

RESEARCH THAT MATTERS

WORKPLACE EXPERIENCES of Nonbinary Employees

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CONTENTS

EXECUTIVE SUMMARY	2
INTRODUCTION.....	6
PRIOR RESEARCH ON WORKPLACE DISCRIMINATION AND HARASSMENT AGAINST NONBINARY EMPLOYEES.....	6
LEGAL PROTECTIONS FROM DISCRIMINATION AND HARASSMENT AGAINST NONBINARY EMPLOYEES	9
DEMOGRAPHICS	13
FINDINGS	16
LIFETIME EXPERIENCES OF DISCRIMINATION AND HARASSMENT	16
RECENT EXPERIENCES OF DISCRIMINATION AND HARASSMENT.....	24
EXPERIENCES AT CURRENT JOB	26
AVOIDING DISCRIMINATION AND HARASSMENT.....	27
IMPACT OF DISCRIMINATION AND HARASSMENT ON EMPLOYEE RETENTION.....	31
CONCLUSION	33
AUTHORS	34
APPENDIX.....	35
METHODS	35

EXECUTIVE SUMMARY

This report examines experiences of employment discrimination and harassment against nonbinary adults using a survey of 1,902 LGBTQ adults in the workforce, including 163 nonbinary adults, conducted in the summer of 2023. We compare the experiences of nonbinary employees with those of cisgender LGBQ employees and transgender employees who do not identify as nonbinary.

The majority of nonbinary adults in the workforce are under age 35 (87%), and half (51%) are people of color. About three-quarters (74%) of nonbinary people in the workforce are making less than \$50,000 a year.

Our analysis indicates that employment discrimination against nonbinary employees is persistent and widespread. At some point in their lives, about six in 10 nonbinary employees (59%) reported experiencing discrimination or harassment at work (including being fired, not hired, not promoted, or verbally, physically, or sexually harassed) because of their sexual orientation or gender identity.

Many nonbinary employees reported recent experiences of discrimination and harassment. Within the past year, 16% of nonbinary employees reported that they had been fired, not hired, or not promoted because of their sexual orientation or gender identity, and 20% reported experiencing harassment at work. One in four (26%) nonbinary employees reported experiencing adverse treatment because of their LGBTQ status at their current job.

Many nonbinary employees also reported engaging in actions to avoid discrimination and harassment, including hiding their nonbinary identity and changing their appearance or behaviors. Nearly half (45%) of nonbinary employees were not out to their current supervisor, and 17% were not out to any of their co-workers. Two-thirds (67%) of nonbinary employees reported downplaying their LGBTQ status at work by doing one or more of the following: changing their speech, mannerisms, appearance, or how they dress at work; avoiding work social events; or not talking about their outside activities at work.

Nearly six in 10 (58%) nonbinary employees have looked for another job because of how they were treated based on their sexual orientation or gender identity at work, and half (50%) reported leaving a job because of such treatment.

Along many measures of adverse workplace experiences, nonbinary employees fall in between cisgender LGBQ employees and transgender employees who do not identify as nonbinary, with cisgender LGBQ employees reporting the lowest rates of adverse experiences and transgender employees reporting the highest. In many cases, nonbinary employees' reports of adverse workplace experiences were closer to the higher levels reported by transgender employees. While the report's key findings are summarized below, the full report includes quotes from respondents to provide more detail about their experiences of discrimination and harassment in the workplace.

KEY FINDINGS

Demographics

- An estimated 87% of nonbinary adults in the workforce are under the age of 35, compared to 51% of cisgender LGBQ adults and 71% of transgender adults in the workforce.
- About half (51%) of nonbinary adults in the workforce are people of color.
- Over 58% of nonbinary adults in the workforce identified as bisexual, 21% selected “something else,” and 4% selected “not sure” to describe their sexual orientation.
- Almost three-quarters are making less than \$50,000 a year (74%), compared to less than half (48%) of cisgender LGBQ adults in the workforce.

Lifetime Experiences of Discrimination and Harassment

- At some point in their lives, about six in 10 nonbinary employees (59%) reported experiencing discrimination or harassment at work, including being fired, not hired, not promoted, or verbally, sexually, or physically harassed because of their gender identity.
 - **Discrimination:** Forty-five percent of nonbinary employees reported experiencing at least one form of employment discrimination (being fired, not hired, not promoted, or being denied other workplace opportunities) because of their sexual orientation or gender identity at some point in their lives.
 - About one in four nonbinary employees reported being fired (23%) and/or not hired (28%) because of their sexual orientation or gender identity.
 - Nonbinary employees also described other types of unfair treatment based on their sexual orientation and gender identity. Some of these experiences included having their shifts changed or their hours reduced, being isolated from other employees or customers, and being excluded from company events.
 - **Harassment:** Half of nonbinary employees (50%) reported experiencing at least one form of harassment (verbal, physical, or sexual) at work because of their sexual orientation or gender identity at some point in their lives.
 - Forty percent of nonbinary employees reported experiencing verbal harassment from supervisors or co-workers because of their sexual orientation or gender identity. Many nonbinary respondents cited examples of being persistently misgendered, deadnamed, or harassed for not conforming to traditional binary genders or gender stereotypes.
 - About one in five (21%) nonbinary employees reported experiencing physical harassment at work because of their sexual orientation or gender identity. Reports of physical harassment included being “threatened,” “cornered,” “roughhoused,” “assaulted,” “attacked,” and “strangled.”
 - Close to one-third (31%) of nonbinary employees reported experiencing sexual harassment at work because of their sexual orientation or gender identity.

Intersectional Discrimination and Harassment

- When asked to describe their worst experiences of discrimination and harassment based on sexual orientation and gender identity, many nonbinary employees described intersectional discrimination based on their multiple marginalized identities. Most frequently, in addition to discrimination based on their gender identity, they described discrimination related to being bisexual or based on living with a disability.

Recent Experiences of Discrimination and Harassment

- **Discrimination:** About one in three nonbinary employees (35%) reported experiencing at least one form of employment discrimination (including being fired, not hired, or being denied a promotion or other workplace opportunities) based on their sexual orientation or gender identity within the past five years. One in six (16%) reported these experiences in the past year.
- **Harassment:** Four out of ten nonbinary employees (39%) reported experiencing at least one form of harassment (including verbal, physical, or sexual harassment) in the workplace based on their sexual orientation or gender identity within in the past five years and one in five reported (20%) reported these experiences in the past year.
- **Negative comments:** In the past year, about half of nonbinary employees (49%) reported hearing negative comments about LGBTQ people in the workplace.

Experiences at Current Job

- Respondents were asked specifically about their experiences at their current job. About two-thirds of nonbinary employees (64%) felt that their current workplace environment was somewhat or very supportive of LGBTQ employees. In comparison, approximately one in ten (13%) felt their workplace environment was somewhat or very unsupportive.
- Approximately one in five nonbinary employees (20%) reported one or more adverse workplace experiences related to their sexual orientation or gender identity at their current job, including 18% who reported unfair treatment, 11% who reported verbal harassment, 7% who felt they had not been promoted or were denied other opportunities in the workplace, 6% who reported sexual harassment, and 1% who reported physical harassment.

Out at Work

- Forty-five percent of nonbinary employees reported that they are not open about being nonbinary to their current supervisor, and approximately one in six (17%) reported that they are not out to any of their co-workers. Only one-third (33%) of nonbinary employees reported being out to all their co-workers.

Covering

- Two-thirds of nonbinary employees (67%) reported engaging in covering behaviors at their current jobs to avoid harassment or discrimination related to their sexual orientation or gender identity. About one-third reported changing how they dressed (35%), their physical appearance (35%), or their voice or mannerisms (36%) at work. Approximately one in five (20%) have changed where, when, or how frequently they used the bathroom.
- Many nonbinary employees have also avoided work events or work-related travel (25%) and work-related social events (39%) to avoid discrimination and harassment.
- Many nonbinary employees also avoid talking about their families at work to avoid discrimination and harassment. Twenty-nine percent of nonbinary employees have avoided talking about their family at work, 24% have not brought family to work events, and 21% have not displayed photos of their partner or family at work to avoid discrimination and harassment.

Retention

- About two-thirds of nonbinary employees (68%) were very or somewhat satisfied with their current job, while almost one in six (17%) were very or somewhat dissatisfied with their current job.
- Half (50%) of nonbinary employees reported that they had left a job at some point in their lives because of how their employer treated them based on their LGBTQ status. About six in ten nonbinary employees said that they have looked for other jobs because of how they were personally treated by their employer based on their LGBTQ status (58%) or had looked for another job because the workplace environment was not supportive of LGBTQ people (60%).
- Due to the workplace environment for LGBTQ people at their current job, one in five nonbinary employees (20%) had considered leaving. Almost two-thirds (65%) of them had taken steps towards finding another job.
- Nonbinary employees were more likely than cisgender LGBQ employees to have left a job (50% vs. 31%) or looked for another job (58% vs. 32%) because of how they were treated because of their LGBTQ status. Compared to cisgender LGBQ employees, they were also more likely to report they had looked for another job due to the general workplace environment for LGBTQ employees (60% vs. 36%).

INTRODUCTION

Prior Williams Institute research has estimated that there are approximately 1.2 million LGBTQ adults who identify as nonbinary in the United States.¹ Nonbinary employees are a growing part of the workforce, particularly among younger employees just entering the workforce.²

Prior Williams Institute research indicates as a population, nonbinary LGBTQ adults are young—76% are between the ages of 18 and 29—urban, and racially and ethnically diverse.³ Almost half of nonbinary LGBTQ adults have a high school degree or less (48%), over 43% are living with low incomes (below 200% of the federal poverty level), and almost two-thirds report not having enough money to meet their basic needs, including 11% who are unstably housed.⁴

In terms of employment, prior Williams Institute research found that almost nine in ten nonbinary LGBTQ adults are in the workforce (89%), including 52% who are employed full-time, 21% who are employed part-time but want a full-time job, 8% who are employed part-time but do not want a full-time job, and 7% who are unemployed but looking for work.⁵ The 2015 United States Transgender Survey further found that a number of nonbinary people have served in the military: 9% of nonbinary respondents overall and 22% of nonbinary respondents with male assigned on their original birth certificates have served in the military.⁶

PRIOR RESEARCH ON WORKPLACE DISCRIMINATION AND HARASSMENT AGAINST NONBINARY EMPLOYEES

Although there have been a number of studies focused on the workplace experiences of transgender and gender-nonconforming people in the United States,⁷ which may include nonbinary people,⁸ there have been fewer studies specifically focusing on the workplace experiences of nonbinary people.

¹ People might identify as “nonbinary” because they identify as having no gender, a gender other than male or female, as having more than one gender, or for other reasons. See Jessica A. Clarke, *They, Them, Theirs*, 132 HARV. L. REV. 894, 905 (2019) (“Nonbinary people may have any number of relationships to gender, including, to name a few, hybridity, rejection, dynamism, insistence on a third option, subversion, or all of these.”)

² BIANCA D.M. WILSON & ILAN H. MEYER, WILLIAMS INST., NONBINARY ADULTS IN THE UNITED STATES (2021).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See, e.g., SANDY E. JAMES ET AL., NATIONAL CENTER FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY, (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>. (A survey of the US transgender population in which nonbinary people made up over one-third of the sample.)

⁷ See, e.g., Katina Sawyer, Christian Thoroughgood & Jennica R Webster, *Queering the Gender Binary: Understanding Transgender Workplace Experiences*, in QUEERING THE GENDER BINARY: UNDERSTANDING TRANSGENDER WORKPLACE EXPERIENCES 21-42 (2016); Joy Van de Cauter et al., *Return to work of transgender people: A systematic review through the blender of occupational health*, 16(11) PLOS ONE (2021), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0259206>; Nick Drydakis, *Trans people, well-being, and labor market outcomes*, IZA WORLD OF LABOR 386 (2024), <https://wol.iza.org/articles/trans-people-well-being-and-labor-market-outcomes/long>.

⁸ JAMES ET AL., SUPRA note 6.

Emerging research explicitly focused on nonbinary people has found that they experience high rates of employment discrimination, often engage in covering behaviors at work, are more likely to be unemployed than the general population, and are concentrated in low-paying jobs.

A few studies have documented the prevalence of employment discrimination and bias against nonbinary employees. For example, a 2023 survey of 454 nonbinary people and 1,483 men and women found that 64% of nonbinary people had experienced employment discrimination based on gender at some point in their lives, with 7% reporting that these experiences occurred frequently.⁹ Women reported experiencing workplace discrimination based on gender at similar rates to nonbinary employees, while men reported significantly lower rates of discrimination.¹⁰

Another study conducted in 2023 documented employment discrimination against nonbinary employees through a survey of 409 nonbinary people and a matched pairs resume test.¹¹ More than 80% of nonbinary respondents (83%) felt that identifying as nonbinary would hurt their job search. About half (51%) of respondents reported having negative workplace experiences related to their nonbinary identity. In the matched pairs test, researchers found that resumes including they/them pronouns under the applicants' names received 8% less interest from employers than resumes that did not include pronouns. When researchers followed up with hiring managers to ask how the resumes could be improved, several expressed explicit bias against nonbinary people. For example, one hiring manager stated, "I would immediately balk at the supposed "gender neutral" pronoun of 'they/them.'"

A 2020 vignette study, which asked people to rate a fictitious co-worker's likeability and perceived workplace performance based on a short narrative, found that participants rated nonbinary employees the lowest, followed by transgender women, with cisgender men rated the highest.¹²

Studies have found that nonbinary employees often engage in covering behaviors to minimize their gender identity in the workplace and mitigate discrimination. For example, a 2024 study based on data from the 2015 U.S. Transgender Survey found that nonbinary employees engaged in several types of behaviors to cover and avoid discrimination at work.¹³ The study found that 82% of nonbinary respondents reported engaging in self-protective behaviors at work, including hiding or delaying their transition or gender identity, not requesting the use of proper pronouns, and staying in a job for which they were overqualified. The study also found that only 28% of nonbinary respondents who had been discriminated against took redressive actions, including contacting a lawyer or administrative agency that handles discrimination complaints. The study found that nonbinary employees and transgender women were more likely to engage in self-protective behaviors than transgender men.

⁹ Katherine B. Coffman, Lucas C. Coffman & Keith Marzilli Ericson, *Nonbinary Gender Economics*, NAT'L BUREAU OF ECON. RSCH (March 2024), <https://www.nber.org/papers/w32222>.

¹⁰ *Id.* (Appendix Figure A6)

¹¹ Ryan McGonagill, *Have Conditions Improved in the Workplace for Nonbinary Professionals?*, *Business.com* (MAY 17, 2024), <https://www.business.com/hiring/nonbinary-discrimination-job-market-report/>.

¹² Kelly K. Dray et al., *Moving Beyond the Gender Binary: Examining Workplace Perceptions of Nonbinary and Transgender Employees*, 27(6) *GENDER, WORK & ORG.* 1181-1191 (Apr. 20, 2020), <https://doi.org/10.1111/gwao.12455>.

¹³ Brook Hutchinson et al., *Analyzing Trans and Nonbinary Employees' Response to Workplace Discrimination*. *Work and Occupations*, *WORK AND OCCUPATIONS* (2024), <https://doi.org/10.1177/07308884241240079>.

Research has also documented higher rates of unemployment among nonbinary employees and higher concentrations of nonbinary employees in lower-paying jobs. For example, a study published in 2016 used data from the 2010 National Transgender Discrimination Survey to evaluate employment outcomes of nonbinary people compared to transgender men and women.¹⁴ The analysis found that among nonbinary adults, 13% were unemployed (compared to 11% of the general population at the time of data collection), and 44% had experienced underemployment. The study also found that 19% of nonbinary adults had lost a job, and 21% had been denied a promotion. Nonbinary employees had similar employment outcomes to transgender men, while transgender women were more likely to experience some types of negative workplace experiences. The analysis also found that nonbinary employees of color were more likely to experience some types of adverse employment outcomes than white nonbinary employees.

In addition, a study using 2020 data from the California Civil Rights Department (CRD) showed that nonbinary employees were concentrated in the lowest-paying jobs as laborers, sales employees, and service employees, with fewer Black and Latino nonbinary employees in high-paying jobs.¹⁵ CRD was the first state or federal agency to systematically collect comprehensive quantitative data on nonbinary employees' employment, compensation, and job placement.¹⁶

Finally, a Williams Institute study published in 2021 based on data from the Generations and TransPop studies (2016-2018) found that 11.3% of nonbinary adults were currently unemployed, and 38% had been unemployed and looking for a job for more than a month at least once in their lives.¹⁷ The study also found that 43% of nonbinary LGBTQ adults reported being fired from a job for any reason, 29% reported being denied a promotion or receiving a negative job evaluation, and 40% reported having trouble with a boss or co-worker.

Research more broadly focused on transgender and gender-nonconforming employees has also documented high rates of adverse employment experiences. For example, a 2022 global survey of 2,230 transgender and gender-nonconforming employees found that 44% of the U.S. respondents reported being victims of sexual harassment or misconduct at work.¹⁸ Similarly, a survey of 2,765 employees across the state of New York, of which 66 respondents identified as transgender, nonbinary, nonconforming, or other gender identities, found that half of the respondents who were gender minorities reported workplace sexual harassment.¹⁹ Another study reviewing 58 empirical studies on the workplace experiences of transgender and gender-diverse employees indicated

¹⁴ Skylar Davidson, *Gender Inequality: Nonbinary Transgender People in the Workplace*, 2(1) COGENT SOC. SERVICES (2016), <http://dx.doi.org/10.1080/23311886.2016.1236511>.

¹⁵ Renée Rondinone, *Civil Rights Department Releases Groundbreaking Data on Nonbinary Employees: Pay Data Reports Show Nonbinary Employees Concentrated in Lowest-Paying Jobs*, CAL. C.R. DEP'T (Mar. 6, 2023), <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/03/2023.03.06-NonbinaryDataPR.pdf>. (Data was limited to private employers with 100 or more employees.)

¹⁶ *Id.*

¹⁷ Bianca D.M. Wilson & Ilan H. Meyer, *Nonbinary LGBTQ Adults in the United States*, WILLIAMS INSTITUTE (June 2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Nonbinary-LGBTQ-Adults-Jun-2021.pdf>.

¹⁸ Pierre Dupreelle et al., *Companies Are Failing Trans Employees*, HARV. BUS. REV. (Mar. 31, 2023), <https://hbr.org/2023/03/companies-are-failing-trans-employees>.

¹⁹ KC Wagner & Zoë West, *The Impact of Sexual Harassment and Gendered Violence on Working New Yorkers*, ILR WORKER INST. (Mar. 2023), <https://www.ilr.cornell.edu/sites/default/files-d8/2023-03/WI%20WSH%202023%205-Page%20Brief%20Rev%203.pdf>.

that experiences of harassment and discrimination in the workplace and expectations of these experiences expose transgender and gender-diverse employees to various stressors that negatively impact work outcomes and mental health.²⁰

LEGAL PROTECTIONS FROM DISCRIMINATION AND HARASSMENT AGAINST NONBINARY EMPLOYEES

No federal or state civil rights statutes expressly prohibit employment discrimination based on nonbinary identity, and little case law addresses the application of existing nondiscrimination laws to nonbinary employees. However, nonbinary employees are likely protected, at least to a certain extent, from discrimination and harassment related to their nonbinary identity under laws that prohibit discrimination based on gender identity and sexual orientation.

Two U.S. Supreme Court cases indicate that Title VII of the Civil Rights Act protects nonbinary employees from discrimination and harassment based on their nonbinary identity. In 1989, the Supreme Court held in *Price Waterhouse v. Hopkins* that discrimination against employees for non-conformance with stereotypes associated with their biological sex violates Title VII's ban on sex discrimination.²¹ In the years following the decision, several lower courts held that discrimination against transgender employees violates Title VII because such discrimination is rooted in sex stereotypes.²² Similarly, discrimination against nonbinary employees based on non-conformance with their sex assigned at birth would likely violate Title VII. As explained by one legal scholar, "Requiring [a nonbinary employee] to present as either a man or a woman is to require them to conform to sex stereotypes."²³

In 2020, the U.S. Supreme Court expressly held in *Bostock v. Clayton County* that employment discrimination against employees based on their homosexual or transgender status violates Title VII because such discrimination necessarily entails discrimination based on sex.²⁴ Although the Court was considering discrimination against the gay and transgender plaintiffs, the holding likely protects all LGBTQ employees, including nonbinary employees, from discrimination based on their LGBTQ status. As one employment law scholar explained, the "straightforward analysis in *Bostock*—that

²⁰ Daniel Cancela, Sarah E. Stutterheim & Sjur Uitdewilligen, *The Workplace Experiences of Transgender and Gender Diverse Employees: A Systematic Literature Review Using the Minority Stress Model*, J. HOMOSEXUALITY 1-29 (2024), <https://www.tandfonline.com/doi/full/10.1080/00918369.2024.2304053>.

²¹ *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

²² See, e.g., *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004) (in which the court determined, after *Price Waterhouse*, that Title VII prohibits discrimination against transgender employees based on gender stereotypes, and that employment discrimination for gender-nonconforming behavior violates Title VII irrespective of the cause of the behavior); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011) (in which the court concluded that an employer discriminated against a transgender woman who brought an employment discrimination case relying on *Price Waterhouse* and other Title VII precedent; the court reasoned that a person is considered transgender "precisely because of the perception that his or her behavior transgresses gender stereotypes."); for more, see U.S. EQUAL EMP. OPPORTUNITY COMM'N, *Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII* (last visited Jul. 17, 2024).

²³ Meredith R. Severtson, *Let's Talk About Gender: Nonbinary Title VII Plaintiffs Post-Bostock*, 74 VAND. LAW REV. 1507, 1531 (2021), <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=4785&context=vlr>.

²⁴ *Bostock v. Clayton County*, 590 U.S. 644 (2020).

to discriminate against someone for being labeled one sex at birth but now identifying as another unavoidably takes sex into account—applies with equal force to nonbinary people as it does to transgender men and women” because “its analysis leaves no coherent way to exclude nonbinary people from protections against sex discrimination ... A person is understood as nonbinary by virtue of sex-based characteristics.”²⁵

Several lower courts have interpreted Title VII and the Supreme Court’s reasoning in *Bostock* to prohibit discrimination against nonbinary employees. For example, a federal district court in Wisconsin held that a nonbinary employee could bring a case under Title VII for discrimination based on transgender status after introducing the plaintiff as “a person who, in the language of the gender identity movement, identifies as nonbinary, more commonly known as transgender, as well as intersexual and bisexual.”²⁶ Similarly, a federal district court in Pennsylvania held that discrimination against nonbinary employees on the basis of gender and sexual orientation can constitute prohibited discrimination based on sex under Title VII.²⁷ One court, a district court in Florida, has further held that Title VII likely prohibits employers from requiring nonbinary (and transgender) employees to use pronouns that correspond to their sex assigned at birth.²⁸ As the court explained, the pronoun policy “discriminates on the basis of sex...because ‘[t]o know which pronouns [the policy] demands [the nonbinary] employee use, one must know [the employee’s] sex.’”²⁹

However, other courts have held that there are limits to how far Title VII and the *Bostock* decision reach, particularly concerning issues such as pronoun use, restroom use, and dress codes in the workplace. These rulings may limit the extent to which nonbinary employees are protected under Title VII from discrimination based on the ways they express their gender at work.

Two cases have arisen as challenges brought by state employers to a technical assistance document issued by the U.S. Equal Employment Opportunity Commission (EEOC) in 2021. The guidance states that “Title VII applies nationwide and protects employees from discrimination based on sexual orientation or gender identity” and specifies examples of protected access to gender-affirming dress codes, bathrooms, and pronouns in order “to provide clarity to the public regarding existing requirements under the [Title VII] law” post-*Bostock*.³⁰ Two courts have struck down the EEOC guidance document. Both courts held that the guidance document was invalid on various grounds because it sought to prohibit conduct beyond the scope of Title VII and *Bostock*. In the words of

²⁵ See, e.g., MERRICK T. ROSSEIN, *Title VII and Employees with Nonbinary Identity*, in EMPLOYMENT DISCRIMINATION LAW AND LITIGATION § 27:13 (2020).

²⁶ See, e.g. *Lammers v. Pathways to a Better Life, LLC*, No. 1:18-cv-01579 (E.D. Wis. Jul. 19, 2021) (order denying motion for summary judgment because it was undisputed that the nonbinary transgender plaintiff was a member of a protected class and they had proffered sufficient evidence defendants had fired them because of their transgender and/or nonbinary status).

²⁷ *Rodriguez v. Northeast Community Center for Behavioral Health*, No. 2:23-cv-03753 (E.D. Penn. March 14, 2024) (order denying the employer’s motion to dismiss the employee’s Title VII claim).

²⁸ *Wood v. Florida Department of Education*, No. 4:23-cv-00526 (N.D. Fl. Jul. 10, 2024) (order denying defendants’ motion to dismiss) (“Accordingly, this Court rejects its previous analysis and incorporates by reference the thoughtful analysis set out in the United States of America’s Statement of Interest[.]”).

²⁹ *Id.*

³⁰ U.S. EQUAL EMP. OPPORTUNITY COMM’N, NVTA-2021-1, PROTECTIONS AGAINST EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY (2021).

the district court in Texas that heard one of the cases, *Bostock* established that “Title VII prohibits employment discrimination against an individual ‘for being homosexual,’ ‘for being transgender’... not necessarily all correlated conduct....The [guidance] misread[s] *Bostock* by melding ‘status’ and ‘conduct’ into one catchall protected class covering all conduct correlating to ‘sexual orientation’ and ‘gender identity.’”³¹ In response to these rulings, the EEOC released a new version of its 2021 guidance document in 2024, but it has also been challenged in court.³² These cases indicate that some courts may be unwilling to find that Title VII prohibits all forms of discrimination and mistreatment against nonbinary people in the workplace, in particular, instances of incorrect pronoun use, requiring that employees use restrooms that align with their sex assigned at birth, and enforcing dress codes based on sex assigned at birth.

Many state civil rights statutes would likely also be interpreted to protect nonbinary people from employment discrimination to at least some extent. Twenty-three states and D.C. have laws that expressly prohibit discrimination based on gender identity and sexual orientation.³³ Many of these states also specifically prohibit discrimination based on “gender expression.”³⁴ These laws generally define “gender identity” broadly; protections are not limited to employees who identify as “transgender.” For example, the Massachusetts law prohibits employment discrimination “because of ... gender identity, sexual orientation,”³⁵ and the Nevada law prohibits employment discrimination “because of ... sexual orientation, gender identity or expression.”³⁶ In ten additional states, state statutes that prohibit discrimination based on sex have been interpreted to prohibit discrimination based on gender identity and sexual orientation consistent with the Court’s decision in *Bostock*.³⁷

³¹ *Texas v. EEOC*, No. 2:21-cv-00194 (N.D. Tex. Oct. 1, 2022) (order vacating the 2021 Guidance on a nationwide basis).

³² Though the court dismissed the state’s challenge, it did not reach the substantive issues raised. Rather, the court simply said that the state must file a new complaint rather than asserting that the EEOC contradicted the court’s previous order against the 2021 guidance when it issued a new guidance document in 2024. Thus, it is likely that the plaintiffs will file a new complaint seeking to invalidate the 2024 guidance. *Texas v. EEOC*, No. 2:21-cv-00194 (N.D. Tex. Jul. 17, 2024) (order denying plaintiffs’ motion for further necessary or proper relief).

³³ These are: D.C. (D.C. CODE § 2-1402.11 (2013)), California (CAL. GOV’T CODE §12900-12996 (2022)), Colorado (COLORADO REV. STAT. § 24-34-401 et seq.), Connecticut (CONN. GEN. STAT. ANN. § 46a-81c (2012) and 2011 CONN. PUB. ACTS 11-55), Delaware (DEL. CODE ANN. tit. 19 § 711 (2022)), Hawai’i (HAW. REV. STAT. §378-1 et seq. (2022)), Illinois (68 ILL. COMP. STAT. 5/1-101 et seq. (2022)), Iowa (IOWA CODE tit. 6 § 216.6 (2022)), Maine (ME. STAT. tit. 5 § 4572 (2010)), Maryland (MD. CODE, STATE GOV’T § 20-602 (2021)), Massachusetts (MASS. GEN. LAWS ch. 151B § 4(1) (2023)), Michigan (MICH. COMP. LAWS § 37.2202.amended (2006)), Minnesota (MINN. STAT. § 363A.08 (2022)), Nevada (NEV. REV. STAT. § 233.010(3) (2023)), New Hampshire (N.H. REV. STAT. ANN. § 354-A.amended (2021)), New Jersey (N.J. REV. STAT. §10:5-12 (2022)), New Mexico (N.M. STAT. § 28-1 -7 (2021)), New York (N.Y. Comp. Codes R. & Regs. tit. 8 § 8-107), Oregon (O.R. REV. STAT. §659A.006 (2021)), Rhode Island (R.I. GEN. LAWS § 28-5-7 (2012)), Utah (U.T. CODE §34A-5-106 (2015)), Vermont (VT. STAT. ANN. tit. 21 § 495 (2012)), Virginia (V.A. CODE ANN. § 2.2-3900 (2022)), and Washington (W.A. REV. CODE § 49.60.180 (2022)).

³⁴ See, e.g., Connecticut (CONN. GEN. STAT. § 46a-60(b)(1) (2023) (“gender identity or expression”); Michigan (MICH. COMP. LAWS § 37.2202.amended (2006) (“gender identity or expression”). See also New York City Commission on Human Rights, *Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3 (2002)*; N.Y.C. Admin. Code § 8-102(23), NYC CHR (last updated Feb. 15, 2019), <https://www.nyc.gov/assets/cchr/downloads/pdf/publications/2019.2.15%20Gender%20Guidance-February%202019%20FINAL.pdf>.

³⁵ MASS. GEN. LAWS ch. 151B § 4(1) (2023).

³⁶ NEV. REV. STAT. § 233.010(3) (2022).

³⁷ These are Alaska (Alaska State Commission for Human Rights, *AS § 18.80.220 & Title VII of the Civil Rights Act LGBTQ+ Employment*

These laws would likely also protect employees from discrimination based on their nonbinary identity, at least to the same extent as Title VII.

At least one state human rights commission has indicated that nonbinary employees are protected from discrimination under state law in a case that addressed gendered dress codes. The Washington State Commission on Human Rights found that an employer violated the state’s gender identity nondiscrimination law when it enforced a gender-based dress code for flight attendants against a genderfluid employee.³⁸ The policy required flight attendants to choose the appropriate “masculine” or “feminine” uniform based on their gender.³⁹ The Washington State Commission on Human Rights found that the dress code forced the genderfluid flight attendant “to try fitting into a binary uniform system despite identifying as neither male nor female,” which constituted discrimination based on gender identity and expression.⁴⁰ Genderfluid and nonbinary individuals, both being gender-nonconforming in their gender identity, are likely similarly situated in terms of nondiscrimination laws protecting against discrimination based on gender identity.

Together, these state and federal laws likely protect nonbinary employees from discrimination and harassment based on their nonbinary status. The laws may also protect nonbinary employees from discrimination related to pronoun use and other conduct issues that may arise in the workplace.

Discrimination Guide, ASCHR (Oct. 22, 2011, rev. Oct. 11, 2023); but see Kyle Hopkins, *Alaska Says It’s Now Legal “in Some Instances” to Discriminate Against LGBTQ Individuals*, PROPUBLICA (Mar. 4, 2023), <https://www.propublica.org/article/alaska-drops-lgbtq-discrimination-ban> (discussing how the Alaska State Commission for Human Rights dropped policy banning LGBT discrimination in many non-employment sectors); Arizona (Office of the Arizona Attorney General of the State of Arizona, *Press Release: Arizona Attorney General’s Office Affirms Support for the Civil Rights of LGBTQ Arizonians*, AZAG (June 12, 2023)); Indiana (IN CODE § 22-9-1-2 (2019), Heather R. Falks, *Gender, Sexual Orientation & Employment*, INDIANA COURT TIMES (July 25, 2022)); Kansas (KA. STAT. § 44-1001 (2021), Ruth Glover, *Guidance from The Kansas Human Rights Commission on Sex Discrimination in Employment, Public Accommodations, and Housing*, KANSAS HUMAN RIGHTS COMMISSION (Sept. 18, 2020)); Kentucky (KY. REV. STAT. § 344.040 (2021), Office of Governor Andy Beshear, Exec. Order 2020-554 “Relating to Equal Employment Opportunities and Non-Discrimination in Employment, Services, and Contracting in Kentucky State Government” (June 29, 2020); Montana (MONT. CODE § 49-2-303 (2021), Employment Standards Division, *Sex Discrimination and Sexual Harrassment*, MONTANA DEP’T OF LABOR & INDUS. (acc. Dec. 18, 2023), <https://erd.dli.mt.gov/human-rights/human-rights-laws/sex-discrimination/>); Nebraska (NEB. REV. STAT. §§ 48-1101–1126 (2014) and see Nebraska Equal Opportunity Commission, *Employment Initial inquiry Questionnaire*, NEOC (acc. Dec. 18, 2023), <https://neoc.nebraska.gov/forms/Employment%20Intake%20Form%20pdf.pdf> (in which the Nebraska Equal Opportunity Commission’s intake form for complaints of employment discrimination includes “Sexual Orientation/ Gender Identity” as a category of bases of discrimination); North Dakota (N.D. CENT. CODE § 14-02.4-03, North Dakota Dep’t of Labor and Human Rights, *NDDOLHR Now Accepting and Investigating Charges of Discrimination Based on Sexual Orientation and Gender Identity*, NDDOLHR (June 18, 2020), <https://www.nd.gov/labor/news/nddolhr-now-accepting-and-investigating-charges-discrimination-based-sexual-orientation-and>); Pennsylvania (PA. STAT. tit. 43 § 955 (2023), PA Human Relations Commission, *Press Release: New LGBTQ+, Hairstyle, And Religion Regulations Approved in Pennsylvania*, PA MEDIA (June 20, 2023)); and Wisconsin (Wis. ADMIN. CODE § 111.31 (2011), expressly prohibits discrimination based on sexual orientation only; gender identity is protected through WI’s administrative policy (Department of Workforce Development, *Sex Discrimination*, [Wisconsin.gov](https://dwd.wisconsin.gov/er/civilrights/discrimination/sexdiscrimination.htm), <https://dwd.wisconsin.gov/er/civilrights/discrimination/sexdiscrimination.htm>).

³⁸ *Justin Wetherell v. Alaska Airlines*, WSHRC: 17EX-0549-20-1, EEOC: 38G-2021-00254, WA STATE HUM. RTS. COMM’N. (investigative finding Dec. 30, 2020), <https://wp.api.aclu.org/documents/wa-human-rights-commission-determination-wetherell-v-alaska-airlines>.

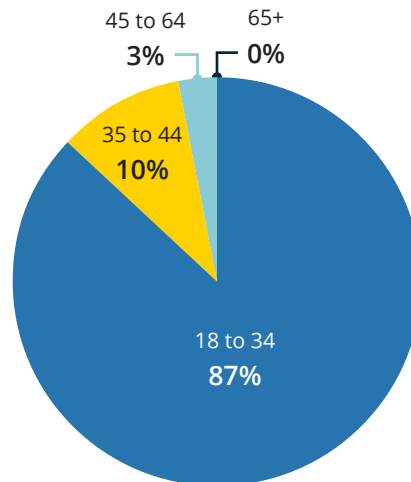
³⁹ *Id.*

⁴⁰ *Id.*

DEMOGRAPHICS

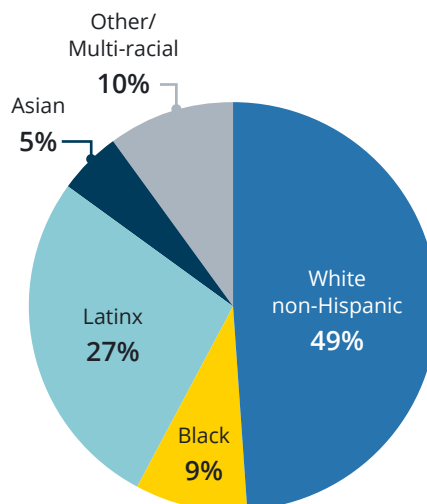
One hundred and sixty-three (163) nonbinary adults in the workforce responded to our survey of LGBTQ employees conducted in July 2023. Nonbinary employees are young: 87% were under the age of 35, and almost all (97%) were under the age of 45. Nonbinary employees were more likely to be under the age of 35 than cisgender LGBTQ (51%) and transgender (71%) employees.

Figure 1. Nonbinary employees by age cohort



About half of nonbinary employees (51%) identified as people of color, including 9% who identified as Black and 27% who identified as Latinx.⁴¹ Nonbinary employees (10%) were more likely to identify as being of an “other race” (besides White, Latinx, Black, or Asian) than cisgender LGBTQ employees (4%).

Figure 2. Nonbinary employees by race/ethnicity



⁴¹ Latinx respondents include respondents of all races who indicated that they are Hispanic. The other race/ethnicity categories do not include anyone who identifies as Hispanic.

In terms of sexual orientation, most nonbinary employees identified as bisexual (58%), something else (21%), or “not sure” (4%). Less than 16% identified as gay, lesbian, or straight.

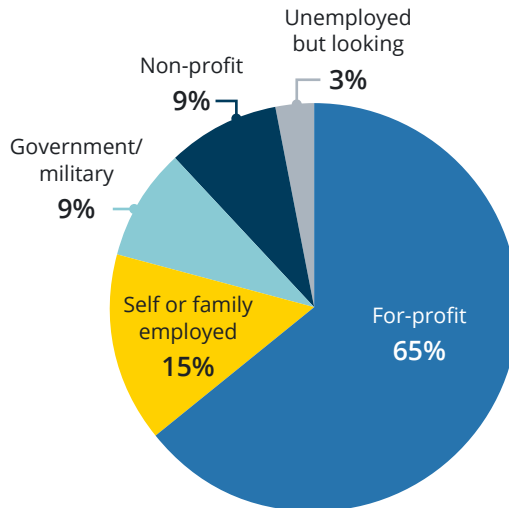
About half of nonbinary employees were single (53%), and almost half were living with a partner (47%). Approximately half of those living with a partner identified their partner as male (49%), a quarter identified their partner as female (24%), and just over a quarter identified their partner as transgender (13%) or nonbinary (13%). Nonbinary employees (14%) were less likely to be married than cisgender LGBQ (27%) and transgender (29%) employees.

About six in 10 nonbinary employees did not have a bachelor’s degree (62%), and almost three-quarters were making less than \$50,000 a year (74%), with 34% making less than \$24,000 a year. Only 8% are making \$100,000 or more a year.

Likely because they are younger, nonbinary employees were less likely to have a postgraduate degree than cisgender LGBQ employees (8% v.16%). Further, while half of cisgender LGBQ employees (52%) reported annual incomes over \$50,000, only one in four nonbinary employees reported incomes at this level (26%).

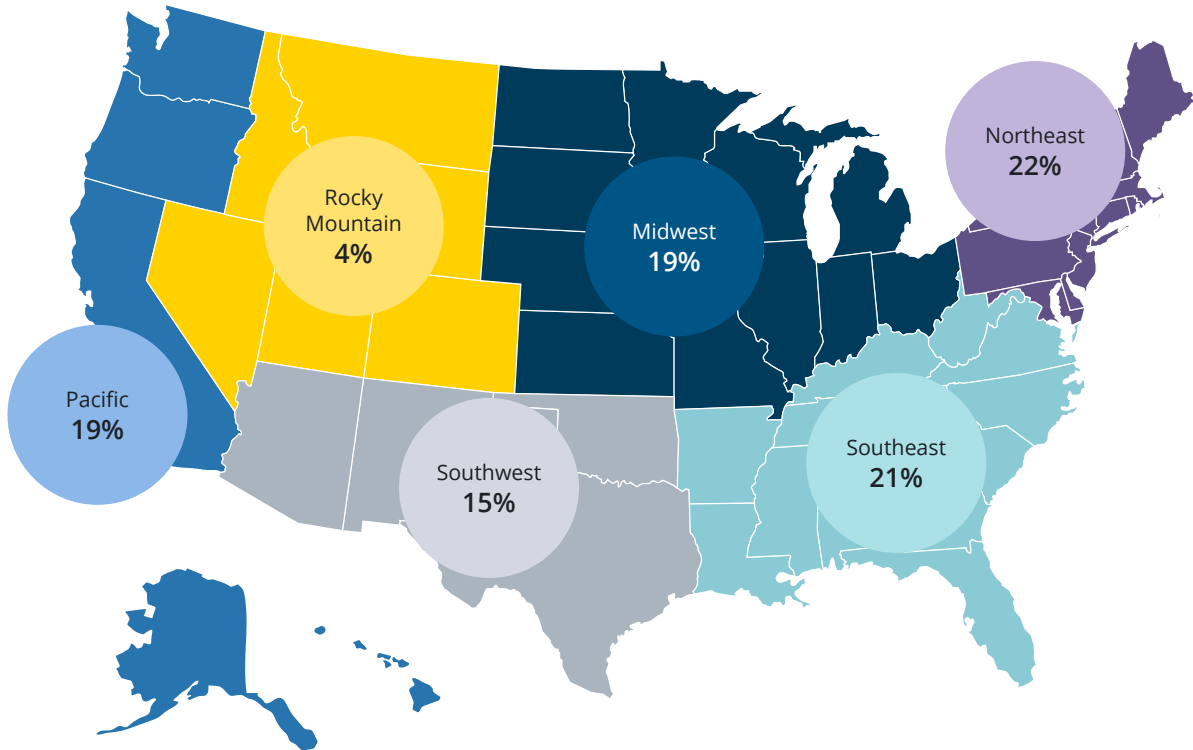
Almost all nonbinary respondents were currently working (97%), with about two-thirds (65%) working in the private sector. Nine percent worked in the non-profit sector, and 9% worked for the government or military.

Figure 3. Nonbinary adults in the workforce by employment sector



In terms of geography, the distribution of nonbinary employees reflected that of the general population of the United States.⁴² About one in five nonbinary employees lived in the Pacific (19%), Southeast (21%), Midwest (19%), and Northeast (22%) regions. Fifteen percent of nonbinary employees lived in the Southwest, and 4% lived in the Rocky Mountain region.

Figure 4. Nonbinary survey respondents by region



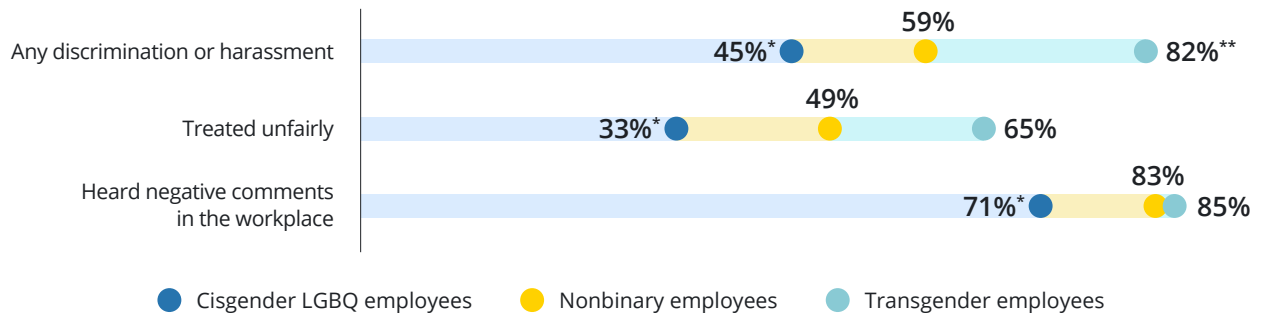
⁴² For regional distribution of the general population, see U.S. Census Bureau, *United States Population Growth by Region*, https://www.census.gov/popclock/data_tables.php?component=growth (2023 data) (last visited July 25, 2023).

FINDINGS

LIFETIME EXPERIENCES OF DISCRIMINATION AND HARASSMENT

Employment discrimination against nonbinary employees is persistent and widespread. At some point in their lives, about six in 10 nonbinary employees (59%) reported experiencing discrimination or harassment at work, including being fired, not hired, not promoted, or verbally, physically, or sexually harassed because of their gender identity. Nonbinary employees were more likely to report these experiences than cisgender LGBQ employees (45%) and less likely to report these experiences than transgender employees (82%).

Figure 5. Lifetime adverse workplace experiences based on LGBTQ status among LGBTQ employees by gender identity



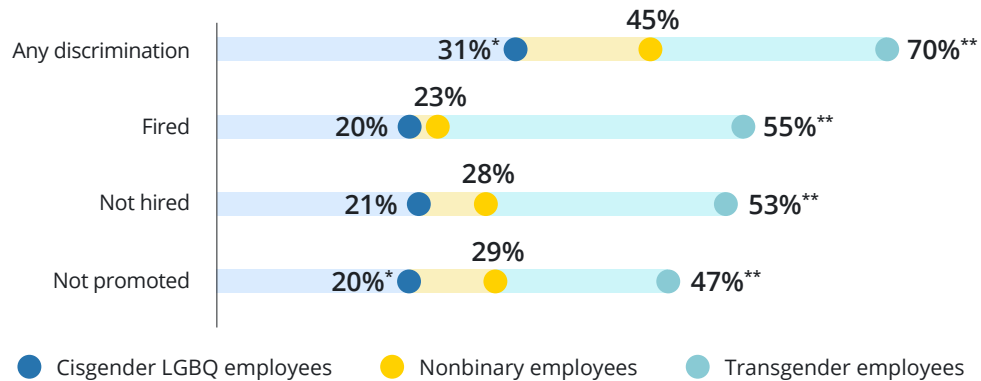
Note: *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than 0.05 when comparing nonbinary employees to transgender employees

Half of nonbinary employees (49%) reported that they had been treated unfairly at work because of their gender identity or sexual orientation at some point in their careers. This was higher than the percentage of cisgender LGBQ employees (33%) who reported unfair treatment at work. Similarly, more nonbinary employees (83%) had heard negative comments about LGBTQ people in the workplace than cisgender LGBQ employees (71%). Nonbinary employees were about as likely to hear negative comments as transgender employees (85%).

Discrimination

Forty-five percent of nonbinary employees reported experiencing at least one form of employment discrimination (being fired, not hired, not promoted, or being denied other workplace opportunities) because of their sexual orientation or gender identity at some point in their lives. Nonbinary employees were more likely to report such experiences than cisgender LGBQ employees (31%) but less likely than transgender employees (70%).

Figure 6. Lifetime experiences of discrimination based on LGBTQ status among LGBTQ employees by gender identity



Note: *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than 0.05 when comparing nonbinary employees to transgender employees

More specifically, about one in four nonbinary employees reported being fired (23%) or not hired (28%) because of their sexual orientation or gender identity. Twenty-nine percent of nonbinary employees reported not being promoted or having been denied other opportunities at work because of their LGBTQ status. While similar percentages of nonbinary and LGBTQ cisgender employees reported each of these types of discrimination, nonbinary employees were less likely to report these types of discrimination than transgender employees.

Respondents to the survey were asked about their more recent experiences of discrimination or harassment. Reports of discrimination by nonbinary employees include:

A boss told me that I either had to "toughen up and stop acting like a 'tranny twink'" or leave. I quit on the spot.

— Black nonbinary employee from Pennsylvania

I was working at a veterinary clinic and was always treated unfairly and poorly by the doctors because I was more masculine presenting than all of the other females who worked at the clinic. I always worked hard and showed up and wanted to learn new things, but they would always try to teach and promote prettier, more feminine-looking girls even though I had more experience and was more reliable.

— White nonbinary employee from Tennessee

Oftentimes, I was passed up for a promotion because I wasn't "manly" enough, and they doubted my ability to lead a team

— Latinx nonbinary employee from California

I worked somewhere for five years without a raise or promotion because I am female and genderfluid.

— White nonbinary employee from Alabama

A manager denied me a promotion (I am a nonbinary feminine-presenting person) in favor of a man with two fewer years of experience. The same manager would also touch me inappropriately during work hours and make suggestive comments about my clothing.

— White nonbinary employee from Colorado

[I was] passed over for projects and promotions because of my non-heteronormative family life.

— Nonbinary employee of color from Washington

Some nonbinary employees also mentioned being isolated from co-workers, sometimes by their supervisor through scheduling changes and shift assignments:

Because I have body hair, which makes me look more masculine, no one wanted to talk to me or work together.

— Nonbinary employee of color from Florida

Many of my co-workers and managers would call me slurs and exclude me from work and social activities because I'm nonbinary.

— White nonbinary employee from Minnesota

I was forced to work alone doing hard manual labor because co-workers joked, "It will toughen this girly boy up."

— Nonbinary employee of color from Washington

At a fast-food chain, I was scheduled less hours than everyone else, and my general manager told me it was because I made my co-workers uncomfortable since they knew I was nonbinary.

— White nonbinary employee from Idaho

Nonbinary employees also reported that sometimes the preferences of customers were given as a reason for excluding them from opportunities at work:

I was ... denied an opportunity to work on a big project allegedly because a client was uncomfortable with the way I looked.

— White nonbinary employee from Idaho

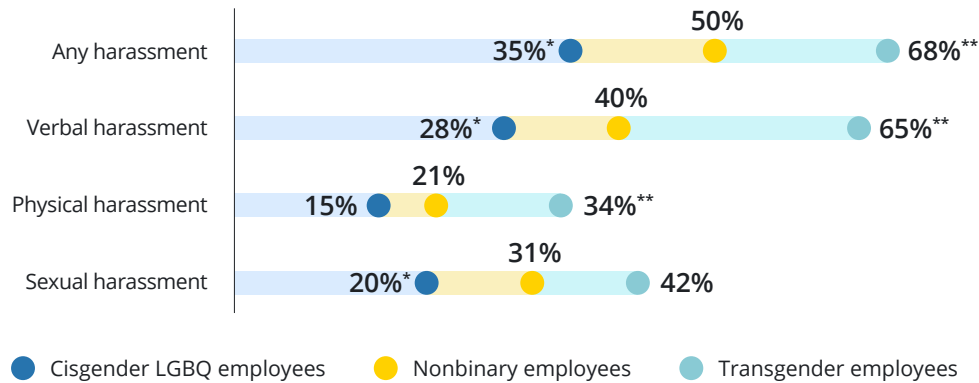
I wouldn't be allowed to do catering events because of how I presented myself and my gender expression.

— White nonbinary employee from California

Harassment

Half of nonbinary employees (50%) reported experiencing at least one form of harassment (verbal, physical, or sexual harassment) at work at some point in their lives because of their sexual orientation or gender identity. Nonbinary employees were more likely to report workplace harassment than cisgender LGBQ employees (35%) but less likely to report harassment of transgender employees (68%).

Figure 7. Lifetime experiences of harassment based on LGBTQ status among LGBTQ employees by gender identity



Note: *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than 0.05 when comparing nonbinary employees to transgender employees

Verbal Harassment

Forty percent of nonbinary employees reported experiencing verbal harassment because of their sexual orientation or gender identity, more than the 28% of cisgender LGBQ employees who reported verbal harassment, but less than the 65% of transgender employees who reported such harassment. Reports of verbal harassment include:

I overheard my manager talking disparagingly about me to the rest of my bosses because of my gender expression.

— Black nonbinary employee from Connecticut

I used to work at a supermarket around my neighborhood, and everything seemed great ... [un]til the manager started talking about me (the way I looked).

— Nonbinary employee of color from New York

Many nonbinary respondents cited examples of being persistently misgendered or deadnamed:

I was frequently told not to mention pronouns and frequently misgendered by all my co-workers because I wasn't allowed to use pronouns. This was at a defense manufacturing company.

— White nonbinary employee from Arizona

My boss wasn't very fond of my preferred pronoun choices and chose to call me by my dead name.

— Black nonbinary employee from Virginia

My pronouns are on my nametag but not properly used. I am the only trans/nonbinary employee at my location and often feel singled out.

— White nonbinary employee from Connecticut

I was treated like a woman and dead-named and misgendered despite being a masc-presenting nonbinary person. I had compassion for small mistakes since I was the only trans person on the team and took measures like wearing pronoun pins on my lapel, as well as putting my pronouns underneath my nametag on my office cube. Unfortunately, it was still largely ignored. I felt disrespected and like it wasn't worth considering.

— White nonbinary employee from California

Nonbinary respondents also described incidents of verbal harassment focused on the ways that they did not conform to binary genders or traditional gender norms:

Most people stare and tell me there are only two genders and I need to grow up.

— Black nonbinary employee from California

A co-worker commented on another co-worker's gender expression, saying she "couldn't pick a gender."

— White nonbinary employee from Georgia

I was teased for the way I dressed daily and how strong my physique is.

— Black nonbinary employee from Michigan

In some cases, reports of verbal harassment came from customers or clients:

A customer started to harass me, and my boss ended up supporting the customer. I had to take the blame for simply being myself.

— Latinx nonbinary employee from California

A customer continuously questioned my gender (e.g., "sir, ma'am, whatever you are").

— Black nonbinary employee from Washington

[I] was teaching students with conservative families who started making things up [about me], saying I was adding things to the curriculum. [The] principal believed them instead of me.

— White nonbinary employee from North Carolina

Once they found out I was bisexual, they [did]n't want me to work with the older kids.

— Latinx nonbinary employee from Kansas

Physical Harassment

About one in five (21%) nonbinary employees reported experiencing physical harassment because of their sexual orientation or gender identity. Transgender employees were more likely to report physical harassment at work (34%). Reports of physical harassment against nonbinary respondents included being “threatened,” “cornered,” “roughhoused,” “assaulted,” “attacked,” and “strangled”:

I was drummed out of my last job by my homophobic boss, who cornered me in the breakroom and attacked me. I did report this, and despite having witnesses and prior bad acts from that supervisor, nothing was done about the assault.

— White nonbinary employee from Colorado

I had several people talk down to me. I have had them call me names. Throw things at me. They told me I was worthless and would amount to nothing in life.

— White nonbinary employee from Iowa

A co-worker strangled me at a counter and said he was trying to “give a girl a massage.”

— Latinx nonbinary employee from Colorado

Sexual Harassment

Thirty-one percent of nonbinary employees reported experiencing sexual harassment at work because of their sexual orientation or gender identity. Nonbinary employees were more likely to report sexual harassment than cisgender LGBTQ employees (20%). Reports of sexual harassment from nonbinary respondents included:

I was 18 [and had] just started college. I was dressed androgynously for my first day at my new job. My boss hit on me ... saying, “Hey, I go both ways, so you’re perfect!” I was mortified because he even said it in front of two of my co-workers.

— Nonbinary employee of color from Kansas

I worked in a gym ... one time, my manager’s boss came in and pulled me for a one-on-one training session and said to me during that time, “You naturally have an advantage selling, like, oh god, I’m already hard.” From that day forward, I was always incredibly uncomfortable in the workplace, and I was continually subjected to this kind of behavior by other workers about myself.

— Latinx nonbinary employee from Connecticut

I was constantly sexually harassed by a co-worker who then became very mad and aggressive when I did not reciprocate his advances. My supervisor did nothing and the manager above [him] did nothing as well.

— White nonbinary employee from Massachusetts

I was sexually assaulted by a co-worker. He knew I was disabled, and he had a physical advantage over me ... Prior to the assault, he cornered me and described in graphic detail his wish for a threesome with me ... When I reported him and took him to court, I received a restraining order. Instead of honoring it, HR brought an attorney into the room and denied the order. They said they would change our schedules, so we weren't working together, and that's the best they could do.

— Latinx nonbinary employee from California

Intersectional Discrimination

A number of nonbinary employees reported incidents of discrimination and harassment related to their multiple marginalized identities or intersectional discrimination. “Intersectionality” was originally defined by UCLA Law Professor Kimberlé Crenshaw, who used the term to refer to the double discrimination of racism and sexism experienced by Black women and as a critique of the “single-axis framework that is dominant in anti-discrimination law.”⁴³ Crenshaw defined intersectionality as a tool to understand “the ways that multiple forms of inequality or disadvantage sometimes compound themselves and create obstacles that often are not understood” by considering one identity in isolation.⁴⁴

Nonbinary respondents most frequently reported incidents of discrimination and harassment based on both their sexual orientation and gender identity. Since most nonbinary respondents identified as bisexual, it is not surprising that many nonbinary people described experiences of discrimination and harassment focused on their sexual orientation.

Once a co-worker found out I was bisexual, they began to frequently talk about wanting to watch me have sex with a woman because they thought it would be “hot.”

— White nonbinary employee from Indiana

Being bisexual at my other job, I was treated differently and put in uncomfortable situations or asked very inappropriate questions about my sexual activity.

— Nonbinary employee of color from Pennsylvania

[My] girlfriend came to my job to bring me lunch. Soon as I came back inside ... “management”... kept harassing me and using derogatory language ... I don't even want to repeat what was said. Just plain nasty and verbal abuse ... We were harassed on social media, gas stations, even Walmart, anytime someone from work saw us out together.

— White nonbinary employee from West Virginia

⁴³ Kimberlé Williams Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 8 U. CHICAGO LEGAL FORUM 139 (1989).

⁴⁴ *Id.*

Notably, several nonbinary respondents reported experiences that included discriminatory treatment based on gender identity and disability status:

My employer ... would cut my hours, believing my gender and mental disabilities would affect the amount of customers we would acquire, giving me times of work with less customers.

— White nonbinary employee from Missouri

I was denied a significant promotion in the disability services office in which I worked due to the office's unjustified views of queer people combined with their low expectations of the quality of work that disabled people (especially queer, non-cisgender disabled people) could bring.

— Nonbinary employee of color from California

I was told to not correct people on my pronouns and not to wear any pronoun-related pins or stickers because it "made people uncomfortable." I also had my work tampered with by another employee who made comments about my disability and gender.

— White nonbinary employee from Texas

I was yelled at by my boss on multiple occasions for being too feminine, too emotional, too liberal, and "not choosing" (a sexuality or a gender). When her verbal assault made me cry, she yelled at me to toughen up and further belittled me for having rejection sensitivity, autism, and an autoimmune disease.

— Latinx nonbinary employee from Florida

Other nonbinary employees reported experiences at the intersection of the nonbinary status and race, ethnicity, or religion:

I was cornered in a freezer, and he yelled slurs at me because I'm nonbinary and I'm with a Black man.

— White nonbinary employee from Missouri

My boss berates me for my private relationship with my partner and for being Muslim. He yells at me and judges my work ... He uses this belief to attack me and other queer people. My boss is Christian, and I am Muslim.

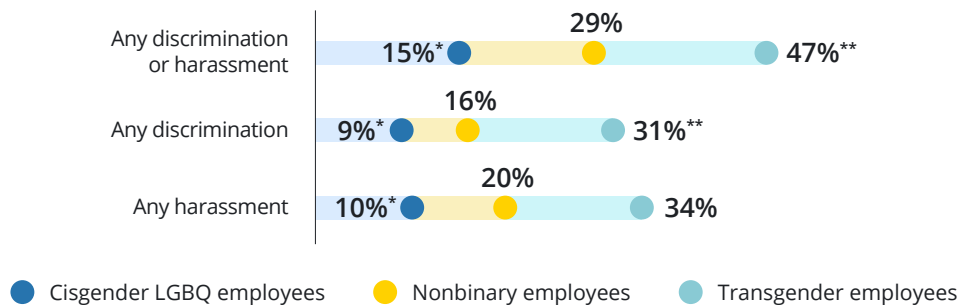
— White nonbinary employee from North Carolina

RECENT EXPERIENCES OF DISCRIMINATION AND HARASSMENT

LGBTQ employees continue to experience discrimination even after the U.S. Supreme Court held in *Bostock v. Clayton County* that discrimination based on sexual orientation and gender identity are forms of sex discrimination prohibited by Title VII.⁴⁵ This decision extended federal nondiscrimination protections to LGBTQ employees nationwide as of June 2020.

A clear pattern emerges when examining recent experiences of discrimination and harassment, with nonbinary employees approximately twice as likely to report adverse workplace experiences as cisgender LGBQ employees but less likely than transgender employees. For example, 29% of nonbinary employees reported workplace discrimination or harassment in the past year, compared to 15% of cisgender LGBQ employees and 47% of transgender employees.

Figure 8. Past year adverse workplace experiences based on LGBTQ status among LGBTQ employees by gender identity



Note: *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than 0.05 when comparing nonbinary employees to transgender employees

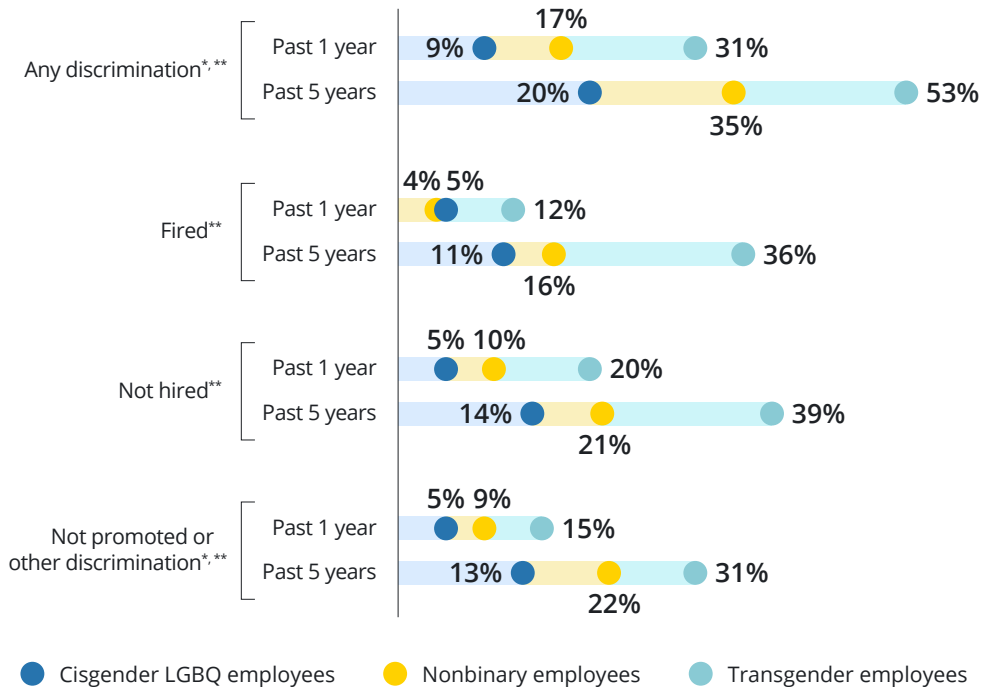
Recent Discrimination

About one-third of nonbinary respondents (35%) reported being fired, not hired, or being denied a promotion or other workplace opportunities in the past five years, and one in six (17%) reported such experiences in the year prior to taking the survey. By comparison, 9% of cisgender LGBQ employees had such experiences in the past year, as did 31% of transgender employees.

In terms of the specific forms of discrimination experienced in the past year, 4% of nonbinary employees reported being fired, 10% reported being not hired, and 9% reported not being promoted or being denied other workplace opportunities based on their sexual orientation or gender identity. Nonbinary employees differed the most from transgender employees in terms of past year experiences, with 12% of transgender employees reporting that they had been fired and 20% reporting that they had not been hired in the past year due to their sexual orientation or gender identity.

⁴⁵ 140 S. Ct. 1731 (2020).

Figure 9. Recent experiences of workplace discrimination based on LGBTQ status among LGBTQ employees by gender identity



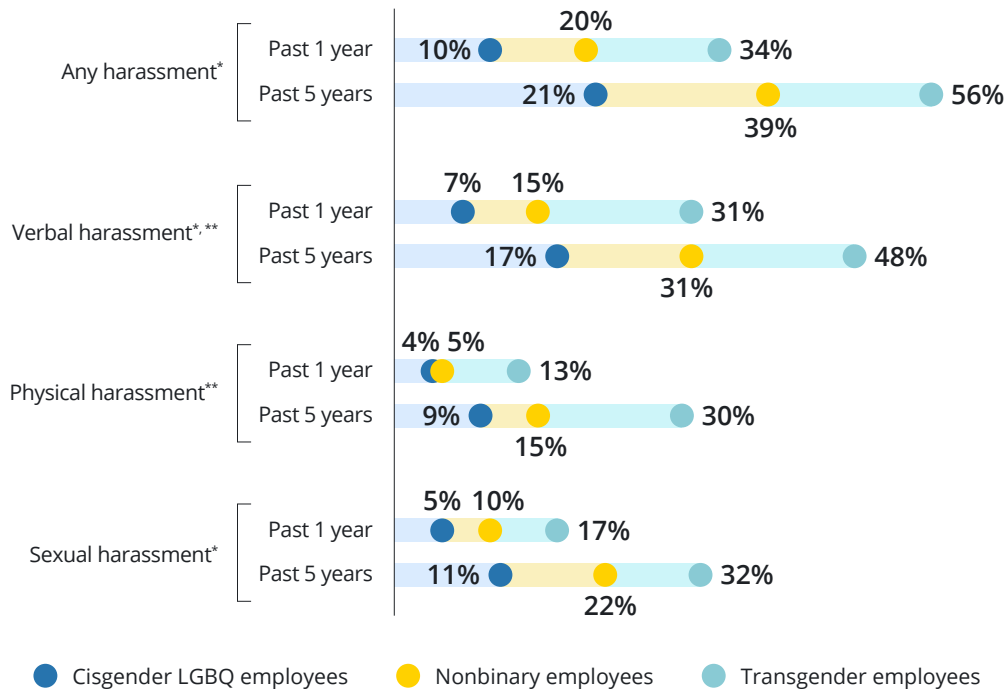
Note: *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than 0.05 when comparing nonbinary employees to transgender employees

Recent Harassment

Four in ten (39%) nonbinary employees reported verbal, physical, or sexual harassment in the workplace based on their sexual orientation or gender identity in the past five years, and one in five (20%) reported these experiences in the past year. By comparison, 10% of cisgender LGBTQ employees had such experiences in the past year.

In terms of the specific forms of harassment experienced in the past year, 15% of nonbinary employees reported being verbally harassed, 10% reported being sexually harassed, and 5% reported being physically harassed. Nonbinary employees were more likely to report recent experiences of verbal harassment than LGBTQ cisgender employees (7%) but less likely than transgender employees (31%). Nonbinary employees were also more likely to report experiencing sexual harassment in the past year than cisgender LGBTQ employees (5%).

Figure 10. Recent experiences of workplace harassment based on LGBTQ status among LGBTQ employees by gender identity



Note: *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than 0.05 when comparing nonbinary employees to transgender employees

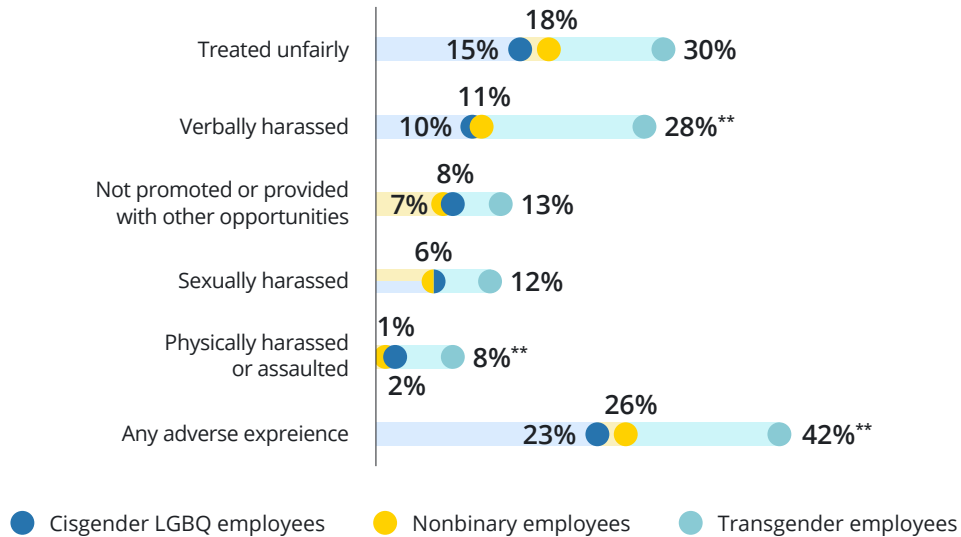
EXPERIENCES AT CURRENT JOB

Respondents were asked specifically about their experiences at their current job. About two-thirds of nonbinary employees (64%) felt that their current workplace environment was somewhat or very supportive of LGBTQ people. In comparison, eleven percent (13%) felt their workplace environment was somewhat or very unsupportive of LGBTQ people. While about two-thirds (68%) of nonbinary employees felt somewhat or very satisfied with their current job, 17% were somewhat or very dissatisfied with their current job.

At their current job, one in four (26%) nonbinary employees reported one or more adverse workplace experiences related to their sexual orientation or gender identity. More specifically, 18% reported unfair treatment, 11% reported verbal harassment, 8% felt they had not been promoted or denied other opportunities in the workplace, 6% reported sexual harassment, and 1% reported physical harassment.

While nonbinary employees reported adverse experiences at their current jobs at similar levels as cisgender LGBTQ employees, transgender employees reported higher levels of verbal and physical harassment.

Figure 11. Adverse workplace experiences based on LGBTQ status among LGBTQ employees at current job by gender identity



Note: *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than 0.05 when comparing nonbinary employees to transgender employees

AVOIDING DISCRIMINATION AND HARASSMENT

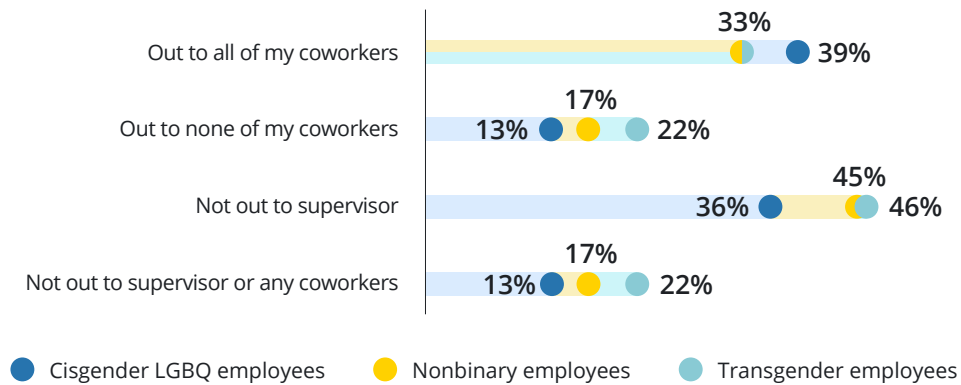
LGBTQ employees often take steps to avoid experiencing discrimination and harassment.⁴⁶ For example, LGBTQ employees may conceal their sexual orientation or gender identity at work, avoid talking about their personal lives with co-workers, or change their appearance to conform to gender norms. Engaging in these behaviors, sometimes referred to as “covering,” can be a source of stress for LGBTQ people and negatively impact their health and well-being.⁴⁷

Forty-five percent of nonbinary employees reported that they are not open about being LGBTQ to their current supervisor, and one in six (17%) reported that they are not out to any of their co-workers. Only one-third (33%) of nonbinary employees reported being out to all their co-workers.

⁴⁶ See Christy Mallory & Brad Sears, *LGBTQ Discrimination, Subnational Public Policy, and Law in the United States*, in Oxford Res. Encyc. Pol. (2020), doi:10.1093/acrefore/9780190228637.013.1200.

⁴⁷ Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 PSYCH. BULL. 674 (2003), doi:10.1037/0033-2909.129.5.674; Kenji Yoshino, *Covering*, 111 Yale L.J. 769 (2001), <https://digitalcommons.law.yale.edu/ylj/vol111/iss4/1>.

Figure 12. Out at work among LGBTQ employees at current job by gender identity



Note: *p-value less than 0.05 when comparing nonbinary employees to cisgender employees (none); **p-value less than 0.05 when comparing nonbinary employees to transgender employees (none)

Not being out, in full or in part, is how many respondents protect themselves from discrimination and harassment. Prior Williams Institute research has found that LGBT people who are out to at least some people in the workplace are approximately three times more likely to have experienced discrimination or harassment because of their sexual orientation or gender identity than those who are not out to anyone at work.⁴⁸

Nonbinary employees shared some of the reasons that they are not out at work, including past experiences related to being out in the workplace and seeing the harassment that their out-LGBTQ co-workers have experienced:

I personally do not experience harassment or discrimination because I present as straight and cisgender to cis straight people. I always hide my gender identity and sexuality. No one has yet found out or outed me. I used to be open about my pronouns, but I have since learned that people never respect them, especially when there are much older people in the company, so I have resigned myself to hiding them.

— Asian nonbinary employee from California

I had a lot of co-workers that made my life hell for me just being me. I don't bring my identity or gender or sexual orientation into the workplace since it is not the place for it. However, they found out about it and began to treat me differently, harassed me, wouldn't give me work, or dumped everything on me. Got so bad I left.

— Asian nonbinary employee from California

⁴⁸ BRAD SEARS ET AL., WILLIAMS INST., LGBT PEOPLE'S EXPERIENCES OF WORKPLACE DISCRIMINATION AND HARASSMENT 19-20 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf>.

I just never felt comfortable telling my workplace I'm nonbinary cause I always hear how my co-workers talk behind peoples' backs about the way others may present themselves outside. A lot of people who work in this retail place who present differently never make it past the first year hired, and it makes me nervous to be myself.

— Latinx nonbinary employee from Texas

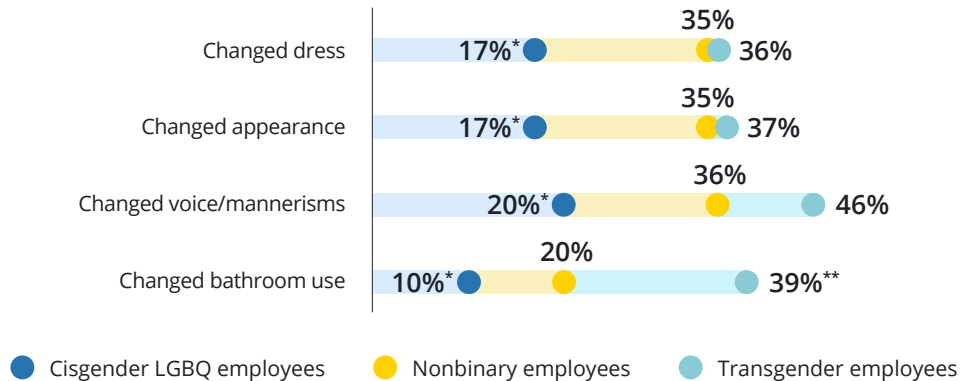
I don't really discuss my sexuality or gender identity at work much, so I don't think I experience much unfair treatment or harassment ... In general, it doesn't come up, and I just experience the ways people's bigotry comes out around me. One person was bigoted towards a new co-worker who was using they/them pronouns, and I was able to experience that, but they didn't know my own thoughts surrounding gender identity.

— White nonbinary employee from Massachusetts

LGBTQ people and others with marginalized identities often adjust their behavior and conduct in order to avoid bringing attention to a stigmatized trait—a process that has been called “covering” by New York University law professor Kenji Yoshino.⁴⁹ LGBTQ people who are open about their sexual orientation and gender identity may still engage in covering behaviors in order to minimize their LGBTQ identity.⁵⁰

Many nonbinary employees reported engaging in covering behaviors at their current jobs to avoid harassment or discrimination related to sexual orientation or gender identity. About two-thirds of nonbinary employees (67%) reported that they take steps to change how they present themselves at work, including over one-third who reported changing how they dressed (35%), their physical appearance (35%), or their voice or mannerisms (36%) at work. One in five (20%) nonbinary employees have changed where, when, or how frequently they used the bathroom.

Figure 13. Covering behaviors at work related to appearance and bathroom use among LGBTQ employees by gender identity



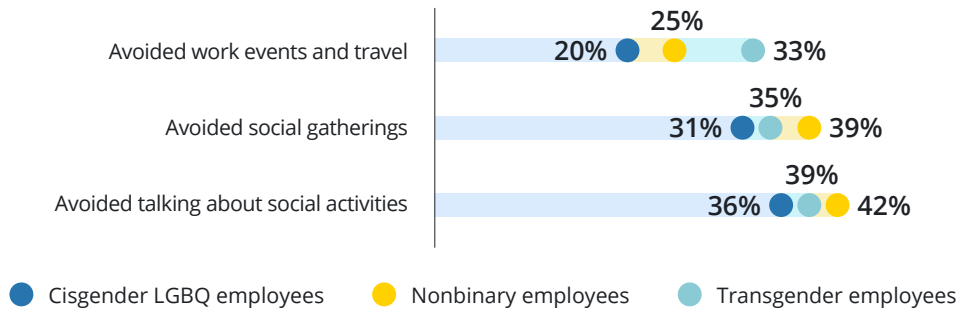
Note: *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than 0.05 when comparing nonbinary employees to transgender employees

⁴⁹ Kenji Yoshino, *Covering*, 111 YALE L. J. 837(2001). Covering is not necessarily the same as concealing LGBTQ status.
⁵⁰ *Id.* at 838.

Covering behaviors related to how employees present themselves at work and bathroom use were more common for nonbinary employees than cisgender LGBQ employees. Nonbinary employees were less likely to report changes in bathroom use than transgender employees, though nonbinary employees reported similar levels of changing their appearance as transgender employees.

Many nonbinary employees also reported that they avoided work events and travel (25%) and work-related social events (39%) in order to avoid discrimination and harassment. Over 42% reported that they avoided talking about their social activities outside of work with co-workers in order to avoid discrimination and harassment.

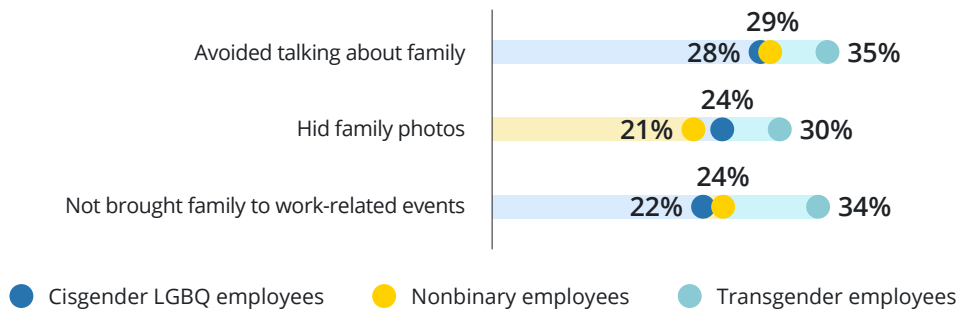
Figure 14. Covering behaviors at work related to travel and socializing by gender identity



Note: *p-value less than 0.05 when comparing nonbinary employees to cisgender employees (none); **p-value less than 0.05 when comparing nonbinary employees to transgender employees (none)

Nonbinary employees also reported that they downplayed their families at work to avoid discrimination and harassment. About thirty percent of nonbinary employees (29%) have avoided talking about their family at work, 24% have not brought family to work events, and 21% have not displayed photos of their partner or family at work to avoid discrimination and harassment.

Figure 15. Covering behaviors at work related to family by gender identity



Note: *p-value less than 0.05 when comparing nonbinary employees to cisgender employees (none); †p-value less than 0.05 when comparing nonbinary employees to transgender employees (none)

While covering behaviors are often initiated by LGBTQ people to prevent discrimination and harassment, some respondents also indicated that they have engaged in these behaviors because they were directly told to do so:

I was scolded for not being “ladylike.” I was told that the boss would not like my demeanor & appearance. It was implied that I was unsuited to work in that office

— White nonbinary employee from New York

I was verbally assaulted and outcast from a previous job. Not only did HR threaten to fire me if I was to ‘keep it up,’ but I was yelled at in front of customers for looking too gay.

— Nonbinary employee of color from Arizona

My worst experience at work was due to me identifying as nonbinary and presenting as more masculine even though I am biologically female. I use the family (unisex) restrooms so that I feel more comfortable, and the people around me do too. However, it is very far away from my office and ... makes my ... restroom[breaks] longer than they should be. My supervisor began to tell me that I needed to hurry up ... [My] female co-workers ... expressed their concern with me using the female restrooms, and that’s why I switched to the unisex one. My supervisor also told me that I wouldn’t be allowed to use his guy’s restrooms. I didn’t have a choice, but I got in trouble every day, every time I went.

— Black nonbinary employee from North Carolina

IMPACT OF DISCRIMINATION AND HARASSMENT ON EMPLOYEE RETENTION

Discrimination and harassment, or fear of those experiences, negatively affect the well-being of employees, which, in turn, can negatively impact employers.⁵¹ Decades of research have linked unsupportive workplace environments for LGBTQ people to poorer health, decreased job satisfaction, and decreased job commitment, among other negative outcomes.⁵²

Half of nonbinary employees (50%) reported that they had left a job at some point in their lives because of how their employer treated them based on their sexual orientation or gender identity. Fifty-eight percent of nonbinary employees said that they have looked for other jobs because of how they were personally treated by their employer based on their LGBTQ status, and 60% had done so because the workplace environment, in general, was not supportive of LGBTQ people.

⁵¹ See, e.g., M.V. LEE BADGETT ET AL., WILLIAMS INST., THE BUSINESS IMPACT OF LGBTQ-SUPPORTIVE WORKPLACE POLICIES (2013), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-LGBT-Support-Workplace-May-2013.pdf>. These employee outcomes can have economic consequences for employers.

⁵² *Id.*

Nonbinary employees were more likely to have left a job (50% v. 31%) or looked for another job (58% v. 32%) because of how they were treated based on their sexual orientation or gender identity than cisgender LGBTQ employees. Compared to cisgender LGBTQ employees, nonbinary employees were also more likely to report they had looked for another job due to the general workplace environment for LGBTQ employees (60% v. 36%).

Due to the workplace environment at their current job, one in five nonbinary employees (20%) had considered leaving. About two-thirds (65%) of them had taken steps towards finding another job.

Some nonbinary respondents who left their jobs or thought about leaving because of harassment and discrimination shared these experiences in their write-in responses. Others wanted to leave but felt trapped by their job prospects:

No one knows, but the way they talk about people who aren't straight makes me sick, and I didn't want to be there.

— Nonbinary employee of color from Alaska

I left a job because the owner stated that gay people should never exist and they should all be lined up and gunned down.

— White nonbinary employee from Pennsylvania

I had to leave without notice from a really well-paying job because I was being harassed and threatened by a fellow co-worker because of my gender expression and gender orientation. I felt threatened [and] had a boss who clearly did not care or understand.

— Latinx nonbinary employee from Texas

[I] had an extremely bigoted and Christian boss at a non-profit ... Because of the general hostility and snide comments about literally anyone who didn't act and think exactly as they did, I kept my mouth shut most of the time out of fear of being harassed ... During June, they would complain about LGBTQIA lifestyles being "shoved down their throats." Just because they saw an extra rainbow or two. Needless to say, I did not make friends with them and found another job as soon as I could.

— White nonbinary employee from Arkansas

CONCLUSION

Nonbinary employees face high levels of discrimination and harassment in the workplace. Their lifetime experiences of discrimination and harassment are particularly high when considering that the vast majority are under the age of 35. In part because of their age, this group of employees earn less and are less likely to have a college degree. Many nonbinary employees are not fully out in the workplace, and many are actively engaged in “covering” behaviors, such as changing their dress or appearance, to hide or downplay their identity. Experiences of discrimination and harassment, as well as unsupportive workplace environments, are leading many nonbinary employees to consider leaving their current jobs.

The findings in this report suggest that employers must pay specific attention to the workplace experiences of nonbinary employees, in particular, to retain younger employees. Policymakers should consider issuing explicit guidance stating that federal and state nondiscrimination policies that prohibit sex and gender identity discrimination include protections for nonbinary employees. Such guidance should specifically address the use of names and pronouns that employees request; nonbinary employees’ access to bathrooms, lockers, changing rooms, and showers; sexual harassment against nonbinary employees; discrimination through schedule and shift changes; and intersectional discrimination.

Finally, the individual reports of discrimination shared by nonbinary employees indicate that further research should study the ways in which they face intersectional discrimination, including on the basis of sexual orientation and disability, sexual harassment, and the use of schedule and shift changes to isolate them from other co-workers, clients, and opportunities for job growth.

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ABOUT THE WILLIAMS INSTITUTE

The Williams Institute is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. A think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance and disseminates it to judges, legislators, policymakers, media, and the public. These studies can be accessed at the Williams Institute website.

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RESEARCH THAT MATTERS



APPENDIX

METHODS

The Employment Experiences Survey Wave II was an anonymous cross-sectional survey conducted between July 12 and July 21, 2023, with 1,902 LGBTQ adults ages 18 and up who were currently in the workforce. Participants were selected by Morning Consult from the Lucid and Pure Spectrum survey panels.⁵³ Using screening questions provided by the Williams Institute, panelists were screened on sex assigned at birth, gender identity, sexual orientation identity and workforce participation and job type to recruit sexual and gender minority participants. In addition, we aimed to survey at least 100 LGBTQ people in each of the six regions identified in Figure 5 above (response numbers by region ranged from 107 in the Rocky Mountain region to 517 in the Southeast). Eligible panelists reviewed an information sheet before opting to participate in an online English language survey.

The Employment Experiences Survey Wave II was largely based on the Employment Experiences Survey Wave I.⁵⁴ This survey was developed primarily to gather data about experiences of harassment and discrimination among LGBTQ workers. Where possible, survey questions were modeled on prior questions used to assess employment discrimination and efforts to avoid discrimination. For example, some employment discrimination questions were informed by the Williams Major Lifetime Discrimination Scale.⁵⁵ Some questions about concealment and avoidance are from a survey developed by the Center for American Progress.⁵⁶ Questions about outness at work were informed by the 2008 General Social Survey and questions about job commitment were informed by the Human Rights Campaign's 2018 "A Workplace Divided" survey.⁵⁷ Two open-ended questions were also included in the survey to gather information about the participant's worst experience of unfair treatment, harassment, or discrimination at work because of their sexual orientation or gender

⁵³ Prior to selecting the Lucid and Pure Spectrum panels for this study, and others, Morning Consult examined European Society for Opinion and Marketing Research (ESOMAR) documents that contain a uniform set of roughly 30 questions for survey panel providers on topics such as sample sources and recruitment, respondent profiling data, respondent privacy and data security, data quality and validation, and survey incentives. Non-probability panels are formed by recruiting panelists through loyalty and rewards programs, publisher partnerships, advertisements on mobile, tablet and desktop websites, and outreach to online gaming communities; snowball sampling or river sampling are excluded. In addition, Morning Consult examines panels for quality based on average survey completion time and correlations between dozens of variable pairs known to have high correlations (e.g., party identification and political ideology, education and income, country headed in the right direction and leader approval, vote and political party, and consumer confidence variables). In general, only panels that meet Morning Consult's quality requirements are approved as sample providers.

⁵⁴ Sears et al., *supra* note 3.

⁵⁵ David R. Williams, Measuring Discrimination Resource (2016), https://scholar.harvard.edu/files/davidrwilliams/files/measuring_discrimination_resource_june_2016.pdf.

⁵⁶ Sejal Singh & Laura E. Durso, L. E., Widespread Discrimination Continues to Shape LGBTQ People's Lives in Both Subtle and Significant Ways, Center for American Progress (May 2, 2017), <https://www.americanprogress.org/issues/lgbtq-rights/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>.

⁵⁷ NORC at the University of Chicago, The General Social Survey: GSS Questionnaire 2008, <https://gss.norc.org/get-documentation/questionnaires> (last visited July 25, 2024); Human Rights Campaign, A Workplace Divided: Understanding the Climate for LGBTQ Workers Nationwide (2018), <https://www.hrc.org/resources/a-workplace-divided-understanding-the-climate-for-lgbtq-workers-nationwide>.

identity, as well as experiences where the religious beliefs of others were believed to be a factor in how the respondent was treated.

In addition to questions included in the 2021 survey, the 2023 survey included questions about intersectional discrimination (discrimination based on multiple marginalized characteristics), co-workers' perceptions of respondents' perceived masculinity and femininity, and employer-level policies and practices that support LGBTQ people. The intersectional discrimination questions were informed by the Generations Study. The question about perceived masculinity and femininity was informed by the recommended measure for assessing gender conformity in the GenIUSS guide to Best Practices for Asking Questions to Identify Transgender and Other Gender Minority Respondents on Population-Based Surveys.⁵⁸

A total of 1,902 participants who self-identified as lesbian, gay, bisexual or transgender or nonbinary (as determined by responses to questions about sex assigned at birth and current gender identity) were included in the analytic sample for this report. Participants who selected gender identity options that were the same as their sex assigned at birth were classified as cisgender. Participants who selected gender identity response options, including male, female, and transgender, which differed from their sex assigned at birth, were classified as transgender. Participants who selected the nonbinary gender identity response option were classified as nonbinary.

Cisgender participants who reported "something else" as their sexual orientation identity (n=98) were excluded from empirical analyses, given uncertainty about whether they were sexual minorities or not. Descriptive analyses were conducted using the survey package in R v4.3.2 statistical software and included design-based F-tests (Rao-Scott chi-square tests) of differences in proportions to assess whether outcomes vary across demographic groups at an alpha of 0.05.⁵⁹ Confidence intervals (95% CI) were included in Appendix tables to communicate the degree of uncertainty around an estimate due to sampling error.

All analyses were weighted using sampling weights developed by Morning Consult. To construct the sampling weights for the entire sample, Morning Consult used the 2018 Population Assessment of Tobacco and Health (PATH) Public Use File.⁶⁰ The 2018 PATH survey was conducted with a large nationally representative sample of U.S. adults and included measures of sexual orientation identity and transgender status. The PATH data were subset on LGBTQ respondents in the workforce (full-time employed, part-time employed, self-employed, or looking for work), and this subset was used to establish weighting targets for age (4 categories), sex assigned at birth (2 categories), race/ethnicity (5 categories), education (3 categories), and region (6 categories). Iterative proportional fitting (or "raking") was then used to create the weight variable. Weights were trimmed at 6 to avoid over-weighting a small number of respondents, and they were normalized to sum to the sample size, which is common practice.

⁵⁸ GenIUSS Group, Best Practices for Asking Questions to Identify Transgender and Other Gender Minority Respondents on Population-Based Surveys (2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Survey-Measures-Trans-GenIUSS-Sep-2014.pdf>.

⁵⁹ J. N. K. Rao & A. J. Scott, *On Chi-Squared Tests for Multiway Contingency Tables with Cell Proportions Estimated from Survey Data*, 12 J. ANN. STAT. 12 46 (1984).

⁶⁰ Nat'l Inst. of Health, U.S. Dep't of Health & Hum. Scvs., 2018 Population Assessment of Tobacco and Health (PATH) Study Wave 4 [United States] Public Use Files.

While selection probabilities for non-probability samples are unknown, in practice, probability panels face the same methodological challenges as non-probability panels⁶¹ that need to be addressed using statistical adjustment. While most non-probability panels are not representative per se, statistical adjustments can be used to create unbiased and representative samples independently of the initial recruitment process.

The study protocol was reviewed and approved by the Institutional Review Board at UCLA.

The quotes from the respondents in this report were collected through one open-ended question: “Tell us about your worst experience of unfair treatment, harassment, or discrimination at work.” Responses were selected for inclusion in this report to illustrate certain points while avoiding duplication in the content of the quotes and representing the full diversity of the sample in terms of sexual orientation, gender identity, sex, race, ethnicity, occupation, and current state of residence. The responses were edited to correct for typos, spelling, grammar, missing words, and other issues not impacting their substance. Where words were otherwise changed (for verb tense, pronouns, clarity, to change information that could be used to identify the respondent, etc.), the changes are noted with brackets. Where words were cut (primarily to reduce the length of the quote or cut personally identifying information), the omission is marked with ellipses. Names of employers were removed and replaced with language describing the type of employment in brackets.

The study protocol was reviewed and approved by the Institutional Review Board at UCLA.

Table A1. Demographics

	NONBINARY (163)		CISGENDER LGBTQ (1653)		TRANSGENDER (86)	
	%	CI 95%	%	CI 95%	%	CI 95%
SEXUAL ORIENTATION *. **						
Gay	0%	0, 0	24.4%	21.9, 27.2	23.4%	14.8, 34.9
Lesbian	0%	0, 0	14.8%	13.1, 16.6	9.2%	4.9, 16.4
Lesbian or gay	15.2%	10.3, 21.7	0%	0, 0	0%	0, 0
Straight	0.5%	0.1, 3.3	0%	0, 0	6.9%	2.5, 17.6
Bisexual	58.1%	50.0, 65.7	60.8%	58.0, 63.6	47.5%	36.1, 59.2
Something else	21.5%	15.6, 28.8	0%	0, 0	11.0%	5.6, 20.3
Not sure/questioning	4.4%	2.1, 9.1	0%	0, 0	2.1%	0.5, 8.9
Don't know what question is asking	0.5%	0.1, 3.3	0%	0, 0	0%	0, 0
AGE *. **						
18-34	86.6%	80.9, 92.3	50.5%	47.8, 53.3	70.9%	59.8, 82.0
35-44	10.4%	5.5, 15.2	16.8%	15.0, 18.7	12.9%	6.1, 19.7
45-64	3.0%	-0.3, 6.4	27.3%	24.5, 30.1	14.4%	4.5, 24.3
65+	0.0%	0, 0	5.4%	3.7, 7.0	1.8%	-1.7, 5.3

⁶¹ Courtney Kennedy et al., Evaluating Online Nonprobability Surveys, Pew Research Center (2016), <https://www.pewresearch.org/methods/2016/05/02/evaluating-online-nonprobability-surveys/>.

	NONBINARY (163)		CISGENDER LGBTQ (1653)		TRANSGENDER (86)	
RACE/ETHNICITY *						
White non-Hispanic	49.2%	41.2, 57.2	54.8%	52.0, 57.5	49.6%	38.1, 61.1
People of color	50.8%	42.9, 58.8	45.2%	42.5, 48.0	50.4%	38.9, 61.9
Black non-Hispanic	9.1%	5.4, 14.8	11.7%	10.1, 13.5	8.8%	3.6, 19.7
Hispanic or Latinx	26.7%	19.5, 35.4	25.4%	22.8, 28.1	33.2%	22.7, 45.8
Asian non-Hispanic	4.8%	2.3, 9.7	4.4%	3.4, 5.7	3.3%	1.0, 9.9
All other races/ethnic groups, non-Hispanic	10.3%	6.3, 16.5	3.8%	2.9, 5.0	5.2%	1.9, 13.4
REGION						
Pacific	19.0%	12.7, 25.3	15.6%	13.6, 17.7	17.1%	8.6, 25.6
Rocky Mountain	3.7%	0.6, 6.8	5.6%	4.3, 6.9	4.6%	0.5, 8.7
Southwest	15.2%	9.1, 21.2	12.1%	10.3, 13.9	6.0%	0.6, 11.5
Midwest	19.1%	13.2, 25.0	19.7%	17.6, 21.8	16.1%	8.0, 24.2
Northeast	22.0%	15.2, 28.9	20.6%	18.3, 22.9	30.5%	19.6, 41.4
Southeast	21.0%	14.7, 27.3	26.3%	23.9, 28.7	25.7%	15.3, 36.1
COHABITATING PARTNER*. **						
Married/Spouse	13.6%	8.3, 19.0	27.3%	24.9, 29.8	29.2%	19.1, 39.3
Non-marital legally recognized partner	5.3%	1.6, 9.1	6.3%	4.9, 7.6	5.9%	1.1, 10.8
Unmarried partner	28.1%	20.9, 35.4	19.4%	17.3, 21.4	17.7%	8.5, 26.8
Single (no cohabitating partner)	52.9%	44.9, 60.9	47.0%	44.3, 49.8	47.2%	35.6, 58.8
GENDER IDENTITY OF PARTNER*. **						
Male	49.4%	37.6, 61.1	56.0%	52.3, 59.7	22.7%	9.8, 35.6
Female	24.2%	14.1, 34.3	38.3%	34.7, 41.9	53.7%	38.5, 69.0
Transgender	13.2%	5.3, 21.2	1.9%	1.0, 2.9	17.0%	5.6, 28.4
Nonbinary	13.2%	5.7, 20.7	3.8%	2.5, 5.1	6.6%	0, 13.3

Note: CI = confidence interval; *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than .05 when comparing nonbinary employees to transgender employees

Table A2. Education, income, and current employment status

	NONBINARY (163)		CISGENDER LGBQ (1653)		TRANSGENDER (86)	
	%	CI 95%	%	CI 95%	%	CI 95%
EDUCATION*						
Less than a bachelor's degree	61.9%	54.2, 69.7	55.0%	52.2, 57.7	60.7%	49.4, 72.0
Bachelor's degree	30.1%	22.9, 37.4	28.9%	26.4, 31.4	30.2%	19.7, 40.7
More than bachelor's degree	8.0%	3.6, 12.3	16.1%	14.0, 18.3	9.1%	2.1, 16.1
INDIVIDUAL INCOME*						
None	4.0%	0.7, 7.2	0.8%	0.5, 1.2	0.0%	0, 0
\$1 to \$24,999K	30.2%	22.8, 37.6	15.9%	14.0, 17.7	26.9%	16.3, 37.5
\$25k - \$49,999k	39.8%	32.0, 47.6	31.2%	28.7, 33.7	32.7%	21.6, 43.8
\$50K-\$99,999	18.1%	12.0, 24.3	35.7%	33.1, 38.4	26.5%	16.6, 36.4
\$100K +	7.9%	3.5, 12.3	16.4%	14.2, 18.6	13.9%	6.7, 21.0
CURRENT EMPLOYMENT						
For-profit	64.7%	57.1, 72.3	67.0%	64.5, 69.5	66.3%	55.3, 77.4
Non-profit	9.2%	4.7, 13.7	7.6%	6.2, 8.9	4.4%	0, 8.7
Government/military	8.6%	4.1, 13.0	11.1%	9.5, 12.7	9.0%	3.0, 15.0
Self or family employed	14.6%	9.0, 20.2	11.9%	10.1, 13.7	12.4%	4.2, 20.6
Unemployed but looking	2.9%	0, 5.8	2.4%	1.5, 3.2	7.9%	1.1, 14.7

Note: CI = confidence interval; *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than .05 when comparing nonbinary employees to transgender employees

Table A3. Lifetime experiences of unfair treatment, discrimination, harassment

	NONBINARY (163)		CISGENDER LGBQ (1653)		TRANSGENDER (86)	
	%	CI 95%	%	CI 95%	%	CI 95%
Any discrimination or harassment	59.4%	51.6, 67.2	44.6%*	41.8, 47.3	82.0%**	72.6, 91.3
Treated unfairly	49.3%	41.3, 57.3	32.9%*	30.3, 35.6	64.5%	53.4, 75.7
Heard negative comments in the workplace	83.2%	77.1, 89.3	70.8%*	68.3, 73.3	85.1%	76.8, 93.4
DISCRIMINATION						
Fired	23.0%	16.1, 29.9	19.5%	17.3, 21.8	54.5%**	42.9, 66.1
Not hired	27.9%	20.8, 35.0	21.0%	18.7, 23.3	53.4%**	41.9, 65.0
Not promoted	28.6%	21.3, 35.9	20.0%*	17.7, 22.3	47.3%**	35.7, 58.8
Any discrimination (fired, not hired, and/or promoted)	44.8%	36.9, 52.8	31.2%*	28.6, 33.8	70.2%**	59.5, 80.8
HARASSMENT						
Verbal	39.9%	32.1, 47.8	27.7%*	25.2, 30.2	64.7%**	53.6, 75.7
Physical	21.0%	14.4, 27.5	15.2%	13.2, 17.2	33.6%**	22.6, 44.6

	NONBINARY (163)		CISGENDER LGBQ (1653)		TRANSGENDER (86)	
	%	CI 95%	%	CI 95%	%	CI 95%
Sexual	30.9%	23.4, 38.3	20.1%*	17.8, 22.3	42.1%	30.6, 53.5
Any harassment (verbal, physical, and/or sexual harassment)	50.1%	42.1, 58.1	34.8%*	32.2, 37.4	68.3%	57.6, 79.1
Religious motivation for unfair treatment	38.5%	29.3, 47.8	50.3%*	46.5, 54.1	41.7%	29.7, 53.7

Note: CI = confidence interval; *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than .05 when comparing nonbinary employees to transgender employees

Table A4. Recent experiences of unfair treatment, discrimination, and harassment in past year and past five years

	NONBINARY (163)		CISGENDER LGBQ (1653)		TRANSGENDER (86)	
	%	CI 95%	%	CI 95%	%	CI 95%
Treated unfairly*						
<1 year	21.4%	14.9, 28.0	9.9%	8.2, 11.6	31.2%	20.7, 41.8
1 to 5 years	17.4%	11.4, 23.4	9.7%	8.1, 11.2	16.2%	7.8, 24.7
Over 5 years ago	10.5%	5.4, 15.6	13.4%	11.3, 15.4	17.1%	8.1, 26.1
Heard negative comments in the workplace*						
<1 year	48.8%	40.8, 56.8	34.4%	31.8, 36.9	59.2%	47.9, 70.6
1 to 5 years	26.5%	19.5, 33.4	20.5%	18.3, 22.7	23.1%	13.4, 32.9
Over 5 years ago	7.9%	3.2, 12.6	16.0%	13.8, 18.1	2.8%	-0.5, 6.0
Any discrimination or harassment*. **						
< 1 year	29.2%	21.8, 36.5	14.6%	12.7, 16.5	46.8%	35.3, 58.3
1 to 5 years	19.9%	13.7, 26.1	13.6%	11.8, 15.5	23.0%	13.0, 33.0
Over 5 years ago	10.4%	5.2, 15.6	16.4%	14.2, 18.6	12.2%	5.0, 19.4
SPECIFIC ADVERSE EXPERIENCES						
Fired**						
< 1 year	3.7%	0.4, 6.9	4.6%	3.4, 5.8	11.6%	5.1, 18.1
1 to 5 years	12.0%	6.7, 17.4	6.6%	5.3, 7.9	24.2%	14.6, 33.8
Over 5 years ago	7.3%	3.2, 11.4	8.3%	6.6, 10.0	18.7%	9.1, 28.2
Not hired**						
< 1 year	9.5%	4.9, 14.1	5.2%	3.9, 6.5	19.8%	11.2, 28.3
1 to 5 years	11.9%	6.7, 17.1	8.4%	6.8, 10.0	19.2%	10.3, 28.1
Over 5 years ago	6.6%	2.7, 10.4	7.4%	5.8, 9.0	14.4%	5.2, 23.7
Not promoted*. **						
< 1 year	8.5%	4.1, 12.9	4.9%	3.7, 6.1	15.3%	7.1, 23.5
1 to 5 years	13.6%	8.0, 19.1	7.6%	6.1, 9.0	15.7%	8.0, 23.5
Over 5 years ago	6.5%	2.4, 10.6	7.6%	6.0, 9.2	16.3%	7.2, 25.3

	NONBINARY (163)		CISGENDER LGBTQ (1653)		TRANSGENDER (86)	
	%	CI 95%	%	CI 95%	%	CI 95%
Any discrimination*, **						
< 1 year	16.5%	10.6, 22.3	9.2%	7.6, 10.7	31.0%	20.6, 41.4
1 to 5 years	18.9%	12.6, 25.2	10.8%	9.1, 12.5	22.2%	12.6, 31.9
Over 5 years ago	9.5%	4.7, 14.3	11.3%	9.3, 13.2	16.9%	7.7, 26.1
Verbal harassment*, **						
<1 year	15.4%	9.6, 21.2	7.4%	6.0, 8.9	30.7%	20.1, 41.3
1 to 5 years	15.5%	9.8, 21.3	9.3%	7.8, 10.8	17.3%	8.6, 26.1
Over 5 years ago	9.0%	4.2, 13.8	11.0%	9.2, 12.8	16.6%	7.8, 25.5
Physical harassment**						
<1 year	4.6%	1.1, 8.0	4.2%	3.1, 5.3	12.9%	4.7, 21.1
1 to 5 years	10.3%	5.3, 15.2	4.6%	3.6, 5.7	17.1%	8.4, 25.9
Over 5 years ago	6.1%	2.3, 10.0	6.4%	5.0, 7.8	3.6%	-0.1, 7.2
Sexual harassment*						
<1 year	9.8%	4.9, 14.7	4.5%	3.4, 5.7	17.3%	8.0, 26.7
1 to 5 years	12.0%	6.9, 17.1	6.1%	4.9, 7.3	14.4%	6.8, 21.9
Over 5 years ago	9.1%	4.3, 13.9	9.5%	7.7, 11.2	10.4%	3.4, 17.3
Any harassment*						
<1 year	20.1%	13.6, 26.7	10.3%	8.6, 11.9	33.9%	23.0, 44.9
1 to 5 years	18.9%	12.8, 25.0	10.6%	9.0, 12.2	22.3%	12.5, 32.1
Over 5 years ago	11.1%	5.8, 16.4	13.9%	11.9, 16.0	12.1%	4.8, 19.4

Note: CI = confidence interval; *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than .05 when comparing nonbinary employees to transgender employees

Table A5. Experiences at current job

	NONBINARY (163)		CISGENDER LGBTQ (1653)		TRANSGENDER (86)	
	%	CI 95%	%	CI 95%	%	CI 95%
Any adverse experience at current job	26.1%	19.0, 33.1	23.1%	20.8, 25.4	42.0%**	30.8, 53.2
SPECIFIC ADVERSE EXPERIENCE AT CURRENT JOB						
Verbally harassed	11.0%	6.0, 16.0	10.0%	8.3, 11.7	27.8%**	17.8, 37.8
Physically harassed or assaulted	1.4%	-0.6, 3.4	2.1%	1.2, 2.9	8.1%**	2.0, 14.1
Sexually harassed	5.9%	2.2, 9.5	5.7%	4.4, 6.9	12.0%	4.6, 19.4
Not promoted or provided with other opportunities	7.5%	3.3, 11.6	7.8%	6.3, 9.4	13.3%	5.6, 20.9
Treated unfairly at current job	18.3%	12.1, 24.5	14.9%	12.9, 16.9	29.7%**	19.6, 39.9

	NONBINARY (163)		CISGENDER LGBTQ (1653)		TRANSGENDER (86)	
	%	CI 95%	%	CI 95%	%	CI 95%
WORKPLACE ENVIRONMENT						
Very unsupportive	7.4%	2.8, 11.9	4.9%	3.7, 6.1	6.3%	0.5, 12.2
Somewhat unsupportive	5.9%	2.2, 9.6	6.2%	5.0, 7.4	14.2%	6.8, 21.6
Neither supportive nor unsupportive	22.8%	16.0, 29.7	23.2%	20.9, 25.6	20.0%	10.7, 29.4
Somewhat supportive	28.5%	21.4, 35.6	26.1%	23.6, 28.5	19.9%	10.7, 29.1
Very supportive	35.4%	27.8, 43.0	39.7%	37.0, 42.4	39.5%	28.1, 51.0
Considered leaving	19.8%	13.6, 26.1	13.4%*	11.6, 15.3	29.4%	19.3, 39.6
Steps toward finding another job	65.5%	48.6, 82.4	66.8%	60.0, 73.7	79.1%	64.3, 94.0
JOB SATISFACTION						
Very dissatisfied	5.3%	1.8, 8.8	4.8%	3.5, 6.0	6.3%	1.2, 11.4
Somewhat dissatisfied	11.6%	6.6, 16.6	8.9%	7.3, 10.4	11.1%	3.1, 19.0
Neither satisfied nor dissatisfied	15.4%	9.6, 21.2	14.1%	12.2, 15.9	21.1%	11.8, 30.4
Somewhat satisfied	32.6%	25.1, 40.0	33.5%	31.0, 36.1	35.8%	24.5, 47.0
Very satisfied	35.1%	27.4, 42.8	38.8%	36.1, 41.5	25.8%	16.1, 35.5

Note: CI = confidence interval; *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than .05 when comparing nonbinary employees to transgender employees

Table A6. Outness

	NONBINARY (163)		CISGENDER LGBTQ (1653)		TRANSGENDER (86)	
	%	CI 95%	%	CI 95%	%	CI 95%
Out to all of my co-workers	32.9%	25.3, 40.4	32.6%	30.0, 35.2	38.9%	27.7, 50.1
Out to none of my co-workers	17.0%	11.2, 22.9	21.8%	19.5, 24.0	12.9%	4.2, 21.7
Out to supervisor	55.2%	47.2, 63.2	54.0%	51.2, 56.7	63.9%	52.3, 75.5
Out to at least a few co-workers and/or supervisor	83.4%	76.8, 88.5	79.3%	76.9, 81.4	87.1%	75.4, 93.7

Note: CI = confidence interval; *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than .05 when comparing nonbinary employees to transgender employees

Table A7. Covering

	NONBINARY (163)		CISGENDER LGBTQ (1653)		TRANSGENDER (86)	
	%	CI 95%	%	CI 95%	%	CI 95%
Any covering	57.2%	59.5, 74.5	67.0%*	54.5, 59.9	70.7%	59.9, 81.4
Changed dress	34.8%	27.3, 42.4	17.4%*	15.4, 19.4	35.6%	25.7, 47.5
Changed appearance	35.0%	27.4, 42.5	17.4%*	15.4, 19.4	37.2%	26.2, 48.2
Changed voice or mannerisms	35.7%	28.0, 43.4	20.1%*	17.9, 22.3	45.7%	34.2, 57.1
Changed bathroom use	19.8%	13.3, 26.3	10.4%*	8.7, 12.0	39.0%**	27.8, 50.2
Avoided work events/ travel	25.4%	18.5, 32.4	19.5%	17.3, 21.8	33.2%	22.5, 44.0
Avoided social events	39.3%	31.5, 47.1	31.4%	28.8, 34.0	35.2%	24.4, 46.0
Not talked about family	29.2%	21.9, 36.5	28.3%	25.8, 30.8	35.2%	24.2, 46.2
Not talked about activities	42.2%	34.3, 50.0	35.6%	33.0, 38.3	39.0%	27.9, 50.2
Hid family photos	21.0%	14.4, 27.6	23.6%	21.2, 26.0	29.5%	18.8, 40.3
Not brought family to events	23.6%	16.7, 30.4	22.3%	20.0, 24.7	33.7%	23.0, 44.4

Note: CI = confidence interval; *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than .05 when comparing nonbinary employees to transgender employees

Table A8. Retention

	NONBINARY (163)		CISGENDER LGBTQ (1653)		TRANSGENDER (86)	
	%	CI 95%	%	CI 95%	%	CI 95%
Left a job/personal treatment*						
Ever (Lifetime)	49.8%	41.8, 57.8	30.7%	28.1, 33.2	67.2%	56.3, 78.1
<1 year	17.1%	11.1, 23.1	4.8%	3.7, 5.9	23.6%	14.2, 33
1 to 5 years	21.0%	14.6, 27.3	11.7%	10.1, 13.4	28.4%	17.8, 38.9
over 5 years ago	11.8%	6.4, 17.1	14.1%	12.1, 16.2	15.2%	6.6, 23.8
Looked for a job/personal treatment*						
Ever (Lifetime)	57.8%	49.9, 65.7	32.3%	29.8, 34.9	69.1%	58.2, 80.0
<1 year	27.6%	20.5, 34.7	6.8%	5.5, 8.1	29.1%	18.9, 39.3
1 to 5 years	20.6%	14.2, 27.0	13.0%	11.2, 14.7	22.7%	13.2, 32.3
over 5 years ago	9.6%	4.7, 14.6	12.6%	10.6, 14.5	17.2%	8.1, 26.4
Looked for a job/workplace environment*. **						
Ever (Lifetime)	59.9%	52.0, 67.8	36.5%	33.8, 39.1	58.6%	47.1, 70.2
<1 year	29.4%	22.1, 36.7	9.6%	8.1, 11.2	25.6%	16.4, 34.8
1 to 5 years	25.4%	18.5, 32.4	13.3%	11.6, 15.1	16.5%	7.8, 25.2
over 5 years ago	5.1%	1.7, 8.4	13.5%	11.5, 15.5	16.6%	7.7, 25.5

Note: CI = confidence interval; *p-value less than 0.05 when comparing nonbinary employees to cisgender employees; **p-value less than .05 when comparing nonbinary employees to transgender employees