

Key findings of this report include:

- In total, there are approximately 47,000 LGBT adults in West Virginia, including approximately 25,500 who are part of the West Virginia workforce.
- Media reports and lawsuits document that a number of West Virginia employees have faced discrimination because of their sexual orientation or gender identity; these include reports from a school teacher and a mine worker.
- Disparities in wages are also a traditional way that discrimination has been measured. Census data show that in West Virginia, the median income of men in same-sex couples is 10% lower than men in different sex marriages.
- 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.
- Five West Virginia localities provide protection from sexual orientation and/or gender identity discrimination by local ordinance.
- Approximately 95% of West Virginia's workforce is not covered by a local ordinance prohibiting employment discrimination based on sexual orientation or gender identity.
- Even within those localities that do have such ordinances, the coverage, enforcement capacity and remedies vary greatly.
- Twenty-one of the state's twenty-five largest employers have internal corporate policies prohibiting sexual orientation discrimination.

- Adding sexual orientation and gender identity to the state’s current non-discrimination law would result in approximately 12 additional complaints being filed with the West Virginia Human Rights Commission each year.
- Enforcing complaints of sexual orientation or gender identity discrimination is likely to be negligible. A conservatively high estimate suggests that enforcement would cost the state approximately \$53,750 annually; 2.9% of the West Virginia Human Rights Commission’s annual budget.

Evidence of Discrimination

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

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 27% of gay men and lesbians had experienced workplace harassment in the last five years, and 7% 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

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.⁶

Several recent instances of employment discrimination against LGBT people in West Virginia have been documented in court cases and the media:

- In March 2013, the Lincoln County Board of Education voted to fire a middle school teacher. While the details of the dismissal are private, the teacher told the Lincoln Journal that the school system “trashed” her sexuality and “so-called lifestyle.”⁷
- In November 2012, a Kanawha County Circuit Court jury found that the board members of a community center violated public policy by rescinding a job offer they had made to a female applicant after finding out she was dating a woman.⁸ A judge had previously held that the applicant’s sexual orientation claim could not proceed, since sexual orientation is not protected under the state’s Human Rights Law.⁹ The judge also held, however, that the case could proceed on theories of sex discrimination, public policy, and intentional infliction of emotional distress.
- In December 2010, a West Virginia coal miner sued his former employer, describing widespread discrimination and harassment on the basis of his sexual orientation.¹⁰ The

miner stated that workers shook their penises at him, wrote slurs on his locker and dinner bucket, made violent threats, and placed a sign on his car stating: "I like little boys."¹¹ In January 2012, the case was settled for an undisclosed amount.¹²

Wage Inequity

Census data show that men in same-sex couples in West Virginia earn less than men married to different-sex partners. On average, men in same-sex couples in West Virginia earn \$31,301 each year, less than the \$37,641 average for men married to different-sex partners.¹³ The median income of men in same-sex couples in West Virginia is \$27,000, or 10% less than that of men married to different-sex partners (\$30,000).¹⁴ 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,¹⁵ a comparison that supports the possibility that people in same-sex couples are not treated equally by employers. A 2009 study suggested that the wage gap for gay men is smaller in states that implement nondiscrimination laws, suggesting that such laws reduce discrimination against LGBT people.¹⁶

Women in same-sex couples earn less than married men as well as men in same-sex couples.¹⁷ Women in same-sex couples in West Virginia earn an average of \$26,649, which is more than married women, whose earnings average \$20,078.¹⁸

These findings are not unique to West Virginia. 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.¹⁹ Surveys of transgender people find that they have high rates of unemployment and very low earnings.²⁰

Current Protections from Discrimination

West Virginia does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in employment, though efforts have been made to pass a sexual orientation non-discrimination law during the four most recent legislative sessions.²¹

Five West Virginia localities – Charleston,²² Morgantown,²³ Lewisburg,²⁴ Harpers Ferry,²⁵ and Buckhannon²⁶ – have local ordinances that prohibit discrimination based on sexual orientation and/or gender identity. Approximately 95% of West Virginia's workforce is not covered by a local ordinance prohibiting employment discrimination based on sexual orientation or gender identity.²⁷

Even within those localities that provide protections from discrimination based on sexual orientation and/or gender identity, there is great variation in terms of enforcement and remedies. For example, Lewisburg's human rights ordinance authorizes the formation of a human rights commission, but it only exists on the books and not in reality, leaving the protections asserted to be largely symbolic.²⁸ In Morgantown, there is a functioning human rights commission, but all complaints filed locally are referred to the state's human rights commission for enforcement.²⁹ If a complaint alleges discrimination based on sexual orientation or gender identity, there is no protection at the state level, and there is no process to deal with the complaint locally, leaving the local ordinance unenforceable when there is discrimination against an LGBT person.³⁰ Buckhannon's city council resolution provides explicit protection for

city employees based on sexual orientation.³¹ The substance of the resolution, which has been incorporated into the city employee handbook, covers its 80 government workers, though there have been no complaints filed to date.³² Buckhannon's resolution provides encouragement to private individuals to end discrimination based on sexual orientation, but no affirmative requirement, and the resolution does not provide any protections based on gender identity.³³ On the other hand, Charleston's city attorney's office addresses complaints based on sexual orientation or gender identity that are filed under their local human rights ordinance.³⁴ Their local state trial court has even gone so far as to deny a motion for summary judgment in a private wrongful termination claim, holding that discrimination based on sexual orientation is against public policy.³⁵ Though the court did not explain its reasoning, it considered in the pleadings a motion that asserted Charleston's local human rights ordinance's inclusion of sexual orientation and gender identity supported a finding that such discrimination was a violation of public policy.³⁶ The differences between localities can mean the difference between a person having actual protection against discrimination or no remedies at all, based exclusively on which locality in which the discrimination takes place. In addition to the concerns about the patchwork of laws that exists, local ordinances may potentially be subject to legal challenges.³⁷

Among the state's top 25 private employers, 84% (21) have internal policies prohibiting discrimination based on sexual orientation.³⁸ These companies include Appalachian Power, Frontier, CAMC, Covenant House, and Create West Virginia.³⁹ Additionally, several of the state's colleges prohibit discrimination against employees based on sexual orientation and/or gender identity, including West Virginia University,⁴⁰ Marshall University,⁴¹ and West Virginia Wesleyan College.⁴²

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.⁴³ 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.⁴⁴

We find that adding sexual orientation and gender identity to West Virginia's employment non-discrimination law would result in approximately 12 additional complaints filed with the West Virginia Human Rights Commission each year. To reach this estimate, we drew on Gallup polling data and Census data from West Virginia 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 Utah,⁴⁵ South Dakota,⁴⁶ Texas,⁴⁷ Missouri⁴⁸ and Pennsylvania.⁴⁹

Results from a 2012 Gallup poll show that 3.1% of people in West Virginia identify as LGBT.⁵⁰ Applying this percentage to the number of people in West Virginia's workforce (826,469⁵¹) indicates that there are 25,621 LGBT workers in West Virginia.

Next, we apply the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in West Virginia to determine how many complaints will be filed annually if these characteristics are added to the employment non-discrimination law. We use 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.⁵² 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.⁵³ There is not sufficient data to make a similar calculation of the average rate of complaints filed on the basis of gender identity.⁵⁴ 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 West Virginia suggests that 12 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. Using information from the West Virginia Human Rights Commission Fiscal Year 2012 report, we can estimate the cost associated with handling the additional 12 complaints.

Cost of Enforcement

Using information from the 2012 Annual Report of the West Virginia Human Rights Commission, we can estimate the cost associated with handling the additional 12 complaints that would be filed if sexual orientation and gender identity were added to West Virginia's employment non-discrimination law.

In fiscal year 2012, the Commission handled 409 discrimination complaints.⁵⁵ The Commission operated on a budget of \$1,831,990.⁵⁶ Dividing the Commission's budget by the number of complaints received suggests that enforcement costs an average of \$4,479 per complaint filed. Based on this assumption, if 12 complaints of sexual orientation or gender identity discrimination were filed each year, it would cost the state approximately \$53,750 to enforce them, or 2.9% of the Commission's budget.

Conclusion

Documented evidence shows that LGBT people face a widespread and persistent pattern of employment discrimination across the country, including in West Virginia. There is currently no law that prohibits employment discrimination based on sexual orientation or gender identity in West Virginia. Adding these characteristics to the state's employment non-discrimination law would provide protection from discrimination to approximately 25,500 LGBT workers in the state. Based on data from other state administrative enforcement agencies, we estimate that approximately 12 complaints of sexual orientation or gender identity employment discrimination would be filed in West Virginia annually if the law were amended. Data from West Virginia's Human Rights Commission suggests that it would cost the state approximately \$53,750 to enforce these complaints each year; 2.9% of its current annual 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.

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Endnotes

¹ This estimate was reached by applying the percentage of people in West Virginia that are LGBT (3.1%) to the number of people in West Virginia in the labor force (826,469). 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.

² The West Virginia Human Rights Act prohibits employment discrimination based on race, religion, color, national origin, ancestry, sex, age, blindness, and disability. W. VA. CODE § 5-11-1 *et seq.* (2012).

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-20111.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 SEARS & MALLORY, *supra* note 4.

⁷ Sean O'Donoghue, *Fired Teacher Denies Trying 'to Turn Them Gay'*, LINCOLN J., Mar. 7, 2013, <http://lincolnjournalinc.com/fired-teacher-denies-trying-to-turn-them-gay-p9667-1.htm> (last visited May 6, 2013).

⁸ LESBIAN AND GAY LAW ASSOC. OF GREATER N.Y., LESBIAN/GAY LAW NOTES 328 (2012).

⁹ *Id.* at 306 (2012).

¹⁰ Complaint, Hall v. Spartan Mining Co., (Cir. Ct. Kanawha Cnty. W. Va. filed Dec. 8, 2010) (No. 10-C-2202).

¹¹ *Id.*

¹² Telephone Interview with Roger Foreman, Plaintiff's Counsel (Nov. 26, 2013).

¹³ ADAM P. ROMERO, CLIFFORD J. ROSKY, M.V. LEE BADGETT & GARY J. GATES, CENSUS SNAPSHOT: WEST VIRGINIA 2 (2008), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/WestVirginiaCensus2000Snapshot.pdf>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 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>.

¹⁷ ROMERO, ROSKY, BADGETT & GATES, *supra* note 13 at 2.

¹⁸ *Id.*

¹⁹ 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).

²⁰ *Id.*; GRANT ET AL., *supra* note 5.

²¹ Zack Harold, *Legislation Seeks Fairness for Gays, Lesbians*, DAILYMAIL.COM, Feb. 11, 2013, <http://www.dailymail.com/News/201302100141>; LESBIAN AND GAY LAW ASSOC. OF GREATER N.Y., *supra* note 8 at 328.

²² CHARLESTON, W.VA., CODE § 62-2 – 62-3 (2008).

²³ MORGANTOWN, W.VA., CODE § 153.07 (2008).

²⁴ Travis Crum, *Buckhannon 5th W.Va. city to pass LGBT protections*, CHARLESTON GAZETTE, May 3, 2013, <http://www.wvgazette.com/News/201305030178>.

²⁵ HARPERS FERRY, W.Va. CODE § § 137.02; 137.03; 137.05 (2013).

²⁶ Buckhannon, W.Va. City Council Res. No. 2013-05 (2013).

²⁷ Calculated by authors using data from the American Community Survey, 2011 1-Year-Estimates & 5-Year-Estimates tables, available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited May 21, 2013).

²⁸ Telephone Interview with John Manchester, Mayor, City of Lewisburg W. Va. (Nov. 20, 2013).

²⁹ MORGANTOWN, W.VA., CODE § 159.03 (2008).

³⁰ Telephone Interview with Don Spencer, Chair, Morgantown Human Rights Commission (Nov. 19, 2013).

³¹ Buckhannon, W.Va. City Council Res. No. 2013-05 (2013).

³² Telephone Interview with David W. McCauley, City Attorney, City of Buckhannon W. Va. (Dec. 5, 2013).

³³ Buckhannon, W.Va. City Council Res. No. 2013-05 (2013).

³⁴ Telephone Interview with Paul Ellis, City Attorney, City of Charleston W. Va. (Nov. 19, 2013).

³⁵ Order Granting in Part and Denying in Part Defendant’s Motion for Summary Judgment at 2-3, *Hudson v. Bob Burdette Center*, No. 11-C-1493 (Kanawha Cnty. Cir. Ct. Oct. 26, 2012) (unpublished opinion).

³⁶ Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment at 24-28, *Hudson v. Bob Burdette Center*, No. 11-C-1493 (Kanawha Cnty. Cir. Ct.) (no date).

³⁷ 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.

West Virginia primarily follows Dillon’s Rule. *Brackman's Inc., v. City of Huntington*, 27 S.E.2d 71, 73 (W. Va. 1943). However, in 2007, the state began a Home Rule pilot program (W. VA. CODE ANN. § 8-1-5a (West 2013)) allowing certain pilot cities to establish their own home rule charters and legislation. Charleston was one of the first four pilot cities, and the state is now accepting applications for other cities to set up Home Rule charters. *State prepares to expand home rule, releases guidelines to apply*, W. VA. MUN.

LEAGUE, (Aug. 19, 2013, 15:59), <http://www.wvml.org/resources/home-rule.html>. Additionally, under legislatively granted authority, the West Virginia Human Rights Act authorizes the formation of local commissions, with “the power to appoint such employees and staff, as it may deem necessary, to fulfill its purpose.” W. VA. CODE ANN. § 5-11-12 (West 2013).

³⁸ Fairness West Virginia, Non-Discrimination is Good Business, <http://www.fairnesswv.org/files/images/2013/02/FairnessGoodBusiness.pdf> (last visited May 2, 2013).

³⁹ Whitney Burdette, *Fairness WV Lobbies Legislature for Non-discrimination Bill*, STATE J., Mar. 5, 2013.

⁴⁰ West Virginia University, Affirmative Action/Equal Opportunity, http://diversity.wvu.edu/policies/affirmative_action (last visited May 2, 2013).

⁴¹ Marshall University, Equal Opportunity Policy Statement, <http://www.marshall.edu/admissions/apply-disclose.asp> (last visited May 2, 2013).

⁴² West Virginia Wesleyan College, Human Resources, <http://www.wvwc.edu/offices/hr/> (last visited May 2, 2013).

⁴³ 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).

⁴⁴ BADGETT, RAMOS, & SEARS, *supra* note 43.

⁴⁵ CLIFFORD ROSKY, CHRISTY MALLORY, JENNI SMITH, & M.V. LEE BADGETT, WILLIAMS INST., EMPLOYMENT DISCRIMINATION AGAINST LGBT UTAHNS (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Rosky-Mallory-Smith-Badgett-Utah-Emp-Discrim-Jan-11.pdf>.

⁴⁶ 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>.

⁴⁷ 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.

⁴⁸ CHRISTY MALLORY, SARAH LIEBOWITZ & AMIRA HASENBUSH, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN MISSOURI (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/MissouriNDRReport-Nov-2013.pdf>.

⁴⁹ CHRISTY MALLORY & AMIRA HASENBUSH, 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/PennsylvaniaNDRReport-Nov-2013.pdf>.

⁵⁰ 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>.

⁵¹ *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

⁵² “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 43.

⁵³ 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 43.

⁵⁴ BADGETT, RAMOS & SEARS, *supra* note 43 at 5.

⁵⁵ WEST VIRGINIA HUMAN RIGHTS COMM'N, ANNUAL REPORT FY 2012 30 (2012), *available at* <http://www.hrc.wv.gov/Links/Documents/ANNUAL%20REPORT%202011-2012.pdf>.

⁵⁶ *Id.* at 38.