

Employment Discrimination Based on Sexual Orientation and Gender Identity in Louisiana



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Christy Mallory and Brad Sears

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Executive Summary

More than 4% of the American workforce identifies as lesbian, gay, bisexual, or transgender (LGBT). Approximately 88,400 of these workers live in Louisiana. Louisiana does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in 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 Louisiana, and estimates the administrative impact of passing a law prohibiting employment discrimination based on these characteristics in the state.

88,400	18%	74%	13%	41
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

Key findings of this report include:

- In total there are approximately 117,000 LGBT adults in Louisiana, including approximately 88,400 who are part of Louisiana’s workforce.²
- Media reports and lawsuits document incidents of sexual orientation and gender identity discrimination against employees in Louisiana. These include reports from bus drivers, a construction worker, a restaurant employee, a college professor, and an employee of a loan company.
- Surveys indicate that discrimination against LGBT workers is persistent and prevalent. For example, a 2015 Human Rights Campaign survey found that 47% of LGBT people had experienced employment discrimination, and 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. In 2010, 78% of respondents to the largest national 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.
- Census data show that in Louisiana, the median income of men in same-sex couples is 18% lower than the median income of men in different-sex marriages.
- Seven localities in Louisiana provide some form of protection from sexual orientation and gender identity discrimination in employment by local ordinance or policy. Two of these localities, New Orleans and Shreveport, have broad ordinances, which prohibit discrimination based on sexual orientation and gender identity in both public and private sector employment. The other five localities' policies protect only local government employees.
- Approximately 87% of Louisiana's workforce is not covered by a local ordinance that prohibits sexual orientation and gender identity discrimination.³
- 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. At least at least eight large private sector employers headquartered in Louisiana have adopted internal policies prohibiting employment discrimination based on sexual orientation, and at least three of those companies also prohibit gender identity discrimination. Additionally, the Louisiana State University System prohibits employment discrimination based on sexual orientation or gender identity, and the University of Louisiana System prohibits employment discrimination based on sexual orientation.
- Public opinion in Louisiana supports the passage of non-discrimination protections for LGBT people. In response to a national poll conducted in 2011, 74% of those polled in Louisiana 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 81% of Louisiana residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.
- Adding sexual orientation and gender identity to the state's current non-discrimination law would result in approximately 41 additional complaints, on average, being filed with the Louisiana Commission on Human Rights each year.
- The anticipated new complaints based on sexual orientation and gender identity could likely be absorbed into the existing system with no need for additional staff and negligible costs.

Evidence of Discrimination

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

The existence of widespread and continuing discrimination against LGBT workers in the U.S. is well documented. 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, 47% of LGBT people said they had experienced employment discrimination in response to a national survey by the Human Rights Campaign in 2015. Additionally, 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.⁴ Similarly, 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.⁵ As recently as 2010, 78% of respondents to the largest national 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.⁶

Specific examples of employment discrimination against LGBT people in Louisiana have been documented in court cases and complaints to community-based organizations, including:

- In 2015, a former employee of a consumer lending company filed a sex discrimination suit under Title VII, alleging that he was fired from his job after his employer learned he is a transgender man.⁷ After a supervisor noticed that the employee's driver's license listed his sex as female, the employee was told that his employer would treat him as female, including by requiring him to dress and conduct himself as a female.⁸ The employee was terminated after refusing to sign an agreement to that effect.⁹ The employee filed a lawsuit against the company in April 2015.¹⁰ The U.S. Equal Employment Opportunity Commission joined the employee's suit in September 2015, as "part of [its] efforts to implement its Strategic Enforcement Plan [which] 'includes 'coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, as they may apply.'""¹¹ The lawsuit is still pending.
- In 2010, a Waffle House employee in Louisiana filed a lawsuit in federal court alleging that his employer discriminated against him because he was gay.¹² In particular, the employee stated that his district manager accused him of sleeping with his male supervisor.¹³ The district court dismissed the complaint stating that Title VII and Louisiana's Employment Discrimination Law do not prohibit discrimination based on sexual orientation, and the treatment the employee experienced could not be considered sex discrimination.¹⁴
- In 2009, the U.S. Equal Employment Opportunity Commission brought suit in federal district court under Title VII on behalf of an employee of an all-male crew on a construction site.¹⁵ The

EEOC presented evidence that the crew's superintendent verbally and physically harassed the employee because the employee did not conform to traditional male stereotypes.¹⁶ The district court found in favor of the employee.¹⁷ On appeal, the Fifth Circuit affirmed the lower court's finding of liability, but sent the case back to the district court to review the amount of damages awarded.¹⁸ Back in the district court, the parties settled for \$125,000.¹⁹

- In 2006, a gay man was hired as a faculty member and coordinator of the 4-H Program at Louisiana State University. He implemented successful youth programs in his position, was promoted in 2007, and received a Distinguished Service Award. At the meeting during a camp event supervised by the faculty member, the Human Resources Manager told him that the school had received an anonymous letter saying that the faculty member had a personal ad on a gay dating website. The faculty member was immediately put on administrative leave without even the opportunity to collect his belongings from the campsite—because he “could not interact with the youth anymore.” He refused to quit so he was demoted from his supervisory position and all youth programs were taken away from him. His contract was not renewed for the 2009-2010 school year.²⁰
- In 2004, a lesbian bus driver for the Monroe School District reported that she had faced harassment for gender non-conformity and sexual orientation. She complained about the adverse treatment, but her grievance was deemed invalid.²¹
- In 2000, a New Orleans truck driver filed suit against his former employer for sex discrimination under Title VII.²² The driver had worked for the company for 23 years, and during that time he had been promoted regularly and received excellent performance evaluations.²³ While attempting to resolve workplace rumors that he was gay, he told his supervisor that he sometimes wore women's clothing away from the job.²⁴ This information was provided to the company's president, who requested that the employee resign.²⁵ The employee repeatedly refused to resign and was subsequently fired.²⁶ In court testimony, the president admitted that the employee was fired for the simple reason that, “I think if my customers recognized him . . . I'd lose business.”²⁷ In September 2002, the court granted the company's motion for summary judgment, ruling that the employee's claims based on gender identity discrimination did not fall under Title VII's prohibition of sex discrimination.²⁸

Wage Inequity

Census data show that individuals in same-sex couples in Louisiana earn less than individuals married to different-sex partners. On average, men in same-sex couples in Louisiana earn \$32,611 each year, less than the \$43,865 for men married to different-sex partners.²⁹ The median income of men in same-sex couples in Louisiana is \$28,600, 18% less than that of married men (\$35,000).³⁰

Women in same-sex couples in Louisiana earn an average of \$27,885 per year (with a median of \$24,000); more than women married to different-sex partners whose earnings average \$22,156 (with a median of \$18,000).³¹

Surveys of transgender people find that they have high rates of unemployment and very low earnings.³²

Although regression analyses were not done on the earnings data above, other studies that have analyzed earnings data using such methods have found that men in same-sex couples earn less than heterosexual men, even when they have the same productive characteristics. These studies have controlled for factors unrelated to sexual orientation that may contribute to higher earnings, such as education and work experience. The studies 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.³³

Current Protections from Discrimination

Louisiana does not have a statewide statute that explicitly prohibits discrimination based on sexual orientation or gender identity in both public and private sector employment.³⁴ Though there are no statewide protections from sexual orientation and gender identity workplace discrimination in the state, a number of localities, public universities, and private corporations in the state have adopted local ordinances and internal policies that prohibit such discrimination against employees.

Louisiana Employment Discrimination Law

The Louisiana Employment Discrimination Law (LEDL) prohibits employment discrimination by any employer who has 20 or more employees³⁵ on the basis of race, sex, disability, age, religion, national origin, pregnancy or childbirth, sickle cell trait, smoking, and genetic information.³⁶ LEDL applies to both public and private sector employers.³⁷

The Louisiana Commission on Human Rights is responsible for administrative enforcement of the LEDL.³⁸ The Commission has the power to investigate complaints, and to remedy any violations of the law through conciliation agreements and settlements.³⁹ If the Commission determines that an employer has discriminated in violation of the law, it can award remedies to the complainant including hiring, reinstatement, back pay, and damages that resulted from the discrimination, including compensation for humiliation and embarrassment.⁴⁰

Alternatively, employees can choose to go file a civil suit in court rather than proceeding through the administrative process with the Commission.⁴¹ A court may order the same remedies as the Commission, as well as court costs and attorney's fees.⁴²

During 2015 session of the Louisiana State Legislature, two bills were introduced that would have added sexual orientation and gender identity to the list of characteristics protected from discrimination under the LEDL.⁴³ Neither bill made it out of committee before the session ended.⁴⁴

Local-Level Protections from Discrimination

Two Louisiana localities, New Orleans⁴⁵ and Shreveport,⁴⁶ have local ordinances prohibiting employment discrimination based on sexual orientation and gender identity by public and private sector employers. Slightly less than 13% of Louisiana's workforce is covered by the local non-discrimination ordinances in New Orleans and Shreveport.⁴⁷

The local non-discrimination ordinances in New Orleans and Shreveport apply to employers with eight or more employees.⁴⁸ Both cities' ordinances designate a person or entity to enforce the non-discrimination provisions with the power to investigate complaints and attempt to remedy discrimination through informal measures, such as meetings and conciliations.⁴⁹ Both cities' ordinances also provide for formal administrative hearings, if attempts to remedy discrimination through informal measures fail.⁵⁰ New Orleans's ordinance allows enforcement entities to award certain remedies to complainants if discrimination is found, including hiring, reinstatement, back pay, and damages that resulted from the discrimination, including compensation for humiliation and embarrassment.⁵¹ Shreveport's ordinance does not specify the types of remedies that may be ordered to complainants when discrimination is found.⁵²

Additionally, five localities, Baton Rouge, Jefferson Parish, Lafayette, Monroe, and Bossier City, have policies prohibiting discrimination based on sexual orientation or gender identity against their own government employees.⁵³ Baton Rouge's and Jefferson Parish's policies prohibit discrimination based on both sexual orientation and gender identity.⁵⁴ The policies of Monroe,⁵⁵ Lafayette,⁵⁶ and Bossier City⁵⁷ prohibit discrimination based on sexual orientation, but do not include gender identity. Less than 1% of workers in Louisiana are protected from sexual orientation or gender identity discrimination under these local policies.⁵⁸

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.⁵⁹ 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.⁶⁰

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.⁶¹ 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.⁶² 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.⁶³

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.⁶⁴ A number of states have similar laws that apply to state government contracts.⁶⁵ Without such policies, companies would not be eligible to bid for contracts with these state and local governments.

According to the Human Rights Campaign, at least eight large private sector employers headquartered in Louisiana have adopted internal policies prohibiting discrimination based on sexual orientation.⁶⁶ At least three of these companies also include gender identity in their non-discrimination policies.⁶⁷ Additionally, the Louisiana State University System has a policy prohibiting discrimination based on sexual orientation or gender identity against employees,⁶⁸ and the University of Louisiana System has a policy prohibiting discrimination based on sexual orientation against employees.⁶⁹

Public Opinion

Public opinion in Louisiana supports the passage of non-discrimination protections for LGBT people. In response to a national poll conducted in 2011, 74% of those polled in Louisiana said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.⁷⁰

In addition, public opinion data indicate that Louisiana residents perceive the state as unfriendly to LGBT people. Aggregated data from two large public opinion polls found that 81% of Louisiana residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.⁷¹

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.⁷² However, because the LGBT population is so small, the raw number of sexual orientation and gender identity complaints filed under state non-discrimination laws is very low.⁷³

We estimate that, on average, approximately 41 complaints of sexual orientation or gender identity discrimination would be filed with the Louisiana Commission on Human Rights each year. To reach this estimate, we drew on Gallup polling data and Census data from Louisiana 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 a number of other states.⁷⁴

Results from Gallup polls conducted from 2012 to 2014 show that 4.0% of people in Louisiana's workforce identify as LGBT.⁷⁵ Applying this percentage to the number of people in Louisiana's workforce (2,210,208⁷⁶) indicates that there are 88,408 LGBT workers in Louisiana.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in Louisiana 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 2015 study that analyzed administrative complaint data from 14 states that prohibited sexual orientation and gender identity discrimination at that time.⁷⁷ The study found that across these states, the average rate of complaints filed on the basis of sexual orientation was 4.6 per 10,000 LGBT workers.⁷⁸

Applying the national complaint rate (4.6 per 10,000 LGBT workers) to the number of LGBT workers in Louisiana (88,408) suggests that 41 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.

It is not possible to determine the cost to the state of enforcing these complaints due to lack of available data from the Louisiana Commission on Human Rights.⁷⁹ However, enforcement data from a number of other states indicates that adding sexual orientation and gender identity to the state's current non-discrimination law would not be burdensome for the state to enforce.⁸⁰ The additional complaints could likely be absorbed into Louisiana's administrative system with minimal impact on the budget, staff, and resources.

Conclusion

Documented evidence shows that LGBT people face employment discrimination across the country, including in Louisiana. There is currently no statewide law that prohibits discrimination based on sexual orientation or gender identity in public and private sector employment in Louisiana. Adding these characteristics to the state's employment non-discrimination law would provide protection from discrimination to approximately 88,400 LGBT workers in the state. Based on data from other state administrative enforcement agencies, we estimate that, on average, approximately 41 complaints of sexual orientation or gender identity employment discrimination would be filed in Louisiana annually if the law were amended. It is likely that enforcement of the additional complaints would have a minimal impact on the budget of the Louisiana Commission on Human Rights.

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

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¹² *Williams v. Waffle House*, No. 10-357-M2, 2010 WL 4512819, at *3 (M.D. La. Nov. 2, 2010).

¹³ *Id.* at *1.

¹⁴ *Id.* at *3. Subsequently, the EEOC has ruled that Title VII does prohibit discrimination on the basis of gender identity or sexual orientation. See *infra* note **Error! Bookmark not defined.**.

¹⁵ *EEOC v. Boh Bros. Const. Co.*, 731 F.3d 444, 449 (5th Cir. 2013) (reciting procedural history).

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¹⁷ *Id.* at 467-69.

¹⁸ *Id.*

¹⁹ *EEOC v. Boh Bros. Const. Co.*, Case No. 2:09-cv-06460-ILRL-JCW, ECF No. 124 (Feb. 26, 2014).

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²⁴ *Id.* at 6.

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²⁶ *Id.*

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³⁷ *Id.* § 23:302 (2).

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³⁹ *Id.* §§ 51:2257; La. Comm. on Human Rights, Office of the Gov., File a Complaint, <http://lchrgov.com/lchr/file-a-complaint/> (last visited Oct. 26, 2015).

⁴⁰ *Id.* §§ 51:2261.

⁴¹ *Id.* §§ 23:303.

⁴² *Id.*

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⁴⁶ SHREVEPORT, LA., CODE § 39-2(2) (2014).

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⁴⁹ NEW ORLEANS, LA., CODE §§ 86-9 to 86-16; SHREVEPORT, LA., CODE §§ 39-4, 39-12.

⁵⁰ NEW ORLEANS, LA., CODE § 86-16(c)(3); SHREVEPORT, LA., CODE §§ 39-4, 39-5.

⁵¹ NEW ORLEANS, LA., CODE § 86-17.

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⁶⁸ La. State Univ., PS-01: Equal Employment Policy, Feb. 5, 2013, http://www.lsu.edu/hrm/pdfs/PS-01_Equal_Opportunity_Policy_item50862.pdf

⁶⁹ Univ. La. Sys., M-(11)a: Prohibiting Workplace Harassment, and Discrimination, Dec. 3, 2010, http://ulsystem.edu/assets/docs/searchable/boards/M-%20%2811%29%20%20Prohibiting%20Workplace%20Harassment%20and%20Discrimination%2012_3_2010.pdf.

⁷⁰ Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Public Religion Research Institute Survey (2011) (data and calculations on file with author).

⁷¹ Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with author).

⁷² CHRISTY MALLORY & BRAD SEARS, EVIDENCE OF EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY: AN ANALYSIS OF COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES, 2008-2014, WILLIAMS INST. (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Employment-Discrimination-Complaints-2008-2014.pdf>; 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).

⁷³ *Id.*

⁷⁴ *See Workplace*, THE WILLIAMS INST., <http://williamsinstitute.law.ucla.edu/category/research/workplace/> (last updated Dec. 10, 2013).

⁷⁵ Gary J. Gates & Frank Newport, *supra* note 2.

⁷⁶ American Community Survey, U.S. Census Bureau, American FactFinder, 2014 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP03 (civilian workforce).

⁷⁷ “National average” refers to the average of the complaint rates in 14 states across the country that prohibited sexual orientation and/or gender identity discrimination in 2015. MALLORY & SEARS, *supra* note 72.

⁷⁸ The data gathered for the 2015 study included all employment discrimination complaints filed on the basis of sexual orientation and gender identity; it was not limited to complaints filed by LGB employees. Heterosexual, non-transgender employees may also file complaints under sexual orientation non-discrimination laws if they were discriminated against because of their heterosexuality, gender identity, or because they were perceived to be LGBT. However, we use the LGBT workforce as the underlying population for purposes of our analysis because

LGBT employees likely file the vast majority of sexual orientation discrimination complaints. See Rubenstein, *supra* note 72.

⁷⁹ Repeated attempts were made to obtain data on the number of complaints handled each year by the Louisiana Commission on Human Rights, and the Commission's annual budget. The agency was unable to provide this information.

⁸⁰ See state-level reports on employment discrimination by the Williams Institute available at <http://williamsinstitute.law.ucla.edu/economic-impact-reports-by-state/>.