

# Employment Discrimination Based on Sexual Orientation and Gender Identity in Nebraska



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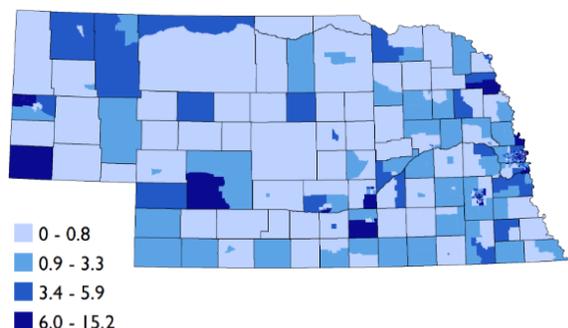
## Executive Summary

More than 4% of the American workforce identifies as lesbian, gay, bisexual, or transgender (LGBT). Approximately 34,800 of these workers live in Nebraska. Nebraska does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in employment.

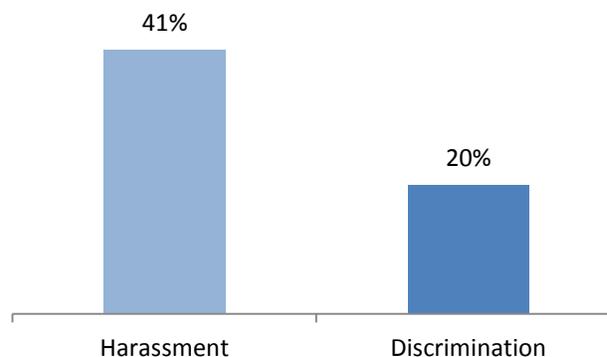
This report summarizes recent evidence of sexual orientation and gender identity employment discrimination, explains the limited current protections from sexual orientation and gender identity employment discrimination in Nebraska, and estimates the administrative impact of passing a law prohibiting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

<b>34,800</b>	<b>8%</b>	<b>20%-33%</b>	<b>69%</b>	<b>22%</b>	<b>16</b>
<b>Number of LGBT Workers</b>	<b>Income Disparity between Straight and Gay Male Workers</b>	<b>LGBT Workers Reporting Workplace Discrimination</b>	<b>Public Support for LGBT Workplace Protections</b>	<b>Workforce Covered by Local Non-Discrimination Laws</b>	<b>Estimated New Complaints if LGBT Protections are Added to State Laws</b>

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



Workplace Experiences of LGBT People in Nebraska<sup>1</sup>



## *Key findings of this report include:*

### LGBT People in Nebraska Experience Discrimination and Harassment in the Workplace

- In total there are approximately 39,500 LGBT people aged 16 and older in Nebraska, including 34,800 who are part of Nebraska's workforce.<sup>2</sup>
- Instances of employment discrimination based on sexual orientation and gender identity in Nebraska have been documented in legislative testimony and in reports to community-based organizations. Examples include instances of discrimination against public and private sector workers.
- Surveys indicate that LGBT people in Nebraska experience employment discrimination. A 2014 Human Rights Campaign survey of LGBT people in Nebraska found that over 20% of respondents reported that they had experienced employment discrimination, and 41% reported that they had experienced harassment at work. A 2010 survey of LGBT people in Omaha similarly found that 33% of respondents reported that they had experienced employment discrimination.
- National surveys also confirm that discrimination against LGBT workers persists. For example, a 2015 Human Rights Campaign survey found that 47% of LGBT people reported that they had experienced employment discrimination, and a 2013 Pew Research Center survey found that 21% of LGBT respondents reported having 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. The 2015 U.S. Transgender Survey report found that 27% of survey respondents reported being fired, denied a promotion, or not being hired for a job they applied for in the year prior to the survey because of their gender identity, and 15% reported being verbally, physically, or sexually harassed at work in the year prior to the survey because of their gender identity in the year prior to the survey.
- Census data show that in Nebraska, the median income of men in same-sex couples is 8% lower than men in different sex marriages.

### Local Governments and Private Employers in Nebraska Have Made Efforts to Protect LGBT People from Workplace Discrimination and Harassment

- One locality in Nebraska, Omaha, has adopted an ordinance prohibiting public and private sector employment discrimination based on sexual orientation or gender identity.
- Omaha's ordinance protects approximately 22% of Nebraska's workforce from discrimination based on sexual orientation and 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. Eight of Nebraska's ten largest private sector employers all have internal policies that prohibit discrimination based on sexual orientation, and seven also prohibit discrimination based on gender identity. Additionally, Nebraska's three largest public

university branches all prohibit employment discrimination based on sexual orientation and gender identity.

## Public Opinion in Nebraska Supports the Passage of Non-Discrimination Protections for LGBT People

- In response to a national poll conducted in 2011, 69% of those polled in Nebraska said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.
- A 2016 poll of Nebraska residents found that 74% of Nebraskans favored laws protecting LGB people from employment discrimination.
- In addition, other polls have found that 79% of Nebraska residents think that LGBT people experience discrimination in the state.

## A Statewide Law Prohibiting Discrimination Based on Sexual Orientation and Gender Identity in Nebraska Would Not Be Administratively Burdensome or Costly to Enforce

- Adding sexual orientation and gender identity to the Nebraska Fair Employment Practice Act would result in approximately 16 additional complaints, on average, being filed with the Nebraska Equal Opportunity Commission or courts 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 Nebraska*

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 reported having been treated unfairly by an employer in hiring, pay, or promotions.<sup>3</sup> Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians reported that they had experienced workplace harassment in the last five years, and 12% said they had lost a job because of their sexual orientation.<sup>4</sup> The 2015 U.S. Transgender Survey report, based on the largest survey of transgender and gender non-conforming people in the U.S. to date, found that 27% of respondents reported being fired, denied a promotion, or not being hired for a job they applied for in the year prior to the survey because of their gender identity, and 15% reported being verbally, physically, or sexually harassed at work in the year prior to the survey because of their gender identity in the year prior to the survey.<sup>5</sup>

Similar statistics have been found in surveys of LGBT individuals in Nebraska. In response to a 2014 survey of LGBT people in Nebraska conducted by the Human Rights Campaign, more than 20% of respondents reported experiencing employment discrimination, and 41% reported being harassed at work.<sup>6</sup> Similarly, in a 2010 survey of LGBT people in Omaha, 33% of respondents reported experiencing job discrimination, 30% reported being treated unfairly by a boss or supervisor, and 34% reported being treated unfairly by coworkers.<sup>7</sup>

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

- In 2015, a resident of Lincoln testified before the Nebraska Legislature about employment discrimination he had experienced because of his sexual orientation.<sup>8</sup> The resident testified that he had been fired from two jobs in Nebraska because he is gay. He stated that he was fired first from a fast food restaurant when the manager discovered that he was gay. According to the resident, the manager told him that he did not “condone [his] immoral behavior,” that he found him to be “a questionable character,” and that he was “not welcome to even step foot back into [the restaurant].” Two other workers at the restaurant, who were gay but not open about their sexual orientation at work, quit their jobs one week after the employee was fired out of fear of discrimination. The resident was fired from a second job at a wine store after he brought a date in during his off-work hours. The resident testified that the day after they had visited the store, he was taken off the schedule without any explanation.<sup>9</sup> The resident stated that he will no longer apply for a job in Nebraska if the employer does not have a non-discrimination policy that includes sexual orientation.
- In 2014, a resident of a small town in Nebraska described his experience of employment discrimination to a research organization.<sup>10</sup> The resident, his husband, and their teenage son had moved from Massachusetts to Nebraska solely so that he could accept a lucrative job. According to the resident, he was told during the interview process that he was joining a “very affirming company” and he would have access to health care benefits for his husband. However, the company ultimately did not provide the benefits, coworkers began to tell homophobic jokes in his presence, and he received anonymous threats on his work email account. The company did not respond to his complaints and eventually fired him. The resident reported that after he left, former coworkers reached out to him and told him that he had been fired because he was gay. The man and his family eventually left the state to find work.
- A woman moved from Colorado to Omaha to work as a camp facilitator and during her orientation described herself as queer.<sup>11</sup> Her supervisor informed her that she should have informed her employers of her sexuality during her interview because they would have reconsidered her position. She now comes out during every job interview and some potential employers have responded by offering to pray for her or inviting her to church.

- A community-based organization collected examples of discrimination from Omaha residents in anticipation of a 2012 city council hearing on a sexual orientation and gender identity non-discrimination ordinance.<sup>12</sup> Examples collected include:
  - A transgender employee of a public school reported that she had been passed over for job promotions because of her gender identity.
  - A non-LGBT small business owner stated that she had seen many residents of Omaha “hide who they are just so they can make a living.”
  - A non-LGBT mother and public elementary school teacher reported that her gay son was fired from a job at a tanning salon in Omaha. She stated that after getting excellent performance reviews, he was fired the day after the regional supervisor visited because he was ““not a good fit”” for the company.
  - A bank employee reported that she had not disclosed her sexual orientation at her job of many years because she feared discrimination. When a coworker saw her outside of work with her wife, the coworker encouraged her not to be open about her sexual orientation at work. The employee stated that she continues to hide her sexual orientation at work because she fears that she could lose her job and not be able to support her wife and three children.
  - A transgender woman reported that after being offered a job, she was told by the employer that she could either express herself as male at work or decline the offer. She decided to accept the job and present herself as male at work. After one year, a manager felt that the employee was being treated unfairly, and petitioned the company’s headquarters for a policy change. The company agreed to change its policies, and allowed the employee to express her gender identity at work. At the time she submitted her story, she had been employed by the company for seven years.
  - An employee of an insurance agency reported that he was not open about his sexual orientation at work because he feared discrimination. He stated that during company meetings, the CEO and his coworkers routinely made homophobic jokes, and insinuated that others in the company were gay. After two years with the company, he was laid off without explanation.
  - A construction industry worker reported that he was not open about his sexual orientation at work because he feared discrimination. He said that he “hears gay jokes...every hour of the day” and feared that he would lose his job if anyone found out that he was gay.
  - A woman who worked in development at a local non-profit reported that she hid her sexual orientation for many years, and did not talk about her wife or her son at work. When she became pregnant with her second son, however, she told the board that she was married to a woman. One of the board members expressed concerns about her employment, telling others that the woman was ““not a good role model.”” In addition, her supervisor told her that she was not entitled to take paid leave to care for her older son because her wife had given birth to him. She was also encouraged to not be open about her sexual orientation at work.

## ***Wage Inequity***

Census data show that men in same-sex couples in Nebraska earn less than men married to different-sex partners. On average, men in same-sex couples in Nebraska earn \$38,900 each year, which is less than the \$41,800 for men married to different-sex partners.<sup>13</sup> The median income of men in same-sex couples in Nebraska is \$30,400, which is 8% less than that of married men (\$33,000).<sup>14</sup>

Women in same-sex couples in Nebraska earn less than men married to different-sex partners as well as men in same-sex couples.<sup>15</sup> Women in same-sex couples earn an average of \$33,200 per year (with a median of \$25,000), which is more than women married to different-sex partners, whose earnings average \$22,200 (with a median of \$19,000).<sup>16</sup> Higher wages among women in same-sex couples has been attributed to different decisions made by lesbians and heterosexual women in the paid labor force.<sup>17</sup> For example, research shows “that lesbians work more hours per week and more weeks per year than heterosexual women, and eventually that time would add up to more labor market experience for lesbians.”<sup>18</sup>

Surveys of transgender people find that they have high rates of unemployment and very low earnings.<sup>19</sup>

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 have consistently found 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.<sup>20</sup>

## **Current Protections from Discrimination**

Nebraska does not have a statewide statute that prohibits discrimination based on sexual orientation or gender identity in public and private sector employment.<sup>21</sup> However, several localities, universities, and private corporations in Nebraska have adopted local ordinances and internal policies that prohibit such discrimination against employees.

### ***Nebraska Fair Employment Practice Act***

The Nebraska Fair Employment Practice Act prohibits employment discrimination based on race, religion, sex, national origin, age, disability, and marital status.<sup>22</sup> The law does not explicitly prohibit discrimination based on sexual orientation or gender identity. The Act applies to public and private sector employers with 15 or more employees.<sup>23</sup>

The Nebraska Equal Opportunity Commission is responsible for administrative enforcement of the Fair Employment Practice Act.<sup>24</sup> The Commission 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.<sup>25</sup> If the Commission determines that discrimination has occurred, the employee may receive hiring or reinstatement and back pay.<sup>26</sup> The Act also allows an employee who has experienced discrimination to file a civil action in court rather than filing an administrative complaint.<sup>27</sup> A court may order the same remedies that are available through an administrative hearing, as well as general and special damages, court costs, and attorneys' fees.<sup>28</sup> An employee must file an administrative complaint with the Commission within 300 days of the alleged discriminatory practice.<sup>29</sup>

### ***Local-Level Protections from Discrimination***

Omaha is the only locality in Nebraska that has an ordinance prohibiting discrimination based on sexual orientation and gender identity in both public and private sector employment.<sup>30</sup> Approximately 22% of Nebraska's workforce is protected from discrimination based on sexual orientation and gender identity under the ordinance.

Omaha's ordinance generally applies to employers with six or more employees, subject to a few limited exceptions.<sup>31</sup> The Director of the Omaha Human Rights and Relations Division and the Civil Rights Hearing Board are responsible for enforcement of the non-discrimination provisions.<sup>32</sup> The Director has the power to accept and investigate complaints, and to attempt to remedy discrimination through informal measures, such as meetings and conciliations.<sup>33</sup> If those efforts fail, the Director may seek a formal hearing on the complaint through the Civil Rights Hearing Board.<sup>34</sup> If the Civil Rights Hearing Board determines that unlawful discrimination has occurred, it may order remedies including hiring or reinstatement of the employee and compensation for lost earnings.<sup>35</sup> Unlike Nebraska's Fair Employment Practice Act, Omaha's ordinance does not provide for a private right of action in court.

In addition, the Lincoln City Council adopted an ordinance prohibiting discrimination based on sexual orientation and gender identity in public and private sector employment in 2012.<sup>36</sup> However, a petition forced the City Council to either repeal the ordinance or put it to a citywide vote. The City Council has not followed either course, leaving the ordinance on the books but rendering it unenforceable.<sup>37</sup>

### ***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.<sup>38</sup> One study of corporate motivations behind adopting workplace non-discrimination policies found that 53% of the top 50 Fortune 500 companies and the top 50 federal contractors in the U.S. with LGBT-supportive policies had adopted the policies for economic reasons.<sup>39</sup>

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.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup>

Additionally, LGBT-supportive workplace policies can expand opportunities to secure potentially lucrative government contracts for corporate employers. A federal executive order requires federal contractors to adopt policies prohibiting discrimination based on sexual orientation and gender identity.<sup>43</sup> Several state and local governments have adopted similar laws.<sup>44</sup> Companies are eligible to bid on contracting opportunities with the federal government or these state and local governments only if they agree to prohibit sexual orientation and gender identity discrimination in the workplace.

A number of Nebraska's top employers have adopted internal corporate policies that prohibit discrimination based on sexual orientation and gender identity. Ten Fortune 1000 companies are headquartered in Nebraska. Eight of these companies include sexual orientation in their non-discrimination policies, and six also include gender identity.<sup>45</sup> Of Nebraska's ten largest private employers (a group that includes three of the ten Fortune 1000 companies), eight prohibit discrimination based on sexual orientation, and seven prohibit discrimination based on both sexual orientation and gender identity.<sup>46</sup> Nebraska's three largest public university branches, the University of Nebraska at Omaha, Lincoln, and Kearney, all prohibit employment discrimination based on both sexual orientation and gender identity.<sup>47</sup> Additionally, in a 2014 poll by the Human Rights Campaign, 48% of employed LGBT respondents from Nebraska reported that their employer barred discrimination against LGBT people.<sup>48</sup>

## **Public Opinion**

Public opinion in Nebraska supports the passage of non-discrimination protections for LGBT people. In response to a national poll conducted in 2011, 69% of those polled in Nebraska said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.<sup>49</sup> In a 2016 poll, 74% of Nebraskan respondents favored laws protecting lesbians, gays, and bisexuals from employment discrimination.<sup>50</sup>

In addition, public opinion data indicate that Nebraska residents perceive the state as unfriendly to LGBT people. Aggregated data from two large public opinion polls found that 79% of Nebraska residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.<sup>51</sup>

## **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.<sup>52</sup> 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.<sup>53</sup>

We estimate that approximately 16 complaints of sexual orientation or gender identity discrimination would be filed with the Nebraska Equal Opportunity Commission each year. To reach this estimate, we drew on Gallup polling data and Census data from Nebraska 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.<sup>54</sup>

Results from Gallup polls conducted between 2012 and 2014 show that 3.4% of people in Nebraska's workforce identify as LGBT.<sup>55</sup> Applying this percentage to the number of people in Nebraska's workforce (1,024,201<sup>56</sup>) indicates that there are 34,833 LGBT workers in Nebraska.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in Nebraska to determine how many complaints would 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.<sup>57</sup> 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.<sup>58</sup>

Applying the national complaint rate (4.6 per 10,000 LGBT workers) to the number of LGBT workers in Nebraska (34,833) suggests that, on average, 16 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 16 complaints filed with the Nebraska Equal Opportunity Commission each year would not be costly or burdensome to enforce. According to the six most recent annual reports (2010 through 2015), the Commission received an annual average of 1,015 discrimination complaints.<sup>59</sup> The annual reports do not provide enough data to determine the cost of enforcement per

complaint, so it is not possible to precisely estimate any added expense associated with the additional 16 complaints.

However, the data suggest that the additional complaints would have a minimal impact on the Commission. Annual fluctuations in the number of complaints filed with the Commission varied from 42 to 114 complaints over the six fiscal year periods from 2009 through 2015. On average, annual filings from 2009 through 2015 varied by 92 complaints. This information suggests that an additional 16 complaints would be within the range of normal variation and could be absorbed by the Commission with minimal impact on staff and resources.

Fiscal Year	Number of Complaints Handled	Change in Complaints from Prior Year
2014-2015	1,145 <sup>60</sup>	128
2013-2014	1,017 <sup>61</sup>	42
2012-2013	975 <sup>62</sup>	64
2011-2012	911 <sup>63</sup>	114
2010-2011	1,025 <sup>64</sup>	110
2009-2010	1,015 <sup>65</sup>	NA

Additionally, the Nebraska Legislative Fiscal Office determined that a 2015 bill adding sexual orientation and gender identity to the state’s non-discrimination law would have had a minimal fiscal impact.<sup>66</sup> The Office did not specifically estimate the number of complaints that would be filed under the law or the costs associated with enforcing them, but stated that the City of Omaha had received few complaints at the local level since passing a similar ordinance.<sup>67</sup> The Office concluded that if the state’s experience was similar, “the investigations could be handled within existing resources.”<sup>68</sup> It further stated that in the event of a “substantial” increase in complaints filed under the new law, the agency could contract out investigative work in the short term for an estimated \$50,000 or carry a backlog equal to the number of additional complaints.<sup>69</sup>

Finally, any complaints filed directly in court would likely have a negligible impact on Nebraska’s judicial system. From 2010 through 2015, Nebraska district and county courts, statewide, handled an average of 405,033 filings per year.<sup>70</sup> The number of filings has varied by an annual average of 13,266 filings over the same time period. Even if all of the 16 complaints of sexual orientation and gender identity discrimination were filed in court rather than the Commission, the impact would be negligible given the size of the judicial system’s existing caseload.

## Conclusion

Documented evidence shows that LGBT people face employment discrimination across the country, including in Nebraska. There is currently no statewide law that prohibits discrimination based on sexual orientation or gender identity in public and private sector employment in Nebraska. Adding these characteristics to the state’s employment non-discrimination law would provide new protections or strengthen existing protections for approximately 34,800 LGBT workers in the state. Based on data from

other state administrative enforcement agencies, we estimate that, on average, approximately 16 complaints of sexual orientation or gender identity employment discrimination would be filed in Nebraska 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 Nebraska Equal Opportunity Commission.

## **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

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<sup>1</sup> Press Release, Human Rights Campaign, HRC Nebraska Commends State Senators for Taking Action on LGBT Equality (Jan. 21, 2015), <http://www.hrc.org/press-releases/entry/hrc-nebraska-commends-state-senators-for-taking-action-on-lgbt-equality>.

<sup>2</sup> These estimates were reached by applying the percentage of people in Nebraska that identify as LGBT (2.7 percent) to the population of Nebraska age sixteen and over (1,462,485) and applying the percentage of people in Nebraska's labor force that identify as LGBT (3.4 percent) to the number of people in the state's civilian labor force aged sixteen and older (1,024,201). 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?version=print>; American Community Survey, *2014 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates*, U.S. CENSUS BUREAU, AMERICAN FACT FINDER (2014); Gary J. Gates, Williams Institute Analysis based on data from the Gallup Daily Tracking Poll (2012-2014) (on file with author).

<sup>3</sup> 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/>.

<sup>4</sup> 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>.

<sup>5</sup> SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY 10 (2016), <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

<sup>6</sup> Press Release, Human Rights Campaign, HRC Nebraska Commends State Senators for Taking Action on LGBT Equality (Jan. 21, 2015), <http://www.hrc.org/press-releases/entry/hrc-nebraska-commends-state-senators-for-taking-action-on-lgbt-equality>.

<sup>7</sup> CHRISTOPHER M. FISHER, JAY A. IRWIN, JASON D. COLEMAN, MOLLY MCCARTHY, & JESSICA CHAVEZ, MIDLANDS LGBT COMMUNITY NEEDS ASSESSMENT, ADDENDUM A (2011), <http://www.unomaha.edu/college-of-education/health-physical-education-recreation/research/mshrc/docs/addendum-a-employment-relateddiscriminationexperiences-lgbtq-omaha.pdf>.

<sup>8</sup> *Hearing on L.B. 568, L.B. 602, L.B. 647, L.B. 648, and L.B. 663 Before the Judiciary Comm.*, 104th Leg. Assem., 1st Reg. Sess. 95-97 (Neb. 2015) (statement of Lucas Peterson), <http://www.legislature.ne.gov/FloorDocs/104/PDF/Transcripts/Judiciary/2015-02-04.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> MOVEMENT ADVANCEMENT PROJECT, PAYING AN UNFAIR PRICE: THE FINANCIAL PENALTY FOR BEING LGBT IN AMERICA 67 (2014), <http://www.lgbtmap.org/file/paying-an-unfair-price-full-report.pdf>.

<sup>11</sup> Julia Shumway, *Large Hearing on Workplace Discrimination Bill in Nebraska*, LGBTQ NATION (Feb. 23, 2017), <https://www.lgbtqnation.com/2017/02/large-hearing-workplace-discrimination-bill-nebraska/>.

<sup>12</sup> Share Your Story: Omaha's Gay, Lesbian, Bisexual & Transgender Discrimination in the Workplace, VOICE OMAHA, <http://voiceomaha.org/equal-employment/> (last visited Mar. 22, 2016).

<sup>13</sup> ADAM P. ROMERO, CLIFFORD J. ROSKY, M.V. LEE BADGETT & GARY GATES, WILLIAMS INST., CENSUS SNAPSHOT: NEBRASKA 2 (2008), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/NebraskaCensus2000Snapshot.pdf>.

<sup>14</sup> *Id.*

<sup>15</sup> ROMERO, ROSKY, BADGETT & GATES, *supra* note 13 at 2.

<sup>16</sup> *Id.*

<sup>17</sup> M.V. LEE BADGETT & ALYSSA SCHNEEBAUM, WILLIAMS INST., THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS 1-2 (2015), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.*

<sup>20</sup> 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); Marieka Klawitter, *Meta-Analysis of the Effects of Sexual Orientation on Earnings*, 54 INDUST. RELATIONS 4 (2014).

<sup>21</sup> See JEROME HUNT, CTR. AM. PROG. ACTION FUND, A STATE-BY-STATE EXAMINATION OF NONDISCRIMINATION LAWS AND POLICIES 3 (June 2012), [http://www.americanprogress.org/issues/2012/06/pdf/state\\_nondiscrimination.pdf](http://www.americanprogress.org/issues/2012/06/pdf/state_nondiscrimination.pdf).

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<sup>22</sup> NEB. REV. STAT. ANN. §§ 48-1001, 48-1104(1) (2015).

<sup>23</sup> *Id.* § 48-1102(2).

<sup>24</sup> *Id.* § 48-1116.

<sup>25</sup> *Id.* § 48-1117.

<sup>26</sup> *Id.* § 48-1119(3).

<sup>27</sup> *Id.* § 48-1119(4).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* § 48-1118(2).

<sup>30</sup> OMAHA, NEB., CODE § 13-89 (2015).

<sup>31</sup> OMAHA, NEB., CODE § 13-88(c).

<sup>32</sup> *Id.* §§ 13-134 to 13-150.

<sup>33</sup> *Id.* § 13-142.

<sup>34</sup> *Id.* § 13-145.

<sup>35</sup> *Id.* § 13-169.

<sup>36</sup> Nancy Hicks, *No Vote in Sight for Lincoln's Fairness Ordinance*, LINCOLN JOURNAL STAR (July 13, 2013 6:00 AM), [http://journalstar.com/news/local/govt-and-politics/no-vote-in-sight-for-lincoln-s-fairness-ordinance/article\\_ed49ee63-2964-58a6-8ff6-301e3cd48101.html](http://journalstar.com/news/local/govt-and-politics/no-vote-in-sight-for-lincoln-s-fairness-ordinance/article_ed49ee63-2964-58a6-8ff6-301e3cd48101.html).

<sup>37</sup> Riley Johnson, *Gay Rights Group Announces Expanded Operation in Nebraska*, LINCOLN JOURNAL STAR (Sept. 15, 2014, 5:45 PM), [http://journalstar.com/news/local/gay-rights-group-announces-expanded-operation-in-nebraska/article\\_fea919e9-40ad-5deb-bf2f-62def6fabb12.html](http://journalstar.com/news/local/gay-rights-group-announces-expanded-operation-in-nebraska/article_fea919e9-40ad-5deb-bf2f-62def6fabb12.html); Joel Williams, *A study of gender identity and sexual orientation private nondiscrimination laws in America's largest 100 cities*, Ballotpedia (July 21, 2015), [http://ballotpedia.org/A\\_study\\_of\\_gender\\_identity\\_and\\_sexual\\_orientation\\_private\\_nondiscrimination\\_laws\\_in\\_America's\\_largest\\_100\\_cities](http://ballotpedia.org/A_study_of_gender_identity_and_sexual_orientation_private_nondiscrimination_laws_in_America's_largest_100_cities). Research could not identify any change in the status of the Lincoln non-discrimination ordinance since July 21, 2015.

<sup>38</sup> See BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., *ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES* (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

<sup>39</sup> *Id.*

<sup>40</sup> M.V. LEE BADGETT, LAURA E. DURSO, ANGELIKI KASTANIS & CHRISTY MALLORY, WILLIAMS INST., *THE BUSINESS IMPACT OF LGBT-SUPPORTIVE WORKPLACE POLICIES* (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-Report-May-2013.pdf>.

<sup>41</sup> Out & Equal, Harris Interactive & Witeck Combs Commc'n, *Majority of Americans: Companies Not Government Should Decide Benefits Offered to Same-Sex Employees*, OUTANDEQUAL.ORG (May 22, 2006), [http://outandequal.org/documents/2006\\_Workplace\\_Survey052306.pdf](http://outandequal.org/documents/2006_Workplace_Survey052306.pdf).

<sup>42</sup> Andras Tilcsik, *Pride and Prejudice: Employment Discrimination Against Openly Gay Men in the United States*, 117 AM. J. SOC. 586, 590-93 (2011).

<sup>43</sup> Exec. Order No. 13672, 79 Fed. Reg. 42,971 (2014).

<sup>44</sup> See Christy Mallory & Brad Sears, *An Evaluation of Local Laws Requiring Government Contractors to Adopt LGBT-Related Workplace Policies*, 5 ALBANY GOV'T L. REV. 478, 481 (2011) (review of local governments with such policies as of 2011). Examples of states with such laws include California (CAL. GOV. CODE § 12990 (2013)), Delaware Delaware (DEL. CODE ANN. tit., 29 § 6962(d)(7) (2013)), and Maryland (MD. CODE ANN., STATE FIN. & PROC. § 19-101 (LexisNexis 2013)).

<sup>45</sup> The list of companies was obtained from *Fortune 1000 2017*, FORTUNE, <http://fortune.com/fortune500/>, filtered by state: Nebraska. Employers that include sexual orientation in their non-discrimination policies include: Berkshire Hathaway, Cabela's, Kiewit, Mutual of Omaha Insurance, TD Ameritrade Holding, Union Pacific, Valmont Industries, and West. All but Kiewit and West also include gender identity in their policies. *Affirming Diversity*, UNION PACIFIC, [http://www.up.com/aboutup/corporate\\_info/diversity/affirmingdiversity/index.htm](http://www.up.com/aboutup/corporate_info/diversity/affirmingdiversity/index.htm); *Cabela's Business Code of Conduct & Ethics*, CABELA'S 14 (April 14, 2014), <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MjI5ODExfENoaWxkSUQ9LTF8VHlwZT0z&t=1>; *A Career with Valmont*, VALMONT, <http://www.valmontcareers.com/get-to-know-us/diversity-and-inclusion>; *Commitment: Mutual of Omaha's Code of Ethics and Business Conduct*, MUTUAL OF OMAHA 10, <http://www.mutualofomaha.com/documents/about/m27710.pdf>; *DiNapoli Reaches Agreement with TD*

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*Ameritrade to Expand Protections Against Discrimination*, OFFICE OF THE STATE COMPTROLLER (November 1, 2013), <https://www.osc.state.ny.us/press/releases/nov13/110113.htm>; *EEO Policy*, BERKSHIRE HATHAWAY ENERGY, <https://www.berkshirehathawayenergyco.com/about-us/careers/eeo-policy>; *Kiewit's Code of Ethics and Business Conduct*, KIEWIT 13 (August 2011),

[http://www.kiewit.com/files/2113/8054/9770/Kiewit\\_Ethics\\_and\\_Code\\_of\\_Conduct.pdf](http://www.kiewit.com/files/2113/8054/9770/Kiewit_Ethics_and_Code_of_Conduct.pdf); *West Code of Ethical Business Conduct*, WEST, <http://investor.west.com/corporate-governance-document.cfm?documentid=11976>.

<sup>46</sup> At the time of writing, Nebraska's ten largest private employers were Union Pacific, Tyson Fresh Meats, Mutual of Omaha Insurance, ConAgra Foods, JBS USA, West Corporation, PayPal, Bryan Medical Center, CHI Health St. Elizabeth, and Cargill Meat Solutions. See State Profile: Largest Employers, CAREERONESTOP.COM, <https://www.careerinfonet.org/oview6.asp?printer=&next=oview6&id=11&nodeid=12&stfips=31&group=1>. The employer that does not include gender identity in their non-discrimination policy is West. *Affirming Diversity*, UNION PACIFIC, [http://www.up.com/aboutup/corporate\\_info/diversity/affirmingdiversity/index.htm](http://www.up.com/aboutup/corporate_info/diversity/affirmingdiversity/index.htm); *Careers*, JBS USA, <http://jbsa.com/careers/>; *Careers*, TYSON, <http://www.tysonfoodscareers.com/EEO-Statement.aspx>; *ConAgra Foods Code of Conduct*, CONAGRA FOODS (December 2012), [http://www.conagrafoods.com/pdf/CodeOfConduct\\_english.pdf](http://www.conagrafoods.com/pdf/CodeOfConduct_english.pdf); *Contact Us: Equal Opportunity Employer*, PAYPAL, <https://jobs.paypal-corp.com/contact-us.html>; *Our Mutual Commitment: Mutual of Omaha's Code of Ethics and Business Conduct*, MUTUAL OF OMAHA 10, <http://www.mutualofomaha.com/documents/about/m27710.pdf>; *Patient Rights and Responsibilities*, BRYAN HEALTH, <https://www.bryanhealth.com/patients-visitors/information/patient-rights-responsibilities/>; *West Code of Ethical Business Conduct*, WEST, <http://investor.west.com/corporate-governance-document.cfm?documentid=11976>.

<sup>47</sup> *Nondiscrimination Policy*, University of Nebraska—Lincoln, <http://www.unl.edu/gradstudies/bulletin/nondiscrimination-policy>; *Affirmative Action / Equal Opportunity Statement*, UNIVERSITY OF NEBRASKA AT OMAHA, <http://www.unomaha.edu/policies/docs/AFFIRMATIVE%20ACTION-EQUAL%20OPPORTUNITY%20STATEMENT.pdf>; *Equal Employment Opportunity Policy*, UNIVERSITY OF NEBRASKA AT KEARNEY (October 2010), [http://www.unk.edu/offices/human\\_resources/aaeo/policies/equal\\_employment\\_opportunity.php](http://www.unk.edu/offices/human_resources/aaeo/policies/equal_employment_opportunity.php).

<sup>48</sup> Human Rights Campaign, *Nebraska HRC Membership Poll* at Q71 (February 6–March 20, 2014) (internal HRC poll, on file with author).

<sup>49</sup> 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).

<sup>50</sup> Ben Bohall, *Statewide Survey Shows Nebraska Breaking Red State Stereotype on Social Issues*, NEBRASKA EDUCATIONAL TELECOMMUNICATIONS (Mar. 24, 2016, 6:44 AM), <http://netnebraska.org/article/news/1017914/statewide-survey-shows-nebraska-breaking-red-state-stereotype-social-issues>.

<sup>51</sup> 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).

<sup>52</sup> CHRISTY MALLORY & BRAD SEARS, WILLIAMS INST., EVIDENCE OF EMPLOYMENT DISCRIMINATION BASED ON 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-Emphy-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).

<sup>53</sup> *Id.*

<sup>54</sup> See *Workplace*, WILLIAMS INST., <http://williamsinstitute.law.ucla.edu/category/research/workplace/> (last updated Dec. 10, 2013).

<sup>55</sup> Gary J. Gates, Williams Institute Analysis based on data from the Gallup Daily Tracking Poll (2012-2014) (on file with author).

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<sup>56</sup> American Community Survey, U.S. Census Bureau, American FactFinder, 2014 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates.

<sup>57</sup> “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 52.

<sup>58</sup> 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 52.

<sup>59</sup> STATE OF NEBRASKA EQUAL OPPORTUNITY COMMISSION, ANNUAL REPORT: FISCAL YEAR 2014/2015 3, <http://www.neoc.ne.gov/reports/pdf/AnnualReport09-10.pdf> (last visited July 24, 2016); STATE OF NEBRASKA EQUAL OPPORTUNITY COMMISSION, ANNUAL REPORT: FISCAL YEAR 2010/2011 3, <http://www.neoc.ne.gov/reports/pdf/AnnualReport09-10.pdf> (last visited July 24, 2016).

<sup>60</sup> STATE OF NEBRASKA EQUAL OPPORTUNITY COMMISSION, ANNUAL REPORT: FISCAL YEAR 2014/2015 3, <http://www.neoc.ne.gov/reports/pdf/AnnualReport09-10.pdf> (last visited July 24, 2016).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> STATE OF NEBRASKA EQUAL OPPORTUNITY COMMISSION, ANNUAL REPORT: FISCAL YEAR 2010/2011 3, <http://www.neoc.ne.gov/reports/pdf/AnnualReport09-10.pdf> (last visited July 24, 2016).

<sup>65</sup> *Id.*

<sup>66</sup> Liz Hruska, LB 586, Revision 01: Fiscal Note, Mar. 23, [http://nebraskalegislature.gov/FloorDocs/Current/PDF/FN/LB586\\_20150324-085819.pdf](http://nebraskalegislature.gov/FloorDocs/Current/PDF/FN/LB586_20150324-085819.pdf).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See NEB. DIST. COURTS ANNUAL CASELOAD REPORT: FISCAL YEAR 2015 3 (2015), <https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/reports/courts/FY-2015-county-caseload-report.pdf>.