

Employment Discrimination Based on Sexual Orientation and Gender Identity in Virginia



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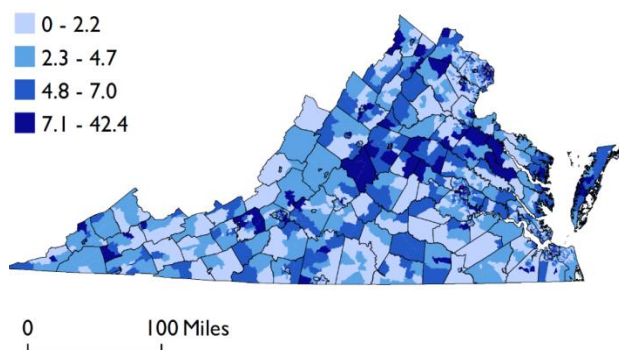
Executive Summary

More than 4% of the American workforce identifies as lesbian, gay, bisexual, or transgender (LGBT). Approximately 124,000 of these workers live in Virginia. Virginia does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in both public and private sector employment.

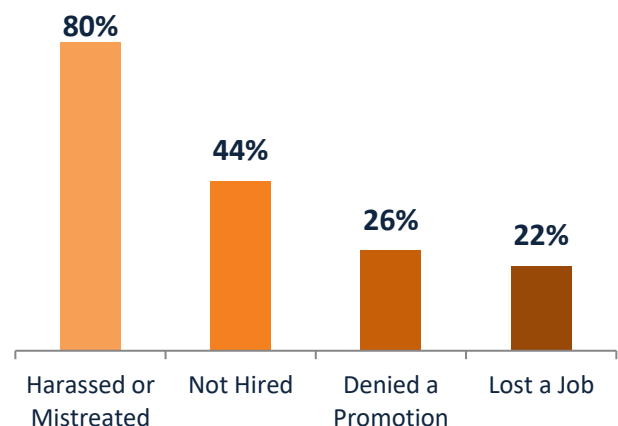
This report summarizes recent evidence of sexual orientation and gender identity employment discrimination, explains the limited current protections from sexual orientation and gender identity employment discrimination in Virginia, and estimates the administrative impact of passing a law prohibiting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

124,000	10%	80%	80%	6%	5
Number of LGBT Workers	Income Disparity between Straight and Gay Male Workers	Transgender Workers Reporting Workplace Discrimination	Public Support for LGBT Workplace Protections	Workforce Covered by Local Non-Discrimination Laws	Estimated New Complaints if LGBT Protections are Added to State Laws

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



Discrimination experienced by transgender workers in Virginia¹



Key findings of this report include:

- In total there are approximately 191,000 LGBT adults in Virginia, including nearly 124,000 who are part of Virginia's workforce.²
- Media reports and lawsuits document incidents of sexual orientation and gender identity discrimination against employees in Virginia. These include reports from a police officer, a college volleyball coach, a museum employee, and an attorney.
- National surveys find that discrimination against LGBT workers is prevalent across the country. Most recently, a 2013 Pew Research Center survey found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.
- When transgender people are surveyed separately, they report similar or higher levels of discrimination. For example, as recently as 2010, 80% of respondents from Virginia to the largest survey of transgender people to date reported having experienced harassment or mistreatment at work.
- Disparities in wages are another way that discrimination has traditionally been measured. Census data show that in Virginia, the median income of men in same-sex couples is 10% lower than the median income of men in different sex marriages.
- A gubernatorial executive order in Virginia provides protection from sexual orientation and gender identity discrimination for state government employees.
- Three localities in Virginia have ordinances prohibiting employment discrimination based on sexual orientation and/or gender identity: Arlington County, Alexandria, and Charlottesville.
- Approximately 94% of Virginia's local government and private sector workforce is not covered by a local ordinance that prohibits employment discrimination based on sexual orientation. Over 99% of Virginia's local government and private sector workforce is not covered by a local ordinance that prohibits discrimination based on gender identity.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. Twenty-five of the 33 Fortune 1000 companies based in Virginia have policies prohibiting discrimination based on sexual orientation, and 17 of those companies also prohibit discrimination based on gender identity.
- Public opinion in Virginia supports passage of a statewide law prohibiting discrimination based on sexual orientation and gender identity. In response to a 2013 survey conducted in Virginia, 80% of the nearly 700 people surveyed said that employers should not be able to discriminate against their employees based on sexual orientation. In addition, other polls find that 79% of Virginia 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 Virginia Human Rights Act would result in at most 5 additional complaints being filed with the Virginia Division of Human Rights each year.
- The additional cases could most likely be absorbed into Virginia's administrative system with minimal impact on the budget, staff, and resources.

Evidence of Discrimination

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

Research shows the existence of widespread and continuing discrimination against LGBT workers in the U.S. In response to surveys, LGBT workers consistently report having experienced discrimination, and non-LGBT people often report having witnessed discrimination against their LGBT co-workers. For example, a national survey conducted by Pew Research Center in 2013 found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.⁴ 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.⁵ As recently as 2010, 78% of respondents to the largest survey of transgender people to date reported having experienced harassment or mistreatment at work, and 47% reported having been discriminated against in hiring, promotion, or job retention because of their gender identity.⁶

Similar statistics have been found in surveys of LGBT individuals in Virginia. In response to the national survey of transgender people, a significant number of transgender respondents from Virginia reported experiencing adverse treatment at work because of their gender identity or gender expression.⁷ More specifically, 80% of the respondents from Virginia reported experiencing harassment or mistreatment at work, 22% reported losing a job, 26% reported being denied a promotion, and 44% reported not being hired.

Employment discrimination against LGBT people has also been documented in court cases, state and local administrative complaints, complaints to community-based organizations, academic journals, newspapers, books, and other media. Additionally, a number of federal, state, and local administrative agencies and legislative bodies have acknowledged that LGBT people have faced widespread discrimination in employment.⁸

Several instances of employment discrimination against LGBT people in Virginia have been documented in the media, court cases, and reports to legal organizations:

- In 2013, a gay man who worked at a 7-Eleven store in Virginia Beach reported that he was fired because of his sexual orientation.⁹ According to the man, he was fired shortly after a male customer approached him and sexually assaulted him in the store.
- In 2012, a volleyball coach filed a complaint with Virginia Commonwealth University alleging that the school fired him because he was gay.¹⁰ The coach had a successful coaching career at VCU for eight years, but was terminated shortly after a new athletics director was hired. The coach reported that the new athletics director did not reach out to him or his team, and did not make an effort to have any meetings with him about his program. VCU's internal investigation

concluded that the termination was not discriminatory, but did not publicly state why he was fired.¹¹

- During the same week in 2012 that the volleyball coach was fired from VCU, another openly gay employee in the athletics department was demoted.¹² The woman had been an employee of VCU for over thirty years. VCU's vice president of equity and diversity said that the female staffer and the coach were the only two employees in the athletics department to experience changes in their jobs after the new director arrived. The employee chose not to file a formal complaint with the university.
- In 2008, a woman reported to a legal services organization that she had been harassed and discriminated against because of her sexual orientation.¹³ The woman, a police officer, reported that she was forced to work long shifts without breaks and was harassed by her captain because she was a lesbian. She further reported that when she applied for another job, the captain approached her future employer and told him that the officer was a lesbian.
- In 2006, a former employee of a state-run museum in Virginia filed suit against the museum alleging that he had been forced out because of his sexual orientation.¹⁴ According to his claim, the Executive Director asked the employee if he was gay, and then fired him when he said that he was, because she feared that his sexual orientation would jeopardize donations. Following an investigation, the Virginia Office of Equal Employment Services determined that there was "sufficient evidence" showing that the employee had been discriminated against because of his sexual orientation. He then filed suit in court under an executive order that prohibited sexual orientation discrimination in state employment, but the court dismissed his action, holding that the order did not create a private right of action.
- In 2000, a woman interviewing for a job with a law firm reported that the firm ended the hiring process because of her sexual orientation.¹⁵ According to the woman, the firm had asked her to come back for a third and final interview, and invited her to bring her spouse along to dinner with partners at the firm afterwards. When the woman told the firm that her spouse was a woman, they told her not to come back for the final interview because they would not hire a lesbian.

Wage Inequity

Census data show that men in same-sex couples in Virginia earn less than men married to different-sex partners. On average, men in same-sex couples in Virginia earn \$45,024 each year, significantly less than the \$51,851 for men married to different-sex partners.¹⁶ The median income of men in same-sex couples in Virginia is \$36,000, compared to \$40,000 for men married to different-sex partners.¹⁷ Men with same-sex partners earn lower wages, despite the fact that they are more likely to have a college degree than men married to different-sex partners,¹⁸ a comparison that supports the possibility that people in same-sex couples are not treated equally by employers. A 2009 study indicated that the wage gap for gay men

is smaller in states that implement non-discrimination laws, suggesting that such laws reduce discrimination against LGBT people.¹⁹

Women in same-sex couples earn less than married men as well as men in same-sex couples.²⁰ Women in same-sex couples in Virginia earn an average of \$41,580 per year (with a median of \$34,000), which is more than married women, whose earnings average \$27,986 (with a median of \$22,400).²¹

These findings are not unique to Virginia. Analyses of national data consistently find that men in same-sex couples and gay men earn 10-32% less than similarly qualified men who are married to different-sex partners, or men who identify as heterosexual.²² Surveys of transgender people find that they have high rates of unemployment and very low earnings.²³

Current Protections from Discrimination

Virginia does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in employment.²⁴ Since 1997, bills have been introduced in 16 legislative sessions to prohibit discrimination based on sexual orientation and/or gender identity at the state level, either in public sector employment, private sector employment, or both.²⁵ Bills that would have prohibited sexual orientation and gender identity discrimination in public sector employment passed the Virginia Senate in 2010, 2011, and 2013, but were not voted on in the House of Delegates.²⁶

A gubernatorial executive order in Virginia provides protection from sexual orientation and gender identity discrimination for state government employees. Additionally, three localities, most public universities, and many large private corporations in Virginia have adopted local ordinances and internal policies that prohibit discrimination based on sexual orientation and gender identity against their employees.

The Virginia Human Rights Act

Currently, the Virginia Human Rights Act prohibits employment discrimination based on race, religion, national origin, sex, pregnancy, childbirth or related conditions, and age by small employers.²⁷ The provisions prohibiting discrimination based on all personal characteristics except age only apply to employers with six to 14 employees.²⁸ The age non-discrimination provisions apply only to employers with six to 19 employees.²⁹ The Act likely does not apply to employers with 15 or more employees, or in the case of age discrimination, 20 or more employees, because these are the minimum thresholds for application of federal non-discrimination laws, including Title VII and the Age Discrimination in Employment Act.³⁰

The Virginia Division of Human Rights enforces the Act.³¹ The Division has the power to investigate complaints and may hold administrative hearings.³² The Division may seek relief for and prevention of discrimination through enforcement authorities.³³ The Act also allows employees to bring suit in court for a violation of the non-discrimination provisions.³⁴

Executive Order Prohibiting Discrimination against State Government Employees

In 2014, Governor Terry McAuliffe issued an executive order banning employment discrimination based on sexual orientation and gender identity against state government employees.³⁵ The order directs state agencies to take affirmative measures to end discrimination in their departments, and allows the Office of Equal Employment Services of the Department Resource Management to enforce the order through disciplinary action.³⁶ The order does not provide for a private right of action in court. The executive order protects over 161,000 state employees from discrimination based on sexual orientation and gender identity.³⁷

Local-Level Protections from Discrimination

Three localities in Virginia—Arlington County,³⁸ Alexandria,³⁹ Charlottesville⁴⁰—have adopted non-discrimination ordinances that prohibit employment discrimination based on sexual orientation in both the public and private sectors. Charlottesville also prohibits discrimination based on gender identity.⁴¹ Additionally, two localities, Alexandria⁴² and Charlottesville,⁴³ prohibit city contractors from discriminating against their employees based on sexual orientation. All three localities allow for administrative enforcement of complaints through local human rights commissions.⁴⁴

Approximately 94% of Virginia's local government and private sector workforce is not covered by a local ordinance that prohibits employment discrimination based on sexual orientation.⁴⁵ Over 99% of Virginia's local government and private sector workforce is not covered by a local ordinance that prohibits discrimination based on gender identity.

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.⁴⁶ 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.⁴⁷

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.⁴⁸ 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.⁴⁹ 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.⁵⁰

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.⁵¹ A number of states have similar laws that apply to state government contracts.⁵² Without such policies, companies would not be eligible to bid for contracts with these state and local governments.

According to the Human Rights Campaign, 25 of the 33 Fortune 1000 companies based in Virginia prohibit discrimination based on sexual orientation, and 17 of those companies also prohibit discrimination based on gender identity.⁵³ Additionally, 14 of Virginia's 15 public universities have internal policies expressly prohibiting discrimination based on sexual orientation, including Christopher Newport University,⁵⁴ College of William and Mary,⁵⁵ George Mason University,⁵⁶ James Madison University,⁵⁷ Longwood University,⁵⁸ Norfolk State University,⁵⁹ Old Dominion University,⁶⁰ Radford University,⁶¹ University of Mary Washington,⁶² University of Virginia,⁶³ Virginia Commonwealth University,⁶⁴ Virginia Military Institute,⁶⁵ and Virginia Tech.⁶⁶ Six of these universities also expressly prohibit discrimination based on gender identity, including the College of William and Mary, James Madison University, Norfolk State University, Old Dominion University, University of Virginia, and Virginia Tech.⁶⁷

Public Opinion

Public opinion in Virginia supports passage of a statewide law prohibiting discrimination based on sexual orientation and gender identity. In May 2013, a polling firm conducted telephone interviews with almost 700 people in Virginia in order to gather opinion data on various issues.⁶⁸ Eighty percent of respondents to the survey said that employers should not be able to discriminate against employees based on sexual orientation.⁶⁹ Similarly, 81% of Virginia respondents to a 2011 national poll 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 Virginia residents perceive the state as unfriendly to LGBT people. Aggregated data from two large public opinion polls found that 79% of Virginia 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 absolute number of sexual orientation and gender identity complaints filed under state non-discrimination laws is very low.⁷³

We estimate that approximately five complaints of sexual orientation or gender identity discrimination would be filed with the Virginia Division of Human Rights each year. To reach this estimate, we drew on Gallup polling data and Census data from Virginia to estimate the number of LGBT people working for employers covered under the Virginia Human Rights Act, and applied a national sexual orientation and gender identity complaint rate to that population. We have previously used a similar methodology to estimate the number of complaints that would be filed on the basis of sexual orientation and gender identity in other states, including South Carolina, Missouri, Ohio, Pennsylvania, South Dakota, Texas, Utah, and West Virginia.⁷⁴

Results from a 2012 Gallup poll show that 2.9% of people in Virginia identify as LGBT.⁷⁵ Precise data on the number of employees who work for Virginia employers with six to 14 employees are not available. However, data from the U.S. Census Bureau's Statistics of U.S. Businesses series indicates that 374,804 people work for employers in Virginia with five to 19 employees.⁷⁶ Using this figure, we can estimate approximately how many LGBT people work for employers who would be covered by the Virginia Human Rights Act. Applying the percentage of people in Virginia who are LGBT (2.9%) to the number of people who work for Virginia employers with five to 19 employees (374,804) indicates that 10,869 LGBT workers in Virginia would be protected if sexual orientation and gender identity were added to the Act. This estimate is likely high, because it includes some employers (specifically those with five employees, and those with 15 to 19 employees) who would not be covered by the Act. As a result, our complaint estimate is likely conservatively high.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in Virginia 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 2008 study that analyzed administrative complaint data from 17 states that prohibited sexual orientation 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 4.7 per 10,000 LGB workers.⁷⁸ There is not sufficient data to make a similar calculation of the average rate of complaints file on the basis of gender identity.⁷⁹ Therefore, we assume that this rate is also 4.7 per 10,000 transgender workers.

Applying the national complaint rate (4.7 per 10,000 LGBT workers) to the approximate number of LGBT workers in Virginia who would be covered by the Act (10,869) suggests that five complaints of sexual orientation and gender identity discrimination would be filed annually if these characteristics were added to the Virginia Human Rights Act. This estimate is likely conservatively high because it is based on employment data for a larger set of employer than would actually be covered by the Act, as explained above.

Adding sexual orientation and gender identity to the state's current non-discrimination law would not be burdensome for the state to enforce. The additional cases could likely be absorbed into Virginia'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 Virginia. There is currently no statewide law that prohibits employment discrimination based on sexual orientation or gender identity in Virginia. Adding these characteristics to the Virginia Human Rights Act would provide protection from discrimination to approximately 124,000 LGBT workers in the state. Based on data from other state administrative enforcement agencies, we estimate that, at most, five complaints of sexual orientation or gender identity employment discrimination would be filed in Virginia annually if the law were amended. Most likely, the additional complaints would have a minimal impact on the state administrative system's budget, staff, and resources.

About the Williams Institute

The Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at UCLA School of Law advances law and public policy through rigorous, independent research and scholarship, and disseminates its work through a variety of education programs and media to judges, legislators, lawyers, other policymakers and the public. These studies can be accessed at the Williams Institute website.

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Endnotes

¹ FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, VIRGINIA RESULTS, NATIONAL CENTER FOR TRANSGENDER GAY AND LESBIAN TASK FORCE, http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_state/ntds_state_va.pdf.

² These estimates were reached by applying the percentage of people in Virginia that are LGBT (2.9%) to the population of Virginia aged 16 years and older (6,601,767) and the number of people in the Virginia civilian labor force (4,269,122), respectively. Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP, Feb. 15, 2013, <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>; American Community Survey, U.S. Census Bureau, American FactFinder, 2012 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates, available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP03.

³ Calculated by authors using data from the American Community Survey, 2010-2012 3-Year-Estimates, Sex by Class of Worker tables available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited August 11, 2014).

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⁵ BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 2 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-20111.pdf>.

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⁷ FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, VIRGINIA RESULTS, *supra* note 1.

⁸ SEARS & MALLORY, *supra* note 5.

⁹ Sunnive Brydum, *Virginia Man Says 7-Eleven Fired Him for Being Gay*, ADVOCATE.COM, Apr. 13, 2013, <http://www.advocate.com/business/2013/04/13/watch-virginia-man-says-7-eleven-fired-him-being-gay>.

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¹³ E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

¹⁴ Va. Dept. of Hum. Res. Mgmt. O.E.E.S, Priv. Ltr. Rul. 0107-038 (Jan. 7, 2009); Final Order, *Moore v. Virginia Museum of Natural History*, No. 690CL09000035-00 (Va. Cir, June 15, 2009).

¹⁵ Human Rights Campaign, Employment Non-Discrimination Act: Stories of Discrimination, <http://www.hrc.org/resources/entry/employment-non-discrimination-act-stories-of-discrimination> (last visited Nov. 25, 2014).

¹⁶ ADAM P. ROMERO, CLIFFORD J. ROSKY, M.V. LEE BADGETT & GARY GATES, CENSUS SNAPSHOT: VIRGINIA 2 (2008), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/VirginiaCensus2000Snapshot.pdf>.

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¹⁸ *Id.*

¹⁹ GARY J. GATES, CAL. CTR. FOR POP. RESEARCH, THE IMPACT OF SEXUAL ORIENTATION ANTI-DISCRIMINATION POLICIES ON THE WAGES OF LESBIANS AND GAY MEN (2009), <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2009-010/PWP-CCPR-2009-010.pdf>.

²⁰ ROMERO, ROSKY, BADGETT & GATES, *supra* note 16 at 2.

²¹ *Id.* at 2.

²² 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).

²³ *Id.*

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²⁶ S. 66, Va. Gen. Assem., 2010 Sess. (Va. 2010); S. 747, Va. Gen. Assem., 2011 Sess., (Va. 2011); S. 701, Va. Gen. Assem., 2013 Sess. (Va. 2013).

²⁷ VA. CODE ANN. § 2.2-3900 (2014).

²⁸ *Id.* § 2.2-3903(B).

²⁹ *Id.*

³⁰ 42 U.S.C. § 2000e(b) (Title VII); 29 U.S.C. § 630(b) (Age Discrimination in Employment Act). See also Va. Dept; of Planning and Budget, S. 587, 2014 Fisc. Impact Statement (explaining that Virginia's age non-discrimination law applies to employers with more than five but less than 20 employees, and noting that "[f]ederal law applies the same protection to workplaces with 20 or more employees.")

³¹ *Id.* §§ 2.2-3402, 2.2-520.

³² *Id.* § 2.2-520.

³³ *Id.*

³⁴ *Id.* § 2.2-3903(D).

³⁵ Va., Exec. Order No. 1 (2014), available at <https://governor.virginia.gov/media/3378/eo-1-equal-opportunity.pdf>.

³⁶ *Id.*

³⁷ Calculated by authors using data from the American Community Survey, 2012 1-Year-Estimates, Virginia: Sex by Class of Worker for the Civilian Population Aged 16 Years and Over available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_B24080&prodType=table (last visited Nov. 21, 2014).

³⁸ ARLINGTON CTY., VA., CODE § 31-3(B) (2014).

³⁹ ALEXANDRIA, VA., CODE § 12-4-5 (2014).

⁴⁰ CHARLOTTESVILLE, VA., CODE § 2-431 (2014).

⁴¹ *Id.*

⁴² ALEXANDRIA, VA., CODE § 12-4-6.

⁴³ CHARLOTTESVILLE, VA., CODE § 22-10.

⁴⁴ ALEXANDRIA, VA., CODE § 12-4-15; ARLINGTON CTY., VA., CODE § 31-7; CHARLOTTESVILLE, VA., CODE § 2-433.

⁴⁵ Calculated by authors using data from the American Community Survey, 2011-2013 3-Year-Estimates, Select Economic Characteristics tables (civilian labor force numbers) available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Aug. 11, 2014). This calculation does not take into account the number of employees protected under Alexandria's contractor non-discrimination ordinance because there are not enough data available to determine this figure. Because some employees may work for businesses that operate outside of Alexandria but contract with the local government of Alexandria, the percentage of covered employees may be slightly higher estimated here.

⁴⁶ 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>.

⁴⁷ *Id.*

⁴⁸ M.V. LEE BADGETT, LAURA E. DURSO, ANGELIKI KASTANIS & CHRISTY MALLORY, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, 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>.

⁴⁹ 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.

⁵⁰ Andras Tilcsik, *Pride and Prejudice: Employment Discrimination against Openly Gay Men in the United States*, 117 AM. J. SOC. 586, 590-93 (2011).

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⁵² For example, California (CAL. GOV. CODE § 12990 (2013)), Delaware (DEL. CODE ANN. tit., 29 § 6962(d)(7) (2013)), and Maryland (MD. CODE ANN., STATE FIN. & PROC. § 19-101 (LexisNexis 2013)), among others.

⁵³ Human Rights Campaign, Corporate Employer Database, http://asp.hrc.org/issues/workplace/search.asp?form=private_detailed_search.aspx (search for Headquarters State: Virginia; Key Policies: Sexual Orientation in Non-discrimination Policy; and Includes Policy: Yes).

⁵⁴ Christopher Newport Univ., Student Handbook 2014-2015, <http://cnu.edu/studentlife/pdf/studenthandbook.pdf> (last visited Nov. 21, 2014).

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- ⁵⁵ William & Mary, Discrimination, Harassment, and Retaliation Policy, http://www.wm.edu/offices/compliance/policies/discrimination_harassment_retaliation/#s2 (last visited Nov. 21, 2014).
- ⁵⁶ George Mason Univ., Non-Discrimination Policy, <http://universitypolicy.gmu.edu/policies/non-discrimination-policy/> (last visited Nov. 21, 2014).
- ⁵⁷ James Madison Univ., Policy 1302: Equal Opportunity, Aug. 2014, <http://www.jmu.edu/JMUpolicy/policies/1302.shtml>.
- ⁵⁸ Longwood Univ., Faculty Policies and Procedures Manual 2012-2013 6, <http://www.longwood.edu/assets/academicaaffairs/FPPM.pdf> (last visited Nov. 21, 2014).
- ⁵⁹ Norfolk State Univ., BOV Policy #4 (2014) Equal Opportunity and Non-Discrimination, May 9, 2014, <https://www.nsu.edu/Assets/websites/policy-library/policies/01/BOV-Policy-04-Equal-Opportunity-Non-Discrimination.pdf>.
- ⁶⁰ Old Dominion Univ., Institutional Equity & Diversity, <https://www.odu.edu/equity> (last visited Nov. 21, 2014).
- ⁶¹ Radford Univ., Nondiscrimination Statement, <http://www.radford.edu/content/radfordcore/home/about/eo-statement.html> (last visited Nov. 21, 2014).
- ⁶² Univ. of Mary Washington, Bias Offense and Incident Reporting Policy, <http://diversity.umw.edu/bias/support-and-resources/statement-of-nondiscrimination/> (last visited Nov. 21, 2014).
- ⁶³ Office of Equal Opportunity Prog., Univ. of Va., Equal Employment Opportunity and Affirmative Action Statement, Oct. 2014, <http://www.virginia.edu/eop/EEOAStatement.html>.
- ⁶⁴ Va. Commonwealth Univ., Office for Institutional Equity, <http://equity.vcu.edu/about/index.html> (last visited Nov. 21, 2014).
- ⁶⁵ Va. Military Inst., Non-Discrimination Statement, <http://www.vmi.edu/Content.aspx?id=10737419939> (last visited Nov. 21, 2014).
- ⁶⁶ Va. Polytechnic Inst. and State Univ., Policy and Procedures, No. 1025, Subject: Anti-Discrimination and Harassment Prevention Policy § 2, Sept. 15, 2014, <http://www.policies.vt.edu/1025.pdf>.
- ⁶⁷ See notes 55, 57, 59, 60, 63, 66, *supra*.
- ⁶⁸ Press Release, Public Policy Polling, Warner Safe for Reelection, May 30, 2013, http://www.publicpolicypolling.com/pdf/2011/PPP_Release_VA_53013.pdf.
- ⁶⁹ *Id.*
- 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 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 U.S. Census Bureau, Statistics of U.S. Businesses, Latest SUSB Annual Data, *available at* <http://www.census.gov/econ/susb/> (chart for U.S. & states, totals; see chart for Virginia, enterprise size 5-9 and 10-19, employment).

⁷⁷ “National average” refers to the average of the complaint rates in 17 states across the country that prohibited sexual orientation discrimination in 2008. BADGETT, RAMOS & SEARS, *supra* note 72.

⁷⁸ The data gathered for the 2008 study included all employment discrimination complaints filed on the basis of sexual orientation; it was not limited to complaints filed by LGB employees. Heterosexual employees may also file complaints under sexual orientation non-discrimination laws if they were discriminated against because of their heterosexuality or because they were perceived to be LGB. However, we use the LGB workforce as the underlying population for purposes of our analysis because LGB employees likely file the vast majority of sexual orientation discrimination complaints. See Rubenstein, *supra* note 72.

⁷⁹ BADGETT, RAMOS & SEARS, *supra* note 72, at 5.