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



the  
**Williams**  
INSTITUTE

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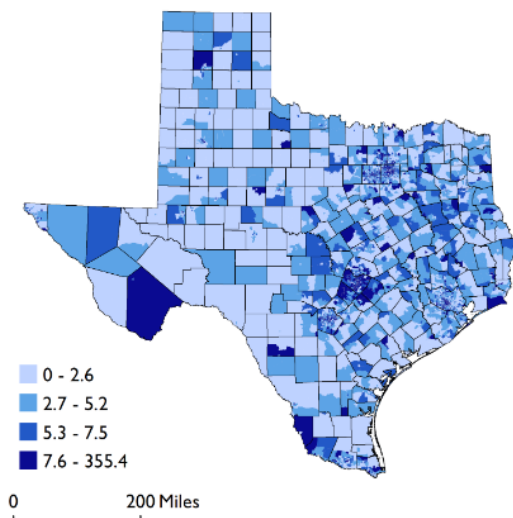
## Executive Summary

More than 4% of the American workforce identifies as lesbian, gay, bisexual, or transgender (LGBT). Approximately 429,000 of these workers live in Texas. Texas does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in employment.

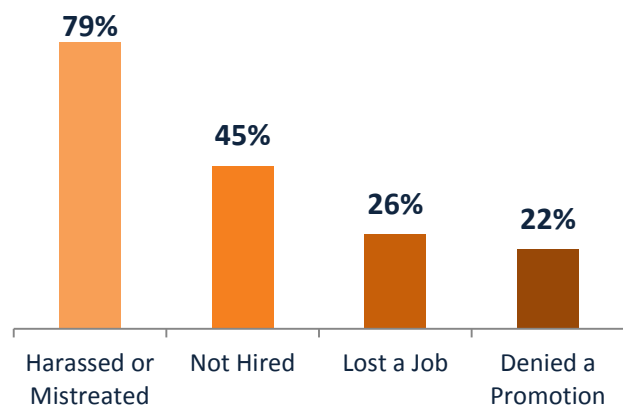
This report summarizes recent evidence of sexual orientation and gender identity employment discrimination, explains the limited current protections from sexual orientation and gender identity employment discrimination in Texas, and estimates the administrative impact of passing a law prohibiting employment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

429,000	9%	79%	73%	14%	202
Number of LGBT Workers	Income Disparity between Straight and Gay Male Workers	Transgender Workers Reporting Workplace Discrimination	Public Support for LGBT Workplace Protections	Workforce Covered by Local Non- Discrimination Laws	Estimated New Complaints if LGBT Protections are Added to State Laws

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



Discrimination experienced by transgender  
workers in Texas<sup>1</sup>



**Key findings of this report include:**

- In total there are approximately 666,000 LGBT adults in Texas, including 429,000 who are part of Texas's workforce.<sup>2</sup>
- Media reports, law suits, academic studies, and complaints to community-based organizations document incidents of sexual orientation and gender identity discrimination against employees in Texas. These include reports from teachers, a detective, an architect, and a bank employee.
- Survey data indicate that discrimination against LGBT workers is prevalent across the country. Most recently, a national survey conducted by the Pew Research Center in 2013 found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.
- When transgender people are surveyed separately, they report similar or higher levels of discrimination. For example, as recently as 2010, 79% of respondents from Texas to the largest survey of transgender people to date reported having experienced harassment or mistreatment at work.
- Disparities in wages are an additional way that discrimination has been measured. Census data show that in Texas, the median income of men in same-sex couples is 9% lower than the median income of men in different-sex marriages.
- Four localities in Texas provide protection from sexual orientation and gender identity discrimination in public and private sector employment by local ordinance. Seven additional localities protect their own local government workers or employees of local government contractors from discrimination based on sexual orientation or gender identity.
- Approximately 86% of Texas's workforce is not covered by a local ordinance that prohibits sexual orientation and gender identity discrimination.<sup>3</sup>
- Private companies may adopt internal non-discrimination policies to improve recruitment and retention of talented employees, to increase employee productivity and customer satisfaction, or to attract a larger customer base. At least 40 of the 51 Fortune 500 companies headquartered in Texas have policies prohibiting discrimination based on sexual orientation, and at least 22 of them also prohibit discrimination based on gender identity.
- Public opinion in Texas supports the passage of non-discrimination protections for LGBT people. In response to a national poll conducted in 2011, 73% of those polled in Texas said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity. In addition, other polls have found that 79% of Texas residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.
- Adding sexual orientation and gender identity to the state's current non-discrimination law would result in approximately 202 additional complaints being filed with the Texas Workforce Commission Civil Rights Division each year.
- The anticipated new complaints based on sexual orientation and gender identity could likely be absorbed into the existing system with no need for additional staff and negligible costs.

## Evidence of Discrimination

### *Survey Data and Specific Examples of Sexual Orientation and Gender Identity Discrimination in Texas*

The existence of widespread and continuing discrimination against LGBT workers in the U.S. is well documented. In response to surveys, LGBT workers consistently report having experienced discrimination, and non-LGBT people often report having witnessed discrimination against their LGBT co-workers. For example, a national survey conducted by Pew Research Center in 2013 found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.<sup>4</sup> Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians had experienced workplace harassment in the last five years, and 12% had lost a job because of their sexual orientation.<sup>5</sup> As recently as 2010, 78% of respondents to the largest national survey of transgender people to date reported having experienced harassment or mistreatment at work, and 47% reported having been discriminated against in hiring, promotion, or job retention because of their gender identity.<sup>6</sup>

Similar statistics have been found in surveys of LGBT individuals in Texas. In response to the national survey of transgender people, a significant number of transgender respondents from Texas reported experiencing adverse treatment at work because of their gender identity or gender expression.<sup>7</sup> More specifically, 79% of the respondents from Texas reported experiencing harassment or mistreatment at work, 26% reported losing a job, 22% reported being denied a promotion, and 45% reported not being hired because of their gender identity or expression.

Employment discrimination against LGBT people in Texas has also been documented in court cases, complaints to community-based organizations, academic studies, and the media. Examples include:

- In 2014, a former employee of a clothing department store in Texas filed suit against the store for discrimination based on her gender identity.<sup>8</sup> The employee alleged that her co-workers harassed her, she was forced to use the men's restroom, and she was referred to by male pronouns.<sup>9</sup> In January 2015, the department store withdrew a motion to dismiss that it had previously filed in court arguing that gender identity discrimination is not prohibited by Title VII of the Civil Rights Act.<sup>10</sup> The case will move forward toward trial.<sup>11</sup>
- In 2014, an Austin police detective, who is a lesbian, filed a lawsuit against the department for sexual harassment. The detective alleged that her male colleagues would "show her pornographic images of women, make explicit and inappropriate comments and ask [her] if she would have sex with [female victims or suspects they encountered]." <sup>12</sup>
- In 2013, a gay man reported that he was harassed, passed over for a promotion, and fired by a bank in Texas because he is gay. The man reported that he endured years of harassment based on his sexual orientation at the bank, including the HR Director telling him he was "'messed up

in [his] head.” When seeking a promotion, he said he was told by the company that his work performance was great, but that the other candidate, who had a wife and children, was a better fit for the bank’s image. Later, he was terminated.<sup>13</sup>

- An academic study published in 2011 found evidence of hiring discrimination against gay men in Texas. In the controlled study, the researcher sent matched resumes, one with a signal of gay identity and the other without, in response to 1,769 job postings in seven states. In Texas, employers were significantly less likely to follow up on the resume that signaled that the applicant was gay than to follow up on the resume without the signal. The difference in callback rates in Texas was the second largest of all states tested.<sup>14</sup>
- In a 2009 court case, an architect who worked for the Harris County Hospital District alleged that his supervisors made derogatory comments about his sexual orientation and LGBT people. According to the architect, his supervisors told him that his “‘type’ was a ‘weak link’ and that ‘hiring his type was the biggest mistake [they] had ever made,’” and made inappropriate comments about a gay football player’s suicide. The court found in favor of the employer, in part because discrimination based on sexual orientation was not prohibited by federal or state law.<sup>15</sup>
- In 2009, a lesbian public school teacher was subjected to a hostile work environment because of her sexual orientation.<sup>16</sup>
- In 2009, a public school teacher was censored for expressing pro-LGBT viewpoints.<sup>17</sup>
- In 2009, a lesbian public school guidance counselor was subjected to a hostile work environment because of her sexual orientation and was censored for expressing pro-LGBT viewpoints.<sup>18</sup>
- In 2009, a teacher at a privately run learning center reported that he had been experiencing harassment based on his sexual orientation at his workplace for years. Approximately one year after he began teaching at the center in 2006, a student asked him if he was gay. He truthfully answered “yes.” The assistant principal, having heard about the conversation between him and the student, implored him to keep his sexual orientation a secret because his job would be in danger if he were “out” at work and he might also be in physical danger. In response, he wrote a letter stating that he felt it would be disingenuous and would work a disservice to the students if he acted like there was something shameful about being gay. Thereafter, three students were allowed to transfer out of his class and his request to conduct a diversity training was denied. The discrimination makes him feel isolated at work and unable to interact with his colleagues.<sup>19</sup>

## ***Wage Inequity***

Census data show that men in same-sex couples in Texas earn less than men married to different-sex partners. On average, men in same-sex couples in Texas earn \$40,271 each year, significantly less than the \$47,592 for men married to different-sex partners.<sup>20</sup> The median income of men in same-sex couples in Texas is \$32,000, 9% less than that of married men (\$35,000).<sup>21</sup> Men with same-sex partners earn lower wages, despite the fact that they are more likely to have a college degree than men married to different-sex partners,<sup>22</sup> a comparison that supports the possibility that people in same-sex couples are not treated equally by employers. A 2009 study indicated that the wage gap for gay men is smaller in states that implement non-discrimination laws, suggesting that such laws reduce discrimination against LGBT people.<sup>23</sup>

Women in same-sex couples in Texas earn less than married men as well as men in same-sex couples.<sup>24</sup> Women in same-sex couples earn an average of \$32,251 per year (with a median of \$27,500), which is more than married women, whose earnings average \$25,904 (with a median of \$35,000).<sup>25</sup>

These findings are not unique to Texas. Analyses of national data consistently find that men in same-sex couples and gay men earn 10-32% less than similarly qualified men who are married to different-sex partners, or men who identify as heterosexual.<sup>26</sup> Surveys of transgender people find that they have high rates of unemployment and very low earnings.<sup>27</sup>

## **Current Protections from Discrimination**

Texas does not have a statewide statute that prohibits discrimination based on sexual orientation or gender identity in both public and private sector employment.<sup>28</sup> Currently, there is a bill pending in the Texas Legislature that would add sexual orientation and gender identity to the state's employment non-discrimination law,<sup>29</sup> as well as a separate bill to prohibit employment discrimination based on sexual orientation by state government contractors.<sup>30</sup> Similar legislative efforts to prohibit sexual orientation and gender identity discrimination have been in every legislative session since at least 1993.<sup>31</sup> None of these bills have made it out of committee.<sup>32</sup>

Though there are no statewide protections from sexual orientation and gender identity workplace discrimination in Texas, several localities, universities, and private corporations in the state have adopted local ordinances and internal policies that prohibit such discrimination against employees.

## ***Texas Labor Code***

Currently, the Texas Labor Code prohibits employment discrimination by any employer who has 15 or more employees<sup>33</sup> on the basis of race, disability, religion, sex, national origin, and age.<sup>34</sup> The non-discrimination provisions apply to public and private sector employers.<sup>35</sup> The provisions do not prohibit religious organizations from limiting employment or giving a preference to employees of the same religion.<sup>36</sup>

The Texas Workforce Commission Civil Rights Division is responsible for administrative enforcement of the non-discrimination provisions in the Texas Labor Code.<sup>37</sup> The Division has the power to investigate, and attempt to remedy any violations through informal measures, including conferences and conciliations.<sup>38</sup> An employee must file an administrative complaint with the Division within 180 days of the alleged discriminatory practice.<sup>39</sup> The Labor Code also allows an employee who has experienced discrimination to file a civil action in court after he or she has exhausted administrative remedies.<sup>40</sup> A court may award equitable, compensatory, and punitive damages, including, for example, back pay and damages for pain and suffering, subject to caps depending on the size of the employer.<sup>41</sup>

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

Four Texas cities, Austin,<sup>42</sup> Dallas,<sup>43</sup> Fort Worth,<sup>44</sup> and Plano,<sup>45</sup> prohibit public and private sector employment discrimination based on sexual orientation and gender identity. Approximately 13% of Texas's workforce is covered by a local ordinance that prohibits discrimination based on sexual orientation and gender identity in both public and private sector employment.<sup>46</sup>

In these four cities, the non-discrimination ordinances generally apply to employers with 15 or more employees, subject to a few limited exceptions.<sup>47</sup> Each city's ordinance designates a person or entity to enforce the non-discrimination provisions with the power to investigate complaints and attempt to remedy discrimination through informal measures, such as meetings and conciliations.<sup>48</sup> However, none of the ordinances specify the remedies, if any, which may be awarded to employees who have experienced discrimination.<sup>49</sup> Further, no city's ordinances provide for a private right of action in court.

Additionally, ten localities, Bastrop,<sup>50</sup> Bulverde,<sup>51</sup> Dallas County,<sup>52</sup> El Paso,<sup>53</sup> Houston,<sup>54</sup> La Feria,<sup>55</sup> Pottsboro,<sup>56</sup> San Antonio,<sup>57</sup> Waco,<sup>58</sup> and Walker County<sup>59</sup> have limited non-discrimination policies that prohibit discrimination based on sexual orientation and/or gender identity against local government employees (all nine localities) or employees of city government contractors (Houston, Pottsboro, and San Antonio). Approximately 1% of workers in Texas are protected from sexual orientation and gender identity discrimination under ordinances that apply to city government employment.<sup>60</sup> It is not possible to determine how many employees of city government contractors are protected from sexual orientation and gender identity discrimination under Houston's, Pottsboro's, and San Antonio's ordinances given existing data sources.

### ***Private Company and University Non-Discrimination Policies***

Private companies adopt internal policies prohibiting discrimination based on sexual orientation and gender identity for a variety of reasons including improved recruitment and retention of talented employees, increasing employee productivity and customer satisfaction, and attracting a larger customer base.<sup>61</sup> One study of corporate motivations behind adopting workplace non-discrimination policies found that 53% of the top companies in the U.S. with LGBT-supportive policies had adopted the policies for economic reasons.<sup>62</sup>

Academic research has found that LGBT-supportive corporate policies are linked to positive business-related outcomes, including greater job commitment, improved workplace relationships, increased job satisfaction, and improved health outcomes among LGBT employees.<sup>63</sup> For example, a 2006 national poll found that 89% of LGBT respondents and 72% of non-LGBT respondents reported that when deciding where to work, it was important that an employer have a written non-discrimination policy that includes race, ethnicity, sex, religion, age, sexual orientation and disability.<sup>64</sup> Research also suggests that employers limit their available talent pool by screening out applicants based on their sexual orientation. One study found that the rate of screening out gay male applicants was twice as high in regions without sexual orientation non-discrimination laws.<sup>65</sup>

Additionally, LGBT-supportive workplace policies can expand opportunities to secure potentially lucrative government contracts for corporate employers. A 2011 study found that 68 local governments had laws requiring contractors to have LGBT-inclusive non-discrimination policies.<sup>66</sup> A number of states have similar laws that apply to state government contracts.<sup>67</sup> Without such policies, companies would not be eligible to bid for contracts with these state and local governments.

A number of Texas's top companies and employers have adopted internal corporate policies that prohibit discrimination based on sexual orientation and gender identity. According to the Human Rights Campaign, at least forty of the 51 Fortune 500 companies headquartered in Texas have internal policies prohibiting discrimination based on sexual orientation.<sup>68</sup> At least 22 of these companies also include gender identity in their non-discrimination policies. Additionally, two public university systems in Texas, the University of Texas system<sup>69</sup> and the Texas Tech University System,<sup>70</sup> prohibit discrimination based on sexual orientation in employment.

## **Public Opinion**

Public opinion in Texas supports the passage of non-discrimination protections for LGBT people. In response to a national poll conducted in 2011, 73% of those polled in Texas said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.<sup>71</sup>

In addition, public opinion data indicate that Texas residents perceive the state as unfriendly to LGBT people. Aggregated data from two large public opinion polls found that 79% of Texas residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.<sup>72</sup>

## **Administrative Impact**

### ***Complaint Estimate***

Despite the persistence and pervasiveness of employment discrimination against LGBT people, studies show that enforcing sexual orientation and gender identity provisions in non-discrimination laws has only a minimal burden on state agencies. Complaints of sexual orientation discrimination are filed by



LGBT people at approximately the same rate as complaints of race and sex discrimination are filed by people of color and women, respectively.<sup>73</sup> However, because the LGBT population is so small, the absolute number of sexual orientation and gender identity complaints filed under state non-discrimination laws is very low.<sup>74</sup>

We estimate that approximately 202 complaints of sexual orientation or gender identity discrimination would be filed with the Texas Workforce Commission Civil Rights Division (CRD) each year. To reach this estimate, we drew on Gallup polling data and Census data from Texas to estimate the size of the LGBT workforce in the state, and applied a national sexual orientation and gender identity complaint rate to that population. We have previously used this methodology to estimate the number of complaints that would be filed on the basis of sexual orientation and gender identity in other states, including South Carolina, Missouri, Ohio, Pennsylvania, South Dakota, Texas, Utah, and West Virginia.<sup>75</sup>

Results from a 2012 Gallup poll show that 3.3% of people in Texas identify as LGBT.<sup>76</sup> Applying this percentage to the number of people in Texas's workforce (12,992,119<sup>77</sup>) indicates that there are 428,740 LGBT workers in Texas.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in Texas to determine how many complaints will be filed annually if these characteristics are added to the employment non-discrimination law. We used the national average complaint rate from a 2008 study that analyzed administrative complaint data from 17 states that prohibited sexual orientation discrimination at that time.<sup>78</sup> The study found that across these states, the average rate of complaints filed on the basis of sexual orientation was 4.7 per 10,000 LGB workers.<sup>79</sup> There is not sufficient data to make a similar calculation of the average rate of complaints file on the basis of gender identity.<sup>80</sup> Therefore, we assume that this rate is also 4.7 per 10,000 transgender workers.

Applying the national complaint rate (4.7 per 10,000 LGBT workers) to the number of LGBT workers in Texas (428,740) suggests that 202 complaints of sexual orientation and gender identity discrimination would be filed annually if these characteristics were added to the state's employment non-discrimination law.

### ***Cost of Enforcement***

Available data suggests that the additional 202 complaints would not be costly or burdensome to enforce. In 2012, the Williams Institute estimated the cost of enforcing employment discrimination complaints filed on the basis of sexual orientation and gender identity each year in Texas. Using data from the Legislative Budget Board, we estimated that at most, it would cost the state, on average, \$260,000 to \$320,000 to enforce 203 complaints<sup>81</sup> of sexual orientation and gender identity workplace discrimination each year.

Data from CRD suggest that this estimate is conservatively high. Annual fluctuations in the number of total number of complaints (employment and housing discrimination) handled by CRD varied from 57 to 844 complaints over the five most recent years for which data are available, FY 2010 – FY 2014.<sup>82</sup> On average, annual filings from 2010 through 2014 varied by 315 complaints. This information suggests that 202 additional complaints of sexual orientation or gender identity discrimination filed each year would be within the range of normal variation and could be absorbed by CRD with minimal impact on staff and resources.

Fiscal Year <sup>83</sup>	Number of Complaints	Change in Complaints from Prior Year
2014	1,058	844
2013	1,902	349
2012	2,251	327
2011	2,578	57
2010	2,521	

## Conclusion

Documented evidence shows that LGBT people face employment discrimination across the country, including in Texas. There is currently no statewide law that prohibits discrimination based on sexual orientation or gender identity in public and private sector employment in Texas. Adding these characteristics to the state's employment non-discrimination law would provide protection from discrimination to approximately 429,000 LGBT workers in the state. Based on data from other state administrative enforcement agencies, we estimate that approximately 202 complaints of sexual orientation or gender identity employment discrimination would be filed in Texas annually if the law were amended. It is likely that enforcement of the additional complaints would have a minimal impact on the budget of the Texas Workforce Commission Civil Rights Division.

## **About the Williams Institute**

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

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## Endnotes

<sup>1</sup> FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, TEXAS RESULTS, NATIONAL CENTER FOR TRANSGENDER GAY AND LESBIAN TASK FORCE, [http://www.endtransdiscrimination.org/PDFs/ntds\\_state\\_tx.pdf](http://www.endtransdiscrimination.org/PDFs/ntds_state_tx.pdf).

<sup>2</sup> This estimate was reached by applying the percentage of people in Texas that are LGBT (3.3%) to the population of Texas aged 16 years and older (20,168,039) and the number of people in the Texas civilian labor force (12,992,119), respectively. Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP, Feb. 15, 2013, <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>; American Community Survey, U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2012 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_1YR\\_DP03&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP03&prodType=table).

<sup>3</sup> 13% of workers are protected under broad local ordinances that prohibit discrimination in both public and private sector employment; another 1% of local government workers are protected under ordinances that prohibit their local government employers from discriminating based on sexual orientation and gender identity. Calculated by authors using data from the American Community Survey, 2011-2013 3-Year-Estimates & 2009-2011 5-Year-Estimates, Select Economic Characteristics tables (civilian labor force numbers) available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Jan. 14, 2015). Some additional workers likely have protection from sexual orientation and gender identity discrimination under ordinances that prohibit discrimination in employment by local government contractors; however, it is not possible to determine the number of employees with such protections.

<sup>4</sup> A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times, Pew Research Center, June 13, 2013, <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>.

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

<sup>6</sup> JAMIE M. GRANT, LISA A. MOTTET, JUSTIN TANIS, JACK HARRISON, JODY L. HERMAN, & MARA KEISLING, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 51 (2011), [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf).

<sup>7</sup> FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, TEXAS RESULTS, NATIONAL CENTER FOR TRANSGENDER GAY AND LESBIAN TASK FORCE, [http://www.endtransdiscrimination.org/PDFs/ntds\\_state\\_tx.pdf](http://www.endtransdiscrimination.org/PDFs/ntds_state_tx.pdf).

<sup>8</sup> Katy Steinmetz, *Does Saks Have the Legal Right to Fire a Transgender Employee?*, TIME.COM, Jan. 12, 2015, <http://time.com/3664705/saks-transgender-lawsuit/>.

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

<sup>10</sup> Chris Geidner, *As Justice Department Weighs in, Saks Backs down on Claim in Trans Discrimination Case*, BUZZFEED.COM, Jan. 26, 2015, <http://www.buzzfeed.com/chrisgeidner/saks-withdraws-motion-asserting-no-existing-federal-legal-pr#.cpqbYZLZOG>.

<sup>11</sup> *Id.*

<sup>12</sup> Ciara O'Rourke, *Austin Officer's Suit Alleges Retaliation*, AUSTIN AMERICAN-STATESMAN, Dec. 30, 2014, at B1.

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- <sup>13</sup> David Taffet, *Granbury Bank Employee's Firing Shows Need for ENDA*, DALLASVOICE.COM, Jan. 4, 2013, <http://www.dallasvoice.com/granbury-bank-employees-firing-shows-enda-10135804.html>.
- <sup>14</sup> Andras Tilcsik, *Pride and Prejudice: Employment Discrimination against Openly Gay Men in the United States*, 117 AM. J. SOC. 586 (2011).
- <sup>15</sup> Lee v. Harris County Hosp. Dist., No. 01-12-00311-CV, 2013 Tex. App. LEXIS 12778 (Ct. App. Tex. Oct. 15, 2013).
- <sup>16</sup> E-mail 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).
- <sup>17</sup> E-mail 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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- <sup>20</sup> ADAM P. ROMERO, CLIFFORD J. ROSKY, M.V. LEE BADGETT & GARY GATES, CENSUS SNAPSHOT: TEXAS 2 (2008), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/TexasCensus2000Snapshot.pdf>.
- <sup>21</sup> *Id.*
- <sup>22</sup> *Id.*
- <sup>23</sup> GARY J. GATES, CAL. CTR. FOR POP. RESEARCH, THE IMPACT OF SEXUAL ORIENTATION ANTI-DISCRIMINATION POLICIES ON THE WAGES OF LESBIANS AND GAY MEN (2009), <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2009-010/PWP-CCPR-2009-010.pdf>.
- <sup>24</sup> ROMERO, ROSKY, BADGETT & GATES, *supra* note 20 at 2.
- <sup>25</sup> *Id.*
- <sup>26</sup> M.V. Lee Badgett, Holning Lau, Brad Sears & Deborah Ho, *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination 1998-2008*, 84 CHI.-KENT L. REV. 559, 559-60 (2009).
- <sup>27</sup> *Id.*
- <sup>28</sup> See JEROME HUNT, CTR. AM. PROG. ACTION FUND, A STATE-BY-STATE EXAMINATION OF NONDISCRIMINATION LAWS AND POLICIES 3 (June 2012), [http://www.americanprogress.org/issues/2012/06/pdf/state\\_nondiscrimination.pdf](http://www.americanprogress.org/issues/2012/06/pdf/state_nondiscrimination.pdf).
- <sup>29</sup> H.B. 627, 84th Leg., Reg. Sess. (Tex. 2015).
- <sup>30</sup> H.B. 582, 84th Leg., Reg. Sess. (Tex. 2015).
- <sup>31</sup> S.B. 237, 83rd Leg., Reg. Sess. (Tex. 2013); H.B. 1146, 83rd Leg., Reg. Sess. (Tex. 2013); H.B. 138, 83rd Leg., Reg. Sess. (Tex. 2013); H.B. 665, 82nd Leg., Reg. Sess. (Tex. 2011); H.B. 2215, 81st Leg., Reg. Sess. (Tex. 2009); H.B. 307, 80th Leg., Reg. Sess. (Tex. 2007); H.B. 2522, 79th Leg., Reg. Sess. (Tex. 2005); H.B. 1515, 79th Leg., Reg. Sess. (Tex. 2005); H.B. 1526, 79th Leg., Reg. Sess. (Tex. 2005); H.B. 143, 79th Leg., Reg. Sess. (Tex. 2005); H.B. 2519, 79th Leg., Reg. Sess. (Tex. 2005); H.B. 1206, 79th Leg., Reg. Sess. (Tex. 2005); H.B. 1136, 78th Leg., Reg. Sess. (Tex. 2003); H.B. 810, 78th Leg., Reg. Sess. (Tex. 2003); H.B. 574, 78th Leg., Reg. Sess. (Tex. 2003); H.B. 3463, 78th Leg., Reg. Sess. (Tex. 2003); H.B. 1524, 78th Leg., Reg. Sess. (Tex. 2003); H.B. 816, 77th Leg., Reg. Sess. (Tex. 2001); H.B. 668, 77th Leg., Reg. Sess. (Tex. 2001); H.B. 295, 77th Leg., Reg. Sess. (Tex. 2001); H.B. 2590, 77th Leg., Reg. Sess. (Tex. 2001); H.B. 475, 76th Leg., Reg. Sess. (Tex. 1999); H.B. 909, 76th Leg., Reg. Sess. (Tex. 1999); H.B. 363, 76th Leg., Reg. Sess. (Tex. 1999); H.B. 487, 75th Leg., Reg. Sess. (Tex. 1997); H.B. 1517, 75th Leg., Reg. Sess. (Tex. 1997); H.B. 1457, 75th Leg., Reg. Sess. (Tex. 1997); H.B. 1626, 74th Leg., Reg. Sess. (Tex. 1995); H.B. 1626, 74th Leg., Reg. Sess. (Tex. 1995); H.B. 1915, 73rd Leg., Reg. Sess. (Tex. 1993).

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<sup>32</sup> Actions taken on bills introduced to the Texas Legislature from 1993-present are available at <http://www.capitol.state.tx.us/Search/TextSearch.aspx> (search for bill by keyword or number, click “Actions” from the drop down menu).

<sup>33</sup> TEX. LAB. CODE § 21-002(8).

<sup>34</sup> *Id.* § 21.051.

<sup>35</sup> *Id.* § 21-002(8).

<sup>36</sup> *Id.* § 21.109.

<sup>37</sup> *Id.* § 21.0015.

<sup>38</sup> *Id.* § 21.207.

<sup>39</sup> *Id.* § 21.202.

<sup>40</sup> *Id.* §§ 21.252; 21.254.

<sup>41</sup> *Id.* §§ 21.258; 21.2585.

<sup>42</sup> AUSTIN, TEX., CODE §5-3-4.

<sup>43</sup> DALLAS, TEX., CODE §§46-6; 46-4(18).

<sup>44</sup> FORT WORTH, TEX., CODE §17-67.

<sup>45</sup> PLANO, TEX., CODE §2-11(F) (as amended), *available at* [http://www.planotx.org/City\\_Hall/agendas/CouncilAgendas/AgendaItems/CMGR120814-61.pdf](http://www.planotx.org/City_Hall/agendas/CouncilAgendas/AgendaItems/CMGR120814-61.pdf).

<sup>46</sup> Calculated by authors using data from the American Community Survey, 2011-2013 3-Year-Estimates, Select Economic Characteristics tables (civilian labor force numbers) available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Jan. 14, 2015).

<sup>47</sup> AUSTIN, TEX., CODE § 5-3-2(10); DALLAS, TEX., CODE § 46-4(9); FORT WORTH, TEX., CODE §17-66; PLANO, TEX., CODE §2-11(B)(11).

<sup>48</sup> AUSTIN, TEX., CODE §§ 5-3-6, 5-3-12; DALLAS, TEX., CODE §§ 46-10 to 46-11; FORT WORTH, TEX., CODE §17-69; PLANO, TEX., CODE §2-11(L), (M).

<sup>49</sup> *See id.*

<sup>50</sup> BASTROP, TEX., CODE §1.15.091 (sexual orientation).

<sup>51</sup> BULVERDE, TEX., CODE §1.07.02 (sexual orientation).

<sup>52</sup> DALLAS CTY, TEX., CODE § 86-1042 (sexual orientation and gender identity).

<sup>53</sup> EL PASO, TEX., CODE §6.1-11 (sexual orientation and gender identity).

<sup>54</sup> HOUSTON, TEX., CODE §§18-3(8) (sexual orientation discrimination prohibited in city employment), 15-17 (sexual orientation and gender identity discrimination prohibited in city employment and city contractor employment).

<sup>55</sup> LA FERIA, TEX., CODE §14.11 (sexual orientation).

<sup>56</sup> POTTSBORO, TEX., CODE §1.1600 (sexual orientation discrimination prohibited in city employment and city contractor employment).

<sup>57</sup> SAN ANTONIO, TEX., CODE §§2-572 (sexual orientation and gender identity discrimination prohibited in city employment), 2-640 (sexual orientation and gender identity discrimination prohibited in city contractor employment).

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- <sup>58</sup> J.B. Smith, *City Extends Anti-Bias Policy to LGBT Employees*, WACOTRIB.COM, June 2, 2014, [http://www.wacotrib.com/news/city\\_of\\_waco/city-extends-anti-bias-policy-to-lgbt-employees/article\\_a7a7b3b0-2a2f-53bd-a05e-6544bbf1e392.html](http://www.wacotrib.com/news/city_of_waco/city-extends-anti-bias-policy-to-lgbt-employees/article_a7a7b3b0-2a2f-53bd-a05e-6544bbf1e392.html).
- <sup>59</sup> Walker Cty, Tex., EEO Short Form, Jan. 4, 2010, [http://www.co.walker.tx.us/egov/docs/1291755563\\_88806.pdf](http://www.co.walker.tx.us/egov/docs/1291755563_88806.pdf) (sexual orientation).
- <sup>60</sup> Calculated by authors using data from the American Community Survey, 2009-2013 5-Year-Estimates, Select Economic Characteristics tables (civilian labor force numbers) available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Jan. 14, 2015).
- <sup>61</sup> See BRAD SEARS & CHRISTY MALLORY, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, *ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES* (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.
- <sup>62</sup> *Id.*
- <sup>63</sup> M.V. LEE BADGETT, LAURA E. DURSO, ANGELIKI KASTANIS & CHRISTY MALLORY, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, *THE BUSINESS IMPACT OF LGBT-SUPPORTIVE WORKPLACE POLICIES* (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-Report-May-2013.pdf>.
- <sup>64</sup> Out & Equal, Harris Interactive & Witeck Combs Commc'n, *Majority of Americans: Companies Not Government Should Decide Benefits Offered to Same-Sex Employees*, OUTANDEQUAL.ORG (May 22, 2006), [http://outandequal.org/documents/2006\\_Workplace\\_Survey052306.pdf](http://outandequal.org/documents/2006_Workplace_Survey052306.pdf).
- <sup>65</sup> Andras Tilcsik, *Pride and Prejudice: Employment Discrimination against Openly Gay Men in the United States*, 117 AM. J. SOC. 586, 590-93 (2011).
- <sup>66</sup> Christy Mallory & Brad Sears, *An Evaluation of Local Laws Requiring Government Contractors to Adopt LGBT-Related Workplace Policies*, 5 ALBANY GOV'T L. REV. 478, 481 (2011).
- <sup>67</sup> For example, California (CAL. GOV. CODE § 12990 (2013)), Delaware (DEL. CODE ANN. tit., 29 § 6962(d)(7) (2013)), and Maryland (MD. CODE ANN., STATE FIN. & PROC. § 19-101 (LexisNexis 2013)), among others.
- <sup>68</sup> The list of state headquarters for Fortune 1000 companies (2014) is available at Fortune 1000 Companies List for 2014, Geolounge.com, <http://www.geolounge.com/fortune-1000-companies-2014-list/> (last visited Jan. 14, 2015). Information about corporate policies is available at Human Rights Campaign, Corporate Employer Database, <http://www.hrc.org/resources/entry/search-our-employer-database> (Jan. 15, 2015) (search by employer name).
- <sup>69</sup> The University of Texas System, Systemwide Policy, Policy UTS105 (Mar. 8, 2011), available at <http://www.utsystem.edu/bor/procedures/policy/policies/UTS105.pdf>.
- <sup>70</sup> Texas Tech University, Operating Policy Procedure, OP 10.12: Sexual Orientation Non-Discrimination Policy (Feb. 7, 2012), <http://www.depts.ttu.edu/opmanual/OP10.12.pdf>.
- <sup>71</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Public Religion Research Institute Survey (2011) (data and calculations on file with author).
- <sup>72</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with author).
- <sup>73</sup> M.V. LEE BADGETT, CHRISTOPHER RAMOS & BRAD SEARS, WILLIAMS INST., *EVIDENCE OF EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY: COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES 1999-2007* (2008), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Ramos-Emphy-Discrim-1999-2007-Nov-08.pdf>; William B. Rubenstein, *Do Gay Rights Laws Matter?: An Empirical Assessment*, 75 S. CAL. L. REV. 66, 79-81 (2001).
- <sup>74</sup> *Id.*

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<sup>75</sup> See *Workplace*, THE WILLIAMS INST., <http://williamsinstitute.law.ucla.edu/category/research/workplace/> (last updated Dec. 10, 2013).

<sup>76</sup> Gary J. Gates & Frank Newport, *supra* note 2.

<sup>77</sup> American Community Survey, U.S. Census Bureau, American FactFinder, 2012 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_1YR\\_DP03](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP03).

<sup>78</sup> **Error! Hyperlink reference not valid.** “National average” refers to the average of the complaint rates in 17 states across the country that prohibited sexual orientation discrimination in 2008. BADGETT, RAMOS & SEARS, *supra* note 73.

<sup>79</sup> The data gathered for the 2008 study included all employment discrimination complaints filed on the basis of sexual orientation; it was not limited to complaints filed by LGB employees. Heterosexual employees may also file complaints under sexual orientation non-discrimination laws if they were discriminated against because of their heterosexuality or because they were perceived to be LGB. However, we use the LGB workforce as the underlying population for purposes of our analysis because LGB employees likely file the vast majority of sexual orientation discrimination complaints. See Rubenstein, *supra* note 73.

<sup>80</sup> BADGETT, RAMOS & SEARS, *supra* note 73, at 5.

<sup>81</sup> The estimated number of complaints has changed due to both changes in population and more accurate data about how many LGBT people live in Texas.

<sup>82</sup> TEX. WORKFORCE COMM., COMM. ON HUMAN RIGHTS ANNUAL REPORT FISCAL YEAR 2014 13, 17 (2014), *available at* <http://www.twc.state.tx.us/crd/annual-human-rights-report-2014.pdf>; TEX. WORKFORCE COMM., FY 2013 COMM. ON HUMAN RIGHTS ANNUAL REPORT 8, 11 (2013), *available at* <http://www.twc.state.tx.us/crd/annual-human-rights-report-2013.pdf>; TEX. WORKFORCE COMM., 2012 ANNUAL REPORT COMM. ON HUMAN RIGHTS 10, 13 (2012), *available at* <http://www.twc.state.tx.us/crd/annual-human-rights-report-2012.pdf>; TEX. WORKFORCE COMM., COMM. ON HUMAN RIGHTS 2011 ANNUAL REPORT 10, 13 (2011), *available at* [http://www.twc.state.tx.us/crd/arcrd\\_11.pdf](http://www.twc.state.tx.us/crd/arcrd_11.pdf); TEX. WORKFORCE COMM., COMM. ON HUMAN RIGHTS 2010 ANNUAL REPORT 6, 9 (2010), *available at* [http://www.twc.state.tx.us/crd/arcrd\\_10.pdf](http://www.twc.state.tx.us/crd/arcrd_10.pdf).

<sup>83</sup> Information provided in this table is from the Annual reports of the Texas Human Rights Commission, *supra* note 82.