

Employment Discrimination Based on Sexual Orientation and Gender Identity in North Dakota



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Executive Summary

More than 4% of the American workforce identifies as lesbian, gay, bisexual, or transgender (LGBT). Approximately 6,800 of these workers live in North Dakota. North Dakota 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 North Dakota, and estimates the administrative impact of passing a law prohibiting employment discrimination based on these characteristics in the state.

6,800	69%	1%	3
Number of LGBT 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 9,800 LGBT adults in North Dakota, including 6,800 who are part of North Dakota's workforce.²
- Instances of employment discrimination based on sexual orientation and gender identity in North Dakota have been documented in legislative testimony, the media, and in reports to community-based organizations. Examples include instances of discrimination against public school teachers, a convenience store clerk, an applicant for a job at a bank, a hospital employee, and an employee of a manufacturing company.
- Survey data indicate that discrimination against LGBT workers is prevalent across the country. Most recently, a national survey conducted by the Pew Research Center in 2013 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.
- No localities in North Dakota have passed ordinances prohibiting discrimination in private sector employment based on sexual orientation or gender identity. Two localities, Fargo and Grand Forks, have adopted policies that protect city employees from discrimination based on sexual orientation. Grand Forks' policy also includes gender identity.
- 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 five large companies headquartered in North Dakota have policies prohibiting discrimination based on sexual orientation, and two of those companies also prohibit discrimination based on gender identity. Additionally, all of the state universities in the North Dakota University System have policies prohibiting discrimination based on sexual orientation, and at least three of those universities also have policies prohibiting discrimination based on gender identity.
- Public opinion in North Dakota supports the passage of non-discrimination protections for LGBT people. In response to a 2015 poll of North Dakota residents, 59% said that they supported Senate Bill 2279, which would have added sexual orientation and gender identity to North Dakota's existing non-discrimination law. In response to a national poll conducted in 2011, 69% of those polled in North Dakota 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 78% of North Dakota 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 three additional complaints, on average, being filed with the North Dakota Human Rights Division or in court 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 North Dakota

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, a national survey conducted by Pew Research Center in 2013 found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.³ Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians had experienced workplace harassment in the last five years, and 12% had lost a job because of their sexual orientation.⁴ As recently as 2010, 78% of respondents to the largest 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.⁵

Specific examples of discrimination against LGBT people in North Dakota have been documented in legislative testimony, the media, and in reports to community-based organizations. Recent examples include:

- In 2009, 2013, and 2015, several state legislators and citizens cited examples of employment discrimination against LGBT people in North Dakota during hearings on bills that would have prohibited discrimination based on sexual orientation and gender identity in the state. Examples from their testimony include:
 - In 2015, Troy Seibel, North Dakota Commissioner of Labor, testified that his department receives one to two complaints of sexual orientation or gender identity discrimination each year, although state law does not prohibit such discrimination.⁶
 - In 2015, a member of the North Dakota Human Rights Commission and former state legislator testified that when he was a practicing attorney in North Dakota, he received many calls from people who had lost their jobs because they were LGBT, but he was unable to help them because state law does not prohibit discrimination based on sexual orientation.⁷
 - In 2015, State Representative Joshua Boschee described in his testimony five specific instances of employment discrimination against LGBT people, or people perceived to be LGBT, in North Dakota:
 - A college student was fired from his job when his employer found out that he was a member of his college's gay/straight alliance.⁸

- A Fargo convenience store employee was asked by his manager if he was gay because he wore a rainbow bracelet at work. When the employee answered that he was gay, the manager allegedly fired him, stating that he ““didn’t need any gay people working in his store.””⁹
 - A speech and debate coach at a public school in Fargo was terminated after the school discovered that she was transgender.¹⁰
 - Two employees filed complaints with the North Dakota Department of Labor alleging that although they were heterosexual, they were discriminated against because their employers perceived them to be gay.¹¹
- In 2015, a citizen testified that she knew of a gay employee of the Northern Lights Council in Fargo who hid his/her sexual orientation out of fear of losing his/her job.¹²
- In 2015, a former hospital employee testified that she faced hostility and discrimination at work because she was transgender.¹³ She stated that after she transitioned, her coat was vandalized, and when she sent out an email asking her co-workers to refer to her by female pronouns, she was told that she was being disruptive. She said that she eventually left the job because human resources refused to address the issues stating that they were not legally required to do so.
- In 2015, a heterosexual man testified that he was harassed by his co-workers because he was perceived to be gay.¹⁴ He said that his co-workers called him derogatory names at work and humiliated him in front of his subordinates.
- In 2015, a heterosexual man from Williston testified that he was subjected to anti-gay jokes and comments by other staff at his job, including the general manager and human resources director, because he was perceived to be gay.¹⁵
- In 2015, a citizen testified that when she worked at a bank in Minot, her supervisor interviewed a well-qualified man for a job.¹⁶ After the interview was over, the supervisor told the woman that the interviewee was great and it was a ““shame [she couldn’t] hire him.”” When the woman asked why he would not be hired, the supervisor said it was because she believed he was gay and he would not be treated well by other employees at the bank.
- In 2013, an employment attorney testified that she has heard from many North Dakotans who lost their jobs because of their sexual orientation or gender identity.¹⁷
- In 2013, a woman testified that she had lost a job in 2007 because of her sexual orientation.¹⁸

- In 2009, a woman testified that she felt she had to resign because her workplace environment changed when her co-workers found out that she was in a relationship with another woman.¹⁹
- In 2009, a woman testified that she believed she was fired from a construction job because of her sexual orientation.²⁰ She stated that her supervisor told her that she was being let go because she did not “fit in.”
- In 2009, a graduate student testified that he planned to move to Minnesota after graduation because he did not feel comfortable living and working in North Dakota as a gay man, and he would be protected from discrimination in Minnesota.²¹
- In 2009, a transgender woman testified that she moved out of North Dakota to avoid discrimination after she had been fired and then forced to leave her own business because of discrimination based on her gender identity.²²
- In 2009, a Fargo resident testified that her workplace environment became hostile after her co-workers found out that she was transgender.²³ She stated that management had approached her and asked about her gender identity after rumors began to circulate. Although she was told that the information would be kept confidential, she found out later that the management had told other staff. She stated that she wanted to change jobs, but it was difficult to find a new job after recently being diagnosed with cancer.
- In 2015, a media report documented experiences of gay oil field workers in North Dakota. Nearly a dozen workers told the reporter that they were not open about their sexual orientation at work out of fear of losing their jobs.²⁴
- A gay man from Grand Forks reported to a community-based organization that his co-workers harassed him after he published an op-ed in a local paper that mentioned his sexual orientation.²⁵ The employee said that his co-workers would laugh at him, make jokes, and whisper about him. Five months after his op-ed was published, he was fired.

Current Protections from Discrimination

North Dakota does not have a statewide statute that prohibits discrimination based on sexual orientation or gender identity in public and private sector employment.²⁶ However, several localities, universities, and private corporations in North Dakota have adopted local ordinances and internal policies that prohibit such discrimination against employees.

North Dakota Human Rights Act

Currently, the North Dakota Human Rights Act prohibits employment discrimination on the basis of personal characteristics including race, religion, sex, national origin age, physical or mental disability, and status with regard to marriage or public assistance.²⁷ The Act applies to public and private sector employers.²⁸

The Human Rights Division in the North Dakota Department of Labor and Human Rights is responsible for administrative enforcement of the Human Rights Act.²⁹ The Division has the power to accept and investigate complaints, and attempt to remedy any violations through informal measures, including negotiations and conciliations, or through formal administrative hearings.³⁰ If the Division determines that discrimination has occurred, the employee may receive equitable relief and back pay.³¹ The Human Rights Act also allows an employee who has experienced discrimination to file a civil action rather than filing an administrative complaint.³² A court may order the same remedies that are available through an administrative hearing, as well as court costs and attorneys' fees.³³ An employee must file an administrative complaint with the Division or an action in court within 180 days of the alleged discriminatory practice.³⁴

Local-Level Protections from Discrimination

No localities in North Dakota have passed ordinances that prohibit discrimination based on sexual orientation or gender identity in private sector employment. However, two localities, Fargo³⁵ and Grand Forks,³⁶ have adopted personnel policies or local ordinances that prohibit discrimination based on sexual orientation within city government employment. Grand Forks' ordinance also includes gender identity. Together, these policies provide protection from sexual orientation and gender identity discrimination to about 1% of North Dakota's workforce.

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.³⁷ 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.³⁸

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.³⁹ 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.⁴⁰ 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.⁴¹

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.⁴² A number of states have similar laws that apply to state government contracts.⁴³ 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 five large companies headquartered in North Dakota have internal policies prohibiting discrimination based on sexual orientation, and two of those companies also have policies prohibiting discrimination based on gender identity.⁴⁴ Additionally, all of the state universities in the North Dakota University System have policies prohibiting employment discrimination based on sexual orientation,⁴⁵ and at least three of those universities also have policies prohibiting discrimination based on gender identity.⁴⁶

Public Opinion

Public opinion in North Dakota supports the passage of non-discrimination protections for LGBT people. In response to a 2015 poll of North Dakota residents, 59% said that they supported Senate Bill 2279, which would have added sexual orientation and gender identity to the North Dakota Human Rights Act.⁴⁷ In response to a national poll conducted in 2011, 69% of those polled in North Dakota said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.⁴⁸

In addition, public opinion data indicate that North Dakota residents perceive the state as unfriendly to LGBT people. Aggregated data from two large public opinion polls found that 78% of North Dakota residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.⁴⁹

Administrative Impact

Complaint Estimate

Despite the persistence and pervasiveness of employment discrimination against LGBT people, studies show that enforcing sexual orientation and gender identity provisions in non-discrimination laws has only a minimal burden on state agencies. Complaints of sexual orientation discrimination are filed by LGBT people at approximately the same rate as complaints of race and sex discrimination are filed by people of color and women, respectively.⁵⁰ 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.⁵¹

We estimate that approximately three complaints of sexual orientation or gender identity discrimination would be filed with the Human Rights Division in North Dakota each year. To reach this estimate, we drew on Gallup polling data and Census data from North Dakota 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.⁵²

Results from Gallup polls conducted between 2012 and 2014 show that 1.7% of people in North Dakota's workforce identify as LGBT.⁵³ Applying this percentage to the number of people in North Dakota's workforce (401,046⁵⁴) indicates that there are 6,818 LGBT workers in North Dakota.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in North Dakota 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 prohibit sexual orientation or gender identity discrimination.⁵⁵ The study found that across these states, the average rate of complaints filed on the basis of sexual orientation or gender identity was 4.6 per 10,000 LGBT workers.⁵⁶

Applying the national complaint rate (4.6 per 10,000 LGBT workers) to the number of LGBT workers in North Dakota (6,818) suggests that, on average, three complaints of sexual orientation and gender identity discrimination would be filed annually if these characteristics were added to the state's employment non-discrimination law.

Cost of Enforcement

Available data suggest that an additional three complaints filed with the Human Rights Division or in court each year would not be costly or burdensome to enforce. According to the Department of Labor and Human Rights' most recent biennial report (FY2011-FY2013), the Division received 368 complaints of employment discrimination, along with 1,266 complaints for unpaid wages, 78 housing discrimination complaints, and 34 complaints alleging other types of discrimination.⁵⁷ Given the size of the Division's caseload, an additional three complaints filed annually could likely be absorbed into the Division's existing structure, with minimal impact on staff and resources.

Additionally, complaints that were filed directly in court, rather than with the administrative agency, would most likely have no noticeable impact on the state judicial system. In 2013, 183,648 cases were filed in North Dakota courts,⁵⁸ and 188,000 cases were filed in 2014.⁵⁹ Over much of this time period, the court was operating on a biannual (FY2013-FY2015) budget of \$100,481,582.⁶⁰ Given the size of the judicial system's caseload and budget, an additional three cases filed each year would most likely have very little impact. Further, it is likely that a portion of the complaints filed each year would be resolved administratively rather than through the courts.

Conclusion

Documented evidence shows that LGBT people face employment discrimination across the country, including in North Dakota. There is currently no statewide law that prohibits discrimination based on sexual orientation or gender identity in public and private sector employment in North Dakota. Adding these characteristics to the state's employment non-discrimination law would provide protection from discrimination to approximately 6,800 LGBT workers in the state. Based on data from other state administrative enforcement agencies, we estimate that, on average, approximately three complaints of sexual orientation or gender identity employment discrimination would be filed in North Dakota 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 North Dakota Human Rights Division and the judicial system.

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 FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, TEXAS RESULTS, NATIONAL CENTER FOR TRANSGENDER GAY AND LESBIAN TASK FORCE, http://www.endtransdiscrimination.org/PDFs/ntds_state_tx.pdf.

² This estimate was reached by applying the percentage of people in North Dakota that are LGBT (1.7%) to the population of North Dakota aged 16 years and older (578,011) and the percentage of people in the North Dakota workforce that are LGBT (1.7%) to the number of people in the North Dakota civilian labor force (401,046). 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, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP03&prodType=table.

³ A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times, Pew Research Center, June 13, 2013, <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>.

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

⁵ JAMIE M. GRANT, LISA A. MOTTET, JUSTIN TANIS, JACK HARRISON, JODY L. HERMAN, & MARA KEISLING, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 51 (2011), http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

⁶ *Hearing on S.B. Before the Senate Judiciary Committee*, 64th Leg. Assem. (N.D. 2015) (testimony of Troy Seibel, Commissioner of Labor).

⁷ *Hearing on S.B. Before the Senate Judiciary Committee*, 64th Leg. Assem. (N.D. 2015) (testimony of Tom Fiebiger).

⁸ *Hearing on S.B. Before the Senate Judiciary Committee*, 64th Leg. Assem. 1-2 (N.D. 2015) (statement of Rep. Joshua Boschee).

⁹ *Hearing on S.B. Before the Senate Judiciary Committee*, 64th Leg. Assem. (N.D. 2015) (testimony of Rep. Joshua Boschee).

¹⁰ *Id.*

¹¹ *Hearing on S.B. 2279 Before the House Standing Committee*, 64th Leg. Assem. (N.D. 2015) (statement of Rep. Joshua Boschee).

¹² *Hearing on S.B. Before the Senate Judiciary Committee*, 64th Leg. Assem. (N.D. 2015) (statement of Annette Otto).

¹³ *Hearing on S.B. Before the Senate Judiciary Committee*, 64th Leg. Assem. (N.D. 2015) (testimony of Faye Seidler).

¹⁴ *Hearing on S.B. Before the Senate Judiciary Committee*, 64th Leg. Assem. (N.D. 2015) (statement of Frank Cavalleri).

¹⁵ *Hearing on S.B. Before the Senate Judiciary Committee*, 64th Leg. Assem. (N.D. 2015) (statement of Kenneth Winter).

¹⁶ *Hearing on S.B. Before the Senate Judiciary Committee*, 64th Leg. Assem. (N.D. 2015) (testimony of Micki Mertz).

¹⁷ *Hearing on S.B. Before the Senate Judiciary Committee*, 63rd Leg. Assem. (N.D. 2013) (testimony of Lisa Edison Smith).

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- ¹⁸ *Hearing on S.B. Before the Senate Judiciary Committee*, 63rd Leg. Assem. (N.D. 2013) (testimony of Susanna Magstadt).
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- ²⁸ *Id.* § 14-02.4-02(8)(13).
- ²⁹ *Id.* § 14-02.4-19; N.D. Dep't of Labor and Human Rights, Human Rights Protections, <http://www.nd.gov/labor/human-rights/> (last visited June 12, 2015).
- ³⁰ *Id.* § 14-02.4-22.
- ³¹ *Id.* § 14-02.4-20.
- ³² *Id.* § 14-02.4-19(2).
- ³³ *Id.* § 14-02.4-20.
- ³⁴ *Id.* § 14-02.4-19(2).
- ³⁵ See Fargo, N.D., Police Officer Applicant Handbook (Jan. 2, 2015), <http://www.cityoffargo.com/attachments/7bd83aab-886b-4257-9311-455d67b45946/PO%20Applicant%20Handbook.pdf> (providing city employment non-discrimination policy).
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- ³⁷ See BRAD SEARS & CHRISTY MALLORY, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.
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⁴⁴ Information about corporate policies is available at Human Rights Campaign, Corporate Employer Database, <http://www.hrc.org/resources/entry/search-our-employer-database> (last visited June 10, 2015) (search by state of headquarters).

⁴⁵ UNIV. N.D. SYS., SBHE POLICIES § 603.2 (2011), available at <https://www.ndus.edu/makers/procedures/sbhe/default.asp?PID=48&SID=7>.

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⁴⁹ 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).

⁵⁰ CHRISTY MALLORY & BRAD SEARS, WILLIAMS INST., EVIDENCE OF EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY: AN ANALYSIS OF COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES, 2008-2014 (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).

⁵¹ *Id.*

⁵² See *Workplace*, THE WILLIAMS INST., <http://williamsinstitute.law.ucla.edu/category/research/workplace/> (last updated Dec. 10, 2013).

⁵³ Gary J. Gates & Frank Newport, *supra* note 2.

⁵⁴ American Community Survey, U.S. Census Bureau, American FactFinder, 2013 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP03.

⁵⁵ “National average” refers to the average of the complaint rates in 14 states across the country that prohibited sexual orientation or gender identity discrimination in 2015. MALLORY & SEARS, *supra* note 50.

⁵⁶ The data gathered for the 2015 study included all employment discrimination complaints filed on the basis of sexual orientation or gender identity; it was not limited to complaints filed by LGBT employees. Heterosexual and cisgender employees may also file complaints under sexual orientation and gender identity non-discrimination

laws if they were discriminated against because of their heterosexuality, transgender status, 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 and gender identity discrimination complaints. See Rubenstein, *supra* note 50.

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⁶⁰ *Id.* at 32.