

Employment Discrimination Based on Sexual Orientation and Gender Identity in Arkansas



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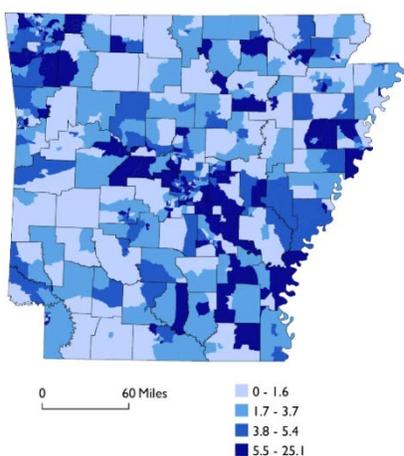
Executive Summary

More than 4% of the American workforce identifies as lesbian, gay, bisexual, or transgender (LGBT). Approximately 47,000 of these workers live in Arkansas. Arkansas does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in both public and private sector employment.

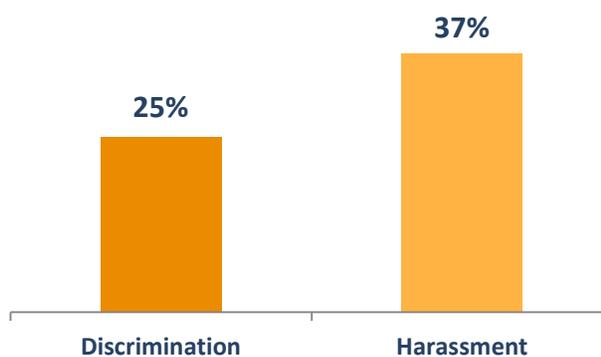
This report summarizes recent evidence of sexual orientation and gender identity employment discrimination, explains the limited current protections from sexual orientation and gender identity employment discrimination in Arkansas, and estimates the administrative impact of passing a law prohibiting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

47,000	24%	71%	0%	22
Number of LGBT Workers	Income Disparity between Straight and Gay Male Workers	Public Support for LGBT Workplace Protections	Workforce Covered by Local Non-Discrimination Laws	Estimated New Complaints if LGBT Protections are Added to State Laws

Same-sex couples per 1,000 households, by Census tract (adjusted)



Discrimination and Harassment Experienced by LGBT Workers in Arkansas



Key findings of this report include:

- In total there are over 80,000 LGBT adults in Arkansas, including over 47,000 who are part of Arkansas's workforce.¹
- Recent survey data from Arkansas indicate discrimination and negative attitudes toward LGBT people in the workplace. In response to a 2014 survey of nearly 1,000 LGBT people from Arkansas, 25% of respondents reported experiencing employment discrimination and 37% reported experiencing harassment at work. Additionally, a 2013 survey of faculty, staff, and students at the University of Arkansas-Little Rock found that 16% of faculty and 19% of staff said that working with a transgender colleague would make them somewhat or very uncomfortable, and 4% of faculty and 5% of staff said that working with a gay or lesbian colleague would make them somewhat or very uncomfortable.
- Recent national surveys have found similar patterns of discrimination against LGBT workers across the country. 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.
- When transgender people are surveyed separately, they report similar or higher levels of discrimination. For example, 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.
- Disparities in wages are another way that discrimination has traditionally been measured. Census data show that in Arkansas, the median income of men in same-sex couples is 24% lower than men in different sex marriages.
- One locality in Arkansas, Fayetteville, had an ordinance prohibiting employment discrimination based on sexual orientation and gender identity in public and private sector employment; however, it was repealed in December, 2014.
- Private companies may adopt internal non-discrimination policies to improve recruitment and retention of talented employees, to increase employee productivity and customer satisfaction, or to attract a larger customer base. Five of the six Fortune 500 companies based in Arkansas have policies prohibiting discrimination based on sexual orientation, and three of those companies also prohibit discrimination based on gender identity.
- Public opinion in Arkansas supports passage of a statewide law prohibiting discrimination based on sexual orientation and gender identity. A 2013 poll conducted in Arkansas found that 63% of respondents would favor state legislation protecting gay and transgender people from employment discrimination. Similarly, in response to a national poll conducted in 2011, 71% of respondents from Arkansas said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity. In addition, other polls have found that 79% of Arkansas residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.

- At most, approximately 22 cases of sexual orientation or gender identity employment discrimination would be filed in Arkansas annually if the Arkansas Civil Rights Act were amended to include sexual orientation and gender identity.
- The additional cases could most likely be absorbed into Arkansas's judicial system with minimal impact on judges, staff, and resources.

Evidence of Discrimination

Survey Data on Sexual Orientation and Gender Identity Discrimination in Arkansas

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.² 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.³ 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.⁴

Similar statistics have been found in surveys of LGBT individuals in Arkansas. In response to a 2014 survey of nearly 1,000 LGBT people in Arkansas, 25% of respondents reported experiencing employment discrimination and 37% reported experiencing harassment in the workplace.⁵ Further, 38% percent of respondents reported that they are not open about their sexual orientation or gender identity at work because they fear discrimination.⁶ Additionally, a survey of faculty, staff, and students at the University of Arkansas-Little Rock found that 16% of faculty and 19% of staff would be somewhat or very uncomfortable working with a transgender colleague, and 4% of faculty and 5% of staff would be somewhat or very uncomfortable working with a gay or lesbian colleague.⁷

Wage Inequity

Census data show that men in same-sex couples in Arkansas earn less than men married to different-sex partners. On average, men in same-sex couples in Arkansas earn \$25,815 each year, significantly less than the \$38,662 for men married to different-sex partners.⁸ The median income of men in same-sex couples in Arkansas is \$22,800, 24% less than the median income for men married to different-sex partners (\$30,000).⁹ 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,¹⁰ 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.¹¹

Women in same-sex couples earn less than married men as well as men in same-sex couples.¹² On average, women in same-sex couples in Arkansas earn more than women married to different-sex partners (\$25,383 for women in same-sex couples compared to \$20,638 for women married to different-sex partners).¹³ The median income for women in same-sex couples in Arkansas (\$15,000) is lower than the median income of women married to different-sex partners (\$17,200).¹⁴

These findings are not unique to Arkansas. Analyses of national data consistently find that men in same-sex couples and gay men earn 10% to 32% less than similarly qualified men who are married to different-sex partners, or men who identify as heterosexual.¹⁵ Surveys of transgender people find that they have high rates of unemployment and very low earnings.¹⁶

Current Protections from Discrimination

Arkansas does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in employment.¹⁷ Additionally, no localities in Arkansas have ordinances prohibiting employment discrimination based on sexual orientation or gender identity. However, a number of universities and private corporations in the state have adopted local ordinances and internal policies that prohibit discrimination based on sexual orientation and gender identity against their employees.

The Arkansas Civil Rights Act

Currently, the Arkansas Civil Rights Act prohibits employment discrimination based on race, religion, national origin, gender, and disability.¹⁸ The Arkansas Civil Rights Act generally applies to public and private sector employers with 9 or more employees within the state, but does not apply to religious organizations.¹⁹ Unlike in most states, no administrative agency in Arkansas is charged with handling complaints of discrimination under the Act. Instead, the Act is enforced only through the courts.²⁰

Local-Level Protections from Discrimination

Fayetteville is the only locality in Arkansas to have adopted a non-discrimination ordinance prohibiting sexual orientation and gender identity discrimination in public and private sector employment.²¹ However, the ordinance was repealed by voters in December, 2014.²²

Private Company and University Non-Discrimination Policies

Private companies adopt internal policies prohibiting discrimination based on sexual orientation and gender identity for a variety of reasons including improved recruitment and retention of talented employees, increasing employee productivity and customer satisfaction, and attracting a larger customer base.²³ One study of corporate motivations behind adopting workplace non-discrimination policies found that 53% of the top companies in the U.S. with LGBT-supportive policies had adopted the policies for economic reasons.²⁴

Academic research has found that LGBT-supportive corporate policies are linked to positive business-related outcomes, including greater job commitment, improved workplace relationships, increased job satisfaction, and improved health outcomes among LGBT employees.²⁵ For example, a 2006 national poll found that 89% of LGBT respondents and 72% of non-LGBT respondents reported that when deciding where to work, it was important that an employer have a written non-discrimination policy that includes race, ethnicity, sex, religion, age, sexual orientation and disability.²⁶ Research also suggests that employers limit their available talent pool by screening out applicants based on their sexual orientation. One study found that the rate of screening out gay male applicants was twice as high in regions without sexual orientation non-discrimination laws.²⁷

Additionally, LGBT-supportive workplace policies can expand opportunities to secure potentially lucrative government contracts for corporate employers. A 2011 study found that 68 local governments had laws requiring contractors to have LGBT-inclusive non-discrimination policies.²⁸ A number of states have similar laws that apply to state government contracts.²⁹ Without such policies, companies would not be eligible to bid for contracts with these state and local governments.

According to the Human Rights Campaign, five of the six Fortune 500 companies based in Arkansas prohibit discrimination based on sexual orientation: Dillard's, Murphy Oil, Tyson Foods, Wal-Mart, and Windstream.³⁰ Three of those companies—Dillard's, Tyson Foods, and Wal-Mart—also prohibit discrimination based on gender identity.³¹ Additionally, several of Arkansas's largest universities prohibit discrimination based on sexual orientation including Arkansas Tech,³² University of Arkansas-Fayetteville, University of Arkansas-Fort Smith,³³ University of Arkansas-Little Rock,³⁴ University of Arkansas-Pine Bluff,³⁵ and the University of Central Arkansas.³⁶ Arkansas Tech and the University of Arkansas-Pine Bluff also include gender identity in their non-discrimination policies.³⁷

Public Opinion

Public opinion in Arkansas supports passage of a statewide law prohibiting discrimination based on sexual orientation and gender identity. An opinion survey conducted in 2013 found strong support for state-level legal protections from employment discrimination for LGBT people. In response to the poll, 63% of respondents said that they would favor state legislation protecting gay and transgender people from employment discrimination.³⁸ Similarly, in response to a national poll conducted in 2011, 71% of respondents from Arkansas said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.³⁹ In addition, public opinion data indicate that Arkansas residents perceive the state as unfriendly to LGBT people. Aggregated data from two large public opinion polls found that 79% of Arkansas residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.⁴⁰

Administrative Impact

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.⁴¹ 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.⁴²

We estimate that, at most, 22 complaints of sexual orientation or gender identity discrimination would be filed with the courts each year in Arkansas. To reach this estimate, we drew on Gallup polling data and Census data from Arkansas 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 South Carolina, Missouri, Ohio, Pennsylvania, South Dakota, Texas, Utah, and West Virginia.⁴³

Results from a 2012 Gallup poll show that 3.5% of adults in Arkansas identify as LGBT.⁴⁴ Applying this percentage to the number of people in Arkansas's workforce (1,351,145⁴⁵) indicates that there are 47,290 LGBT workers in Arkansas.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in Arkansas to determine how many complaints will be filed annually if these characteristics are added to the Arkansas Civil Rights Act. 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.⁴⁶ 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.⁴⁷ There is not sufficient data to make a similar calculation of the average rate of complaints file on the basis of gender identity.⁴⁸ 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 Arkansas (47,290) suggests that 22 complaints of sexual orientation and gender identity discrimination would be filed annually if these characteristics were added to the Arkansas Civil Rights Act.

Most likely, fewer than 22 complaints of sexual orientation and gender identity discrimination would be filed in Arkansas courts each year. An analysis of data from California state agencies and courts suggests that people are more likely to file an administrative complaint than to file a case in court.⁴⁹ The study found that only 44.3% of people who filed an administrative discrimination complaint and requested immediate right-to-sue (indicating their desire to proceed through court rather than through the administrative process) ultimately filed a case in court.

Adding sexual orientation and gender identity to the state's current non-discrimination law would not be burdensome for the state's judicial system to enforce. The additional cases could likely be absorbed into Arkansas's judicial system with minimal impact on judges, staff, and resources.

Conclusion

Documented evidence shows that LGBT people face employment discrimination across the country, including in Arkansas. There is currently no statewide or local law that prohibits employment discrimination based on sexual orientation or gender identity in Arkansas. Adding these characteristics to the Arkansas Civil Rights Act would provide protection from discrimination to approximately 47,000 LGBT workers in the state. Based on data from other states, we estimate that, at most, approximately 22 complaints of sexual orientation or gender identity employment discrimination would be filed in Arkansas annually if the law were amended. Most likely, the additional cases could likely be absorbed into Arkansas's judicial system with minimal impact on judges, staff, and resources.

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 These estimates were reached by applying the percentage of people in Arkansas that are LGBT (3.5%) to the population of Arkansas aged 16 years and older (2,315,039) and the number of people in the Arkansas civilian labor force (1,351,145), respectively. 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, U.S. Census Bureau, American FactFinder, 2013 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP03.
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- ¹⁰ *Id.*
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- ¹² ROMERO, BAUMLE, BADGETT & GATES, *supra* note 8 at 2.
- ¹³ *Id.*
- ¹⁴ *Id.*
- ¹⁵ 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).
- ¹⁶ *Id.*
- ¹⁷ See JEROME HUNT, CTR. AM. PROG. ACTION FUND, A STATE-BY-STATE EXAMINATION OF NONDISCRIMINATION LAWS AND POLICIES 3 (June 2012), http://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/state_nondiscrimination.pdf.

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⁴⁶ “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 **Error! Bookmark not defined.**

⁴⁷ 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 **Error! Bookmark not defined.**

⁴⁸ BADGETT, RAMOS & SEARS, *supra* note **Error! Bookmark not defined.**, at 5.

⁴⁹ Gary Blasi & Joseph W. Doherty, California Employment Discrimination Law and Its Enforcement: The Fair Employment Housing Act at 50 59 (2010), available at http://www.dfeh.ca.gov/res/docs/Renaissance/FEHA%20at%2050%20-%20UCLA%20-%20RAND%20Report_FINAL.pdf.