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Introduction and Summary

This report studies two issues relating to discrimination based on sexual orientation and gender identity. First, we analyze the evidence of the existence of employment discrimination against lesbian, gay, bisexual, and transgender (LGBT) citizens of Oklahoma. Second, we analyze the impact of adding sexual orientation and gender identity to existing nondiscrimination laws in Oklahoma on the state's citizens, economy, and government. We used the best available data from government sources and from recent research to address these two questions.

Specifically this report concludes:

- Across a number of surveys, large percentages of LGBT people report discrimination and harassment in the workplace.
- According to Census Bureau data, men in same-sex couples in Oklahoma face an earnings gap, earning 26% less than married men.
- Employment discrimination hurts businesses. When LGBT employees fear discrimination in the workplace, they hide their identity, have less job-satisfaction, and are less productive.
- Nondiscrimination laws protect employees and assist businesses in recruiting and retaining employees. A number of Oklahoma-based corporations, including Devon Energy Corp., ONEOK Inc., Williams Companies Inc., and OGE Energy Corp., have already adopted such policies.
- Data collected from states that have already adopted non-discrimination laws protecting LGBT employees show that such laws do not overwhelm enforcement agencies or courts.

Estimates of the LGBT Workforce in Oklahoma

Data from the 2008 American Community Survey and other recent data sources suggest that there are between 43,000 and 57,000 lesbian, gay, and bisexual people working in Oklahoma.¹ Because existing government surveys do not ask people if they identify as transgender, it is not possible to estimate the size of the transgender workforce. However, some studies suggest that 0.25 percent of the population identifies as transgender.² Applying this figure to Oklahoma's adult population of 2,736,224,³ there may be over 6,800 transgender individuals living in Oklahoma. Census 2000 data suggest that the LGBT people in Oklahoma are racially and ethnically diverse, live throughout the state, and actively participate in Oklahoma's economy.⁴

Many LGBT People Experience Employment Discrimination

Evidence of employment discrimination faced by LGBT people may be found in several forms. First, on surveys, LGBT employees and their non-LGBT coworkers report experiences of employment discrimination. Second, LGBT employees may be underemployed or paid less than non-LGBT employees, despite having similar qualifications and experience. Data collected by government agencies also show that substantial numbers of LGBT people report employment discrimination. Collected together, current research and surveys of employees from around the country indicate that many LGBT people experience various forms of employment discrimination.

Reporting Discrimination on Surveys: On a national level, a large body of research finds that many LGBT people report experiences of discrimination in the workplace. Fifteen

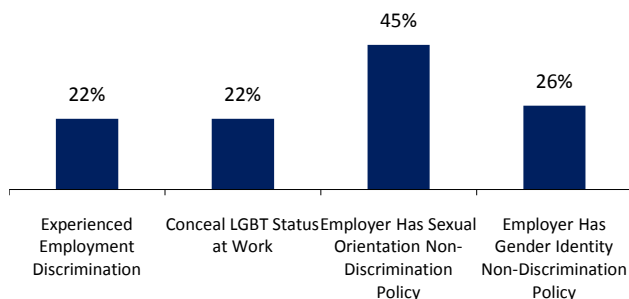
studies conducted since the mid-1990s have found that 15-43 percent of LGBT respondents experienced discrimination in the workplace.⁵ For example, a 2007 survey found that 16 percent of lesbians and gay men and 5 percent of bisexual people reported being fired or denied a job because of their sexual orientation.⁶ Numerous local community surveys of LGBT people find that sexual orientation discrimination is also commonly reported in those areas.⁷

The 2008 General Social Survey, which is a recent national survey, included questions about discrimination on the basis of sexual orientation. This survey found that 37 percent of gay and lesbian people reported workplace harassment in the last five years, and 12 percent reported losing a job because of their sexual orientation.⁸

When transgender people are surveyed separately, they report similar or higher levels of employment discrimination. In 2009, the largest national survey of transgender people to date included people from every state in the U.S. The survey revealed that 97% of the 6,450 people surveyed had experienced harassment or mistreatment at work, and 47% had been discriminated against in hiring, promotion, or job retention because of their gender identity.⁹ Eleven local surveys of transgender people conducted between 1996 and 2006 found that at least 20% and as many as 57% reported having experienced some form of employment discrimination.¹⁰ A 2009 survey of transgender people living in California found that 67% reported experiences with workplace harassment or discrimination directly related to their gender identity.¹¹

Because every survey of LGBT employees finds evidence of discrimination, regardless of the specific place studied, we believe that discrimination against LGBT people also occurs in Oklahoma. In fact, a 2004 survey of 585 LGBT residents of Tulsa, Oklahoma found that almost 22% of respondents had experienced sexual orientation or gender identity discrimination at work in the last five years.¹²

Figure 1. Employment Experiences of LGBT People in Tulsa

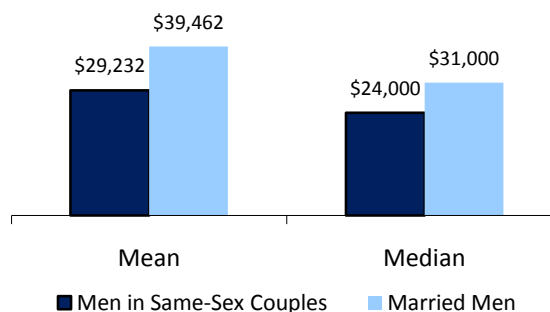


Source: Tulsa Community Foundation, Tulsa Reaches Out (TRO) Project, Community Service Council of Greater Tulsa, 2005

LGBT People Have Lower Earnings: Data from the US Census allows us to examine the employment and earnings for individuals in same-sex couples who live in Oklahoma. While it isn't possible to identify single LGBT people on the Census, a large body of research has relied upon Census data to provide a demographic picture of individuals living in same-sex couples.

Census data show that men in same-sex couples in Oklahoma earn less than married men. On average, men in same-sex couples in Oklahoma earn \$29,232 each year, significantly less than \$39,462 for married men.¹³ The median income of men in same-sex couples in Oklahoma is \$24,000, or 23% less than that of married men (\$31,000).¹⁴ Men with same-sex partners earn lower wages despite the fact that they are more likely to have a college degree than are married individuals,¹⁵ a comparison that supports the possibility of unequal treatment of people in same-sex couples by employers. Women in same-sex couples in Oklahoma earn slightly more than married women, with earnings averaging \$21,348 and \$20,913 per year, respectively (with a median yearly income of \$18,000 for both). Women in same-sex couples earn less than married men as well as men in same-sex couples.

Figure 2. Men's Individual Earnings in Oklahoma



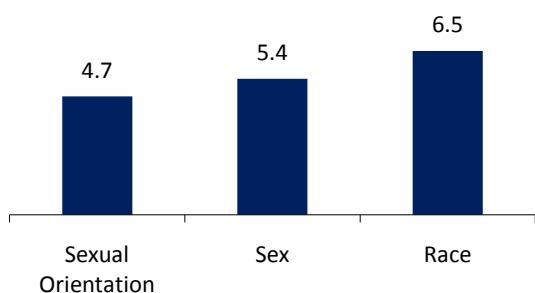
Source: American Community Survey, 2008

These findings are not unique to Oklahoma. Analyses of national data consistently find that men in same-sex couples and gay men earn 10-32% less than similarly qualified heterosexual men.¹⁶ Surveys of transgender people find that they have high rates of unemployment and very low earnings.¹⁷ A recent study suggests that the wage gap for gay men is smaller in states that implement nondiscrimination laws, suggesting that such laws curb discrimination against LGBT people.¹⁸

Filing Complaints of Discrimination with State Agencies: Evidence of employment discrimination against LGBT employees is also observed through data on the filing of discrimination complaints with state agencies. Currently, 21 states and the District of Columbia prohibit employment

discrimination on the basis of sexual orientation, and 12 states and the District of Columbia also prohibit employment discrimination based on gender identity. A 2008 study examined complaints filed by employees in these states and found that LGB workers filed complaints of employment discrimination at similar rates as women filing sex discrimination complaints.¹⁹ Both LGB employees and women filed complaints at a rate of approximately 5 complaints per 10,000 workers in those groups. Race complaints were filed at a slightly higher rate of 7 complaints per 10,000 workers who are people of color.

Figure 3. National Per Capita Discrimination Complaint Rates to State Administrative Agencies (Per 10,000)



Source: Williams Institute Analysis, 2008

Case Law and Other Documented Examples of Employment Discrimination: Since 1994, there have been several cases of employment discrimination related to sexual orientation or gender identity brought in Oklahoma against both public and private employers.

In 2004, Oklahoma City reached a settlement with a transgender police officer who was harassed and fired because of her gender identity. The officer, a decorated army veteran, was fired even though she had received an award from the Department of Justice for her service as a police officer. In *Schonauer v. City of Oklahoma, ex. rel. Oklahoma City Police Department*,²⁰ the plaintiff sued the Oklahoma Police Department and the City of Oklahoma, her employer of more than ten years, for gender discrimination, hostile work environment and disparate treatment, based on gender.²¹ When Ms. Schonauer was first hired by the police department in 1992, she was male; in 2001, she underwent gender reassignment surgery.²² After the surgery, she faced constant harassment from her co-workers, which she alleges interfered with her ability to do her job.²³ However, she continued performing her job and even improved relations between the police department and the Asian, Hispanic, and gay and lesbian communities.²⁴ Despite this achievement, and her exceptional performance prior to 2001,²⁵ the police department removed her from patrol duties, gave her an

interim clerical position, and then placed her on paid administrative leave.²⁶

In *Saladin v. Turner*, a waiter at a high-end Oklahoma restaurant sued his employer, the restaurant owner, for discrimination under the Americans with Disabilities Act.²⁷ The plaintiff was one of the restaurant's most well-respected waiters and was liked by both patrons and co-workers.²⁸ He was openly gay and involved with a long term partner who was infected with HIV.²⁹ Many regular patrons would inquire about plaintiff's partner and plaintiff's charitable activities in the HIV/AIDS community.³⁰ When the restaurant manager learned of this, she requested that plaintiff refrain from these conversations because other customers had allegedly complained.³¹ The restaurant owner did not think this solution was sufficient and decided to suspend the waiter for one month without pay, the longest suspension ever imposed in the restaurant's history.³² During the suspension, the defendant terminated the plaintiff's employment, alleging that another employee had told the manager that plaintiff had quit.³³ The plaintiff subsequently applied for unemployment benefits, but was initially denied because the defendant claimed he had been insubordinate.³⁴ The plaintiff then filed a discrimination complaint with the EEOC.³⁵ The district court held in favor of the waiter, finding that the restaurant owner had suspended and subsequently terminated the plaintiff solely because of his association with his partner, who had AIDS.³⁶

In *Joffe v. Vaughn*, the plaintiff sued his former employer for wrongful termination, slander and intentional infliction of emotional distress.³⁷ The plaintiff was a news anchor at a local television station.³⁸ His co-anchor told the station's news director that the plaintiff had engaged in a homosexual liaison with his hair dresser, specifically claiming that the plaintiff had frequented a well-known "gay bar," picked up a stranger, and took him back to his apartment for sex.³⁹ Within a month of the allegation and without any investigation or substantiated evidence, the defendant told the plaintiff that he must either resign or suffer termination.⁴⁰ The news anchor refused to resign and was fired without cause under the termination provision of his employment contract.⁴¹ He quickly became the subject of negative rumors and speculation throughout Tulsa, despite his recent marriage to his long-time fiancée.⁴² After his own investigation into the allegations, the plaintiff discovered the name of his accuser and filed suit against both his co-anchor and the station. The emotional strain of the incident, however, proved to be too much, and the plaintiff took his own life before completion of the case.⁴³ At trial, the jury found in favor of the plaintiff on the theory of intentional infliction of emotional distress and awarded \$2 million.⁴⁴ The appellate court upheld the

award, in part, because it did not find the unsubstantiated allegations about plaintiff to be credible.⁴⁵

In 2004, a librarian employed at the Oklahoma City Branch of Langston University (Oklahoma's only historically black college and university) for approximately three years, began the process of transitioning from male to female. After she returned from a professional conference, she discovered that a student had circulated over 100 copies of a hate-filled petition calling for her removal from campus and had posted flyers to the same effect around the campus. Every reason cited in support of the librarian's removal was related to her gender identity. When the librarian confronted the library director about the situation, he told the librarian that the student had a right to freedom of speech and that he would not do anything. When other students complained to the library director about the flyers, he supported the student who had passed them out. The student then printed a second flyer stating that "God wished [her] dead" and that he hoped she would die. When she confronted administrators about the second flyer, the librarian was told her concerns were unwarranted and she was the one creating problems. The following semester her schedule was changed so that she would have to leave the building at 10:00PM—long after other staff and faculty had gone home. Fearing that she would be unsafe on campus at that hour, she had no choice but to resign.⁴⁶

In 2007, a gay electronics technician who worked out of a city firehouse reported, after another employee learned that he was gay, that he began to experience harassment from co-workers. When a new employee complained about having to clean the showers at the firehouse, the technician commented that they were so filthy that he wouldn't take a shower there. The new employee replied that, according to what he had heard from others, he had thought that "you'd like that [implying a shower with other men]." One coworker repeatedly screamed at the technician, physically intimidated him, and twice threatened to kill him. When the individual complained, his shift was changed against his wishes so that he would not work the same time as that co-worker. The department administrator refused to give him a copy of the employer's policy vis-à-vis sexual harassment and nondiscrimination.⁴⁷

In 2008, a municipal police officer transitioned from male to female while on the job. Thereafter, she experienced severe harassment based on her gender identity. After her transition, the police department also insisted that she undergo psychological evaluations. They transferred her to an unfavorable position.⁴⁸

Effects of Nondiscrimination Laws on Businesses and Other Employers

Currently, Oklahoma County and the cities of Tulsa, Del City, Altus, McAlester, Vinita, and Miami prohibit employment discrimination on the basis of sexual orientation for public employees by local government policy or ordinance.⁴⁹ Oklahoma's two largest universities, The University of Oklahoma and Oklahoma State University, and at least one Oklahoma school district, Tulsa Public Schools, have policies against employment discrimination based on sexual orientation.⁵⁰ Additionally, several Oklahoma-based private corporate employers have adopted policies prohibiting discrimination based on sexual orientation and/or gender identity; among them are Devon Energy Corp., OGE Energy Corp., ONEOK Inc., and Williams Companies Inc.⁵¹

These Oklahoma employers are adopting nondiscrimination policies that place them in the mainstream of corporate practice in the United States. More than two-thirds of Fortune 1000 companies prohibit discrimination on the basis of sexual orientation, and one-quarter prohibit discrimination on the basis of gender identity.⁵²

The widespread adoption of these policies suggests that nondiscrimination policies make good business sense. Nondiscrimination policies increase the ability to recruit and retain qualified employees and can improve the productivity and satisfaction of employees. Businesses are most successful when they can recruit, hire, and retain employees on the basis of talent, not personal characteristics that have no impact on an employee's ability to perform a job well.

Numerous studies from various academic disciplines suggest that LGBT workers will have greater job satisfaction and be more productive workers if they have legal protection from discrimination. The key link here is between discrimination and disclosure of one's sexual orientation or gender identity. Studies have demonstrated that discrimination keeps LGBT workers from revealing their sexual orientation in the workplace. Although having experienced discrimination directly is a powerful reason for some to "stay in the closet," studies show that LGBT people who fear discrimination are also less likely to reveal their sexual orientation or gender identity to co-workers and supervisors.⁵³

Employers have a stake in these individual decisions, since disclosure has potentially positive benefits to workers' well-being and job performance. Studies find that lesbians and gay men who have come out report lower levels of anxiety, less conflict between work and personal life,

greater job satisfaction, more sharing of employers' goals, higher levels of satisfaction with their co-workers, more self-esteem, and better physical health.⁵⁴

On the other hand, when fear of discrimination causes LGBT employees to conceal their sexual orientation or gender identity, employers experience negative costs along with LGBT people themselves. The time as well as social and psychological energy that are required to maintain a hidden identity would be, from an employer's perspective, better used on the job.⁵⁵ The fact that nearly 22 percent of respondents to an LGBT needs assessment survey in Tulsa reported they were not open about their LGBT status at work suggests that nondiscrimination laws and policies could improve the work lives and productivity of LGBT workers in Oklahoma.⁵⁶

A 2009 Human Rights Campaign survey provides recent evidence of the harmful impact of an unsupportive work environment on LGBT employees. The study finds that employees who are not out to anyone in the workplace were less productive, more distracted, and less likely to stay in their current positions. Specifically, when compared to more open employees, closeted employees were:

- More likely to report feeling depressed (44%) than were those employees who were out (26%);
- More likely to avoid a social work event (29%) than out employees (18%);
- More likely to report feeling distracted at work (31% versus 25%);
- More likely to feel exhausted (30% versus 12%); and
- More likely to have searched for another job (24% versus 16%).⁵⁷

Nondiscrimination policies can improve the workplace climate and influence choices about disclosure and concealment. Several studies have found higher levels of disclosure in workplaces when employers have their own non-discrimination policies that include sexual orientation or gender identity.⁵⁸

Nondiscrimination Laws Do Not Overwhelm Enforcement Agencies

Some question whether a sexual orientation and gender identity anti-discrimination law may create an increased burden on government agencies. However, even if LGBT people filed complaints at the same rates that women file sex discrimination complaints or minorities file racial/ethnic discrimination complaints, government agencies would not be overwhelmed. A 2008 national study of data from 1999-2007 identified the average annual number of sexual orientation complaints for all states with protection for sexual orientation in the workplace at just over 1,200, versus race and sex complaints at 11,500 and 13,800, respectively.⁵⁹ That study estimated that for every 10,000 LGB workers, there are approximately 5 complaints filed on the basis of sexual orientation per year.

Using the earlier estimates of the number of LGB people working in Oklahoma (43,000-57,000) and the complaint rate, we predict that in a given year, approximately 21-29 LGB workers would file a complaint alleging sexual orientation discrimination. Given these estimates, there is no evidence that expanding employment protections to LGB people would encumber the services of existing agencies.

Currently, there are not enough data to do a similar analysis of gender identity discrimination complaints. However, complaints of discrimination based on gender identity were collected from two states and the District of Columbia. The data obtained support the position that passing protections for gender identity in employment will not result in a flood of complaints to enforcement agencies—6 complaints were filed with the District of Columbia in 2006, 4 complaints were filed with Oregon from 2003 through 2006, and 2 complaints were filed with Rhode Island from 2006 through 2007.⁶⁰

Endnotes

- ¹ We computed this range by first estimating the number of LGB people in the U.S. workforce (4,720,323-6,293,831, which is 3%-4% of the U.S. workforce). Next we assume that the same percentage of LGB workers live in Oklahoma as the percentage of same-sex couples living in Oklahoma (0.91%). In other words, we multiply the U.S. workforce by 3% and 4% and then multiply that figure by 0.0091. Multiplying the percentage of the country's same-sex couples that live in Oklahoma (.91%) by the estimated number of LGB people in the U.S. workforce. The workforce total for 2008 is 157,345,776 (2008 ACS Table S2301: Employment Status). Percentage of same sex couples calculated from U.S. Census Bureau, 2008 American Community Survey, *Unmarried Partner Households by Sex of Partners*, B11009. The 3%-4% range is based on findings from the 2002 National Survey of Family Growth and the 2008 General Social Survey (See Gary J. Gates, the Williams Institute, *Same-sex Couples and the Gay, Lesbian, Bisexual Population: New Estimates from the American Community Survey*, p. 11, apx. 1 (Oct. 2006), available at <http://www.law.ucla.edu/williamsinstitute/publications/SameSexCouplesandGLBpopACS.pdf>; Gary J. Gates, the Williams Institute, *Sexual Minorities in the 2008 General Social Survey: Coming Out and Demographic Characteristics*, p. i (Sept. 2010).)
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- ³ U.S. Census Bureau, 2008 American Community Survey, *Universe: Population 18 Years and Over: Total, Oklahoma*, B15001.
- ⁴ Adam P. Romero, Clifford J. Rosky, M.V. Lee Badgett & Gary J. Gates, the Williams Institute, *Census Snapshot: Oklahoma* (1 June 2008), available at <http://www.law.ucla.edu/williamsinstitute/publications/OklahomaCensusSnapshot.pdf>.
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- ¹⁴ *Id.*
- ¹⁵ *Id.*
- ¹⁶ Badgett et al., *supra* note 5.
- ¹⁷ *Id.*; *The State of Transgender California*, *supra* note 11.
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- ²⁶ Oklahoma Office of Personnel Management Affirmative Action, *supra* note 6.
- ²⁷ 936 F. Supp. 1571 (N.D. Okla. 1996).
- ²⁸ *Id.* at 1575.
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ *Id.*
- ³² *Id.*
- ³³ *Id.* at 1578
- ³⁴ *Id.* at 1576.
- ³⁵ *Id.*
- ³⁶ *Id.* at 1581.
- ³⁷ 873 P.2d 299 (Okla. Civ. App. 1993).
- ³⁸ *Id.* at 301.
- ³⁹ *Id.* at 302, 306.
- ⁴⁰ *Id.* at 302.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ All other claims were dismissed by the trial court. *Id.*

⁴⁵ *Id.* at 304, 306.

⁴⁶ Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

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