

UCLA

Other Recent Work

Title

Employment Discrimination Based on Sexual Orientation and Gender Identity in Kentucky

Permalink

<https://escholarship.org/uc/item/0g54k2gq>

Authors

Mallory, Christy
Sears, Brad

Publication Date

2015-02-01

Employment Discrimination Based on Sexual Orientation and Gender Identity in Kentucky



the
Williams
INSTITUTE

Christy Mallory and Brad Sears

February 2015

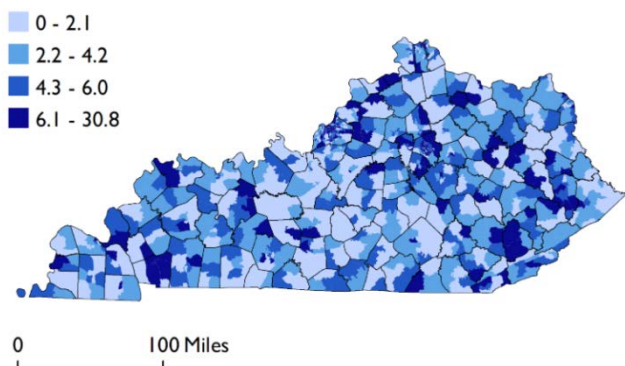
Executive Summary

Approximately 80,000 lesbian, gay, bisexual, and transgender (LGBT) workers live in Kentucky. Kentucky does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in both public and private sector employment.

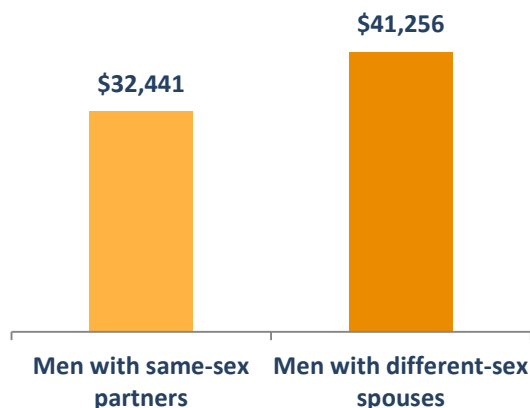
This report summarizes recent evidence of sexual orientation and gender identity employment discrimination, explains the limited current protections from sexual orientation and gender identity employment discrimination in Kentucky, and estimates the administrative impact of passing a law prohibiting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

80,000	6%	84%	23%	38
Number of LGBT Workers	Income Disparity between Straight and Gay Male Workers	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)



Average Individual Earnings for Men in Kentucky



Key findings of this report include:

- In total there are approximately 135,000 LGBT adults in Kentucky, including over 80,000 who are part of Kentucky's workforce.¹
- Media reports and lawsuits document incidents of sexual orientation and gender identity discrimination against employees in Kentucky. These include reports from a police sergeant, a state government employee, and a public school administrator.
- National surveys find that discrimination against LGBT workers is prevalent across the country. Most recently, a 2013 Pew Research Center survey found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.
- When transgender people are surveyed separately, they report similar or higher levels of discrimination. For example, as recently as 2010, 78% of respondents to the largest survey of transgender people to date reported having experienced harassment or mistreatment at work, and 47% reported having been discriminated against in hiring, promotion, or job retention because of their gender identity. A gubernatorial executive order in Kentucky provides protection from sexual orientation and gender identity discrimination for state executive branch employees.
- Seven localities in Kentucky have ordinances prohibiting employment discrimination based on sexual orientation and gender identity: Covington, Danville, Frankfort, Morehead, Vicco, Louisville Metro, and Lexington-Fayette County. Additionally, a mayoral executive order in one city, Berea, prohibits discrimination against the city's own government employees.
- Approximately 77% of Kentucky's workforce is not covered by a local ordinance that prohibits employment discrimination based on sexual orientation and gender identity.²
- 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. All eight of the Fortune 1000 companies based in Kentucky have policies prohibiting discrimination based on sexual orientation, and five of those companies also prohibit discrimination based on gender identity.
- Public opinion in Kentucky supports passage of a statewide law prohibiting discrimination based on sexual orientation and gender identity. In response to a 2010 survey, 84% of 600 Kentuckians surveyed said they agreed with the statement that LGBT people should be protected from workplace discrimination. In addition, other polls find that 78% of Kentucky 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 38 additional complaints being filed with the Kentucky Human Rights Commission each year.
- Because the annual number of discrimination complaints filed with the Commission varied by an average of 36 complaints over the last 10 years, 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 Kentucky

Research shows the existence of widespread and continuing discrimination against LGBT workers in the U.S. In response to surveys, LGBT workers consistently report having experienced discrimination, and non-LGBT people often report having witnessed discrimination against their LGBT co-workers. For example, a national survey conducted by Pew Research Center in 2013 found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.³ 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.⁴ As recently as 2010, 78% of respondents to the largest survey of transgender people to date reported having experienced harassment or mistreatment at work, and 47% reported having been discriminated against in hiring, promotion, or job retention because of their gender identity.⁵

Employment discrimination against LGBT people has also been documented in court cases, state and local administrative complaints, complaints to community-based organizations, academic journals, newspapers, books, and other media. Additionally, a number of federal, state, and local administrative agencies and legislative bodies have acknowledged that LGBT people have faced widespread discrimination in employment.⁶

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

- In 2013, the Louisville Human Relations Commission found in favor of a former Audubon Park police sergeant who was terminated because of his sexual orientation.⁷ Following the Commission's determination, the sergeant and the police department settled the case privately. The sergeant was fired after three years of employment with the department, during which he was subjected to verbal harassment because he was gay. According to reports, anti-gay jokes were told in front of him, he was called derogatory names, and one of his co-workers told other officers that the sergeant had to go on medical leave due to injuries he suffered from having sex with his partner. The sergeant stated that he was fired after complaining about the mistreatment to the police chief.
- In 2010, a former sales associate at a national retailer's Kentucky store filed suit against his former employer alleging that he was terminated because of his sexual orientation, and because he had complained about the ongoing discrimination on several occasions.⁸ The court dismissed the employee's sexual orientation discrimination claim because sexual orientation is not a protected characteristic under the Kentucky Civil Rights Act, and because the Lexington-Fayette ordinance, which applied to the employer, does not allow an employee to bring suit in court for a violation, though it does prohibit discrimination based on sexual orientation.

- In 2009, a former state employee filed suit in federal court against the government agency he had worked for, alleging that the agency had fired him because of his sexual orientation.⁹ The agency terminated the employee after it found emails exchanged between him and a co-worker which “referenced [the employee’s] homosexual partner and included homosexual slang.” The court found that while the agency was “of course...entitled to enforce its own internal policies,” its enforcement of the internet usage policy “focused disproportionately on homosexual employees, and more particularly, friendly homosexual bantering within emails.” Because the gay employee was treated “so differently” under the policy from non-LGBT employees in “strikingly similar circumstances,” the court held that the agency discriminated against the employee because of his sexual orientation in violation of the equal protection clause of the U.S. Constitution.
- In 2008, a gay public school administrator and a bisexual public school administrator reported being subjected to a hostile work environment and denied job-related travel funding on account of their sexual orientation.¹⁰
- In 2007, a gay employee of a business located Louisville Metro brought a lawsuit against his employer alleging that a male co-worker had verbally harassed him because of his sexual orientation.¹¹ The employee filed suit under the Louisville Metro local ordinance prohibiting discrimination based on sexual orientation. The court dismissed the case, holding that the local government did not have the power to create a private cause of action through its ordinance.

Current Protections from Discrimination

Kentucky does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in employment.¹² Over the past 15 years, a number of efforts have been made in the state legislature to pass a statewide law prohibiting sexual orientation and/or gender identity discrimination in Kentucky.¹³ House Bill 171, introduced in the 2014 legislative session, was the first to receive a hearing.¹⁴ However, the 2014 session adjourned without a vote on the bill.¹⁵ The bill would have added sexual orientation and gender identity to the characteristics already protected from discrimination under Kentucky’s Civil Rights Act.¹⁶

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

The Kentucky Civil Rights Act

Currently, the Kentucky Civil Rights Act (“KCRA”) prohibits employment discrimination based on race, religion, national origin, sex, age, and disability.¹⁷ The employment non-discrimination provisions of the KCRA generally apply to both public sector and private sector employers with 8 or more employees

within the state.¹⁸ The Commission on Human Rights enforces the KCRA.¹⁹ The Commission has the power to investigate complaints and may hold administrative hearings.²⁰ The Commission may issue remedies if it determines that an employer has engaged in unlawful discrimination. The remedies may include hiring or reinstatement of employees with back pay, and compensatory damages.²¹ The KCRA also allows employees to bring suit in court for a violation of the non-discrimination provisions.²²

During fiscal year 2013, the most recent year for which data is available, the Commission handled 361 complaints of employment, housing, and public accommodations discrimination and operated on a budget of \$2,064,271.²³

Executive Order Prohibiting Discrimination against State Executive Branch Employees

In 2008, Governor Steve Beshear issued an executive order banning employment discrimination based on sexual orientation and gender identity against state executive branch employees.²⁴ The order applies to hiring, promotion, termination, tenure, recruitment and compensation by state executive branch agencies.²⁵ It does not permit employees to file suit in court based on a violation of the non-discrimination requirements.²⁶

Local-Level Protections from Discrimination

Seven localities in Kentucky have adopted non-discrimination ordinances that prohibit employment discrimination based on sexual orientation and gender identity: Covington,²⁷ Danville,²⁸ Frankfort,²⁹ Morehead,³⁰ Vicco,³¹ Louisville Metro,³² and Lexington-Fayette County.³³ The ordinances are similar in scope across localities, except that only two of the localities, Frankfort and Morehead, allow an employee who has been discriminated against to file a private cause of action in court.³⁴ Additionally, a mayoral executive order issued by the mayor of Berea prohibits discrimination based on sexual orientation against the city's own 130 government employees.³⁵ Approximately 67% of Kentucky's workforce is not covered by a local ordinance that prohibits employment discrimination based on sexual orientation and gender identity.³⁶

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.³⁷ 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.³⁸

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.³⁹ 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.⁴⁰ 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.⁴¹

Additionally, LGBT-supportive workplace policies can expand opportunities to secure potentially lucrative government contracts for corporate employers. The federal government requires federal contractors to have policies prohibiting discrimination against their employees based on sexual orientation and gender identity.⁴² Additionally, a 2011 study found that 68 local governments had laws requiring contractors to have LGBT-inclusive non-discrimination policies,⁴³ and a number of states have similar laws that apply to state government contracts.⁴⁴ Without such policies, companies would not be eligible to bid for contracts with the federal, and many state and local, governments.

According to the Human Rights Campaign, all eight of the Fortune 1000 companies based in Kentucky prohibit discrimination based on sexual orientation: Humana, Yum! Brands, Ashland, Kindred Health Care, General Cable, Lexmark International, Brown-Forman, and PharMerica.⁴⁵ Five of those companies—Humana, Yum! Brands, General Cable, Lexmark International, and Brown-Forman—also prohibit discrimination based on gender identity.⁴⁶ Additionally, Kentucky's largest universities prohibit discrimination based on sexual orientation, including the University of Kentucky,⁴⁷ Western Kentucky University,⁴⁸ University of Louisville,⁴⁹ Eastern Kentucky University,⁵⁰ and Northern Kentucky University.⁵¹ The University of Louisville also includes gender identity in its employment non-discrimination policy.⁵²

Public Opinion

Public opinion in Kentucky supports passage of a statewide law prohibiting discrimination based on sexual orientation and gender identity. In November and December 2010, a polling firm conducted telephone interviews with 600 people in Kentucky in order to gather opinion data on legal protections for LGBT people in the state.⁵³ Eighty-three percent of respondents to the survey indicated that they agreed or strongly agreed with the statement, "Gays, lesbians, and transgender persons should be protected from anti-gay and gender identity workplace discrimination." Additionally, 86% of respondents indicated that they agreed or strongly agreed with the statement, "Gays, lesbians, and transgender persons should be able to apply for a job without being discriminated against based on their sexual orientation or gender identity." Similarly, 70% of Kentucky respondents to a 2011 national poll said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.⁵⁴

In addition, public opinion data indicate that Kentucky residents perceive the state as unfriendly to LGBT people. Aggregated data from two large public opinion polls found that 78% of Kentucky residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.⁵⁵

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.⁵⁶ 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.⁵⁷

We estimate that approximately 38 complaints of sexual orientation or gender identity discrimination would be filed with the Kentucky Human Rights Commission each year. To reach this estimate, we drew on Gallup polling data and Census data from Kentucky 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.⁵⁸

Results from a 2012 Gallup poll show that 3.9% of people in Kentucky identify as LGBT.⁵⁹ Applying this percentage to the number of people in Kentucky's workforce (2,059,802⁶⁰) indicates that there are 80,332 LGBT workers in Kentucky.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in Kentucky 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.⁶¹ 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.⁶² There is not sufficient data to make a similar calculation of the average rate of complaints file on the basis of gender identity.⁶³ 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 Kentucky (80,332) suggests that 38 complaints of sexual orientation and gender identity discrimination would be filed annually if these characteristics were added to the state's employment non-discrimination law.

Cost of Enforcement

Available data suggest that the additional 38 complaints could be absorbed into the existing budget of the Kentucky Commission on Human Rights with minimal impact on staff and resources. According to data from the most recent annual report of the Commission, the Commission has received an annual average of 349 discrimination complaints from 2003 through 2013.⁶⁴ The majority of the complaints allege employment discrimination, but the Commission also handles complaints of discrimination in housing, public accommodations, and financial transactions. The budget reports do not provide enough data to determine the cost of enforcement per complaint, so it is not possible to precisely estimate any added expense associated with the additional 38 complaints.

However, the data suggest that the additional complaints would have a minimal impact on the Commission. Annual fluctuations in the number of complaints filed varied from 2 to 99 complaints over the eleven most recent years for which data are available, FY 2003 – FY 2013.⁶⁵ On average, annual filings from 2003 through 2013 varied by 36 complaints. This information suggests that 38 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 the Commission with minimal impact on staff and resources.

Fiscal Year ⁶⁶	Number of Complaints	Change in Complaints from Prior Year
2013	361	75
2012	286	47
2011	333	4
2010	329	7
2009	322	99
2008	421	2
2007	423	40
2006	383	40
2005	343	5
2004	338	40
2003	298	NA

Conclusion

Documented evidence shows that LGBT people face employment discrimination across the country, including in Kentucky. There is currently no statewide law that prohibits employment discrimination based on sexual orientation or gender identity in Kentucky. Adding these characteristics to the Kentucky Civil Rights Act would provide protection from discrimination to approximately 80,000 LGBT workers in the state. Based on data from other state administrative enforcement agencies, we estimate that approximately 38 complaints of sexual orientation or gender identity employment discrimination would be filed in Kentucky annually if the law were amended. It is likely that the additional 38 complaints could be absorbed into the Kentucky Human Rights Commission's existing budget.

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.

For more information

The Williams Institute, UCLA School of Law

Box 951476

Los Angeles, CA 90095-1476

(310)267-4382

williamsinstitute@law.ucla.edu

www.law.ucla.edu/williamsinstitute

Endnotes

¹ These estimates were reached by applying the percentage of people in Kentucky that are LGBT (3.9%) to the population of Kentucky aged 16 years and older (3,470,977) and the number of people in the Kentucky civilian labor force (2,059,802), respectively. Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP, Feb. 15, 2013, <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>; American Community Survey, U.S. Census Bureau, American FactFinder, 2012 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates, available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP03.

² Calculated by authors using data from the American Community Survey, 2010-2012 3-Year-Estimates, Sex by Class of Worker tables available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited August 11, 2014).

³ 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/>.

⁴ 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>.

⁵ 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.

⁶ SEARS & MALLORY, *supra* note 4.

⁷ Andrew Wolfson, *Fired Gay Cop Details Harassment Allegations*, USA TODAY.COM, Oct. 9, 2013, <http://www.usatoday.com/story/news/nation/2013/10/09/fired-gay-cop-details-harassment-allegations-2956645/>.

⁸ Price v. TJX Companies, No. 5:11-CV-319-JMH, 2012 WL 1565235 (E.D. Ky., May 2, 2012).

⁹ Stroder v. Ky. Cabinet for Health & Family Svcs, No. 3:09-CV-00947-H, 2012 WL 1424496 (W.D. Ky., Apr. 24, 2010).

¹⁰ E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).

¹¹ Roberson v. Brightpoint Svcs, No. 3:07-CV-501-S, 2008 WL 793636 (W.D. Ky., Mar. 24, 2008).

¹² See JEROME HUNT, CTR. AM. PROG. ACTION FUND, A STATE-BY-STATE EXAMINATION OF NONDISCRIMINATION LAWS AND POLICIES 3 (June 2012), http://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/state_nondiscrimination.pdf.

¹³ John Cheves, *After 15 Years, Lawmakers Hold Hearing on Bill to Ban Discrimination Based on Sexual Orientation*, LEXINGTON HERALD-LEADER, Mar. 5, 2014, <http://www.kentucky.com/2014/03/05/3122897/after-15-years-lawmakers-hold.html>; H.R. 379, 2015 Ky. Leg. Reg. Sess. (Ky. 2015); S. 156, 2015 Ky. Leg. Reg. Sess. (Ky. 2015).

¹⁴ *Id.*; H.R. 171, 2014 Ky. Leg., Reg. Sess. (Ky. 2014).

¹⁵ See Ky. Leg., HB171, <http://www.lrc.ky.gov/record/14RS/HB171.htm> (providing status of bill).

¹⁶ H.R. 171, 2014 Ky. Leg., Reg. Sess. (Ky. 2014).

¹⁷ KY. REV. STAT. ANN. § 344.040 (2014).

¹⁸ The eight employee threshold applies in cases of discrimination based on race, religion, national origin, sex, and age. *Id.* § 344.030(2). For purposes of disability discrimination claims, the law only applies if employers have 15 or

more employees. *Id.* The law also exempts religious organizations from the provisions related to discrimination based on religion. *Id.* § 344.090(2).

¹⁹ *Id.* §§ 344.150, 344.180, 344.190.

²⁰ *Id.* §§ 344.200, 344.210.

²¹ *Id.* § 344.230.

²² *Id.* § 344.450.

²³ KY. COMM. HUM. RIGHTS, 2013 ANNUAL REPORT 11, <http://kchr.ky.gov/NR/rdonlyres/50FA2E45-D30F-4652-AD91-90388D1CA683/0/AnnualReport2013Updated.pdf>; OFFICE OF STATE BUDGET DIR., 2014-2016 BUDGET OF THE COMMONWEALTH, BUDGET IN BRIEF 22, <http://www.osbd.ky.gov/NR/rdonlyres/7156D01C-9329-4FA8-B026-8E712ED41BFA/0/1416BOCBudInBrief.pdf> (last visited Sept. 2, 2014).

²⁴ Ky., Exec. Order No. 2008-473 (2008), *available at* <https://personnel.ky.gov/Documents/EqualOpportunityEO2008473.pdf>.

²⁵ *Id.*

²⁶ *See id.*

²⁷ COVINGTON, KY., CODE § 37.10 *et seq.* (2014).

²⁸ Danville, Ky., Ord. No. 1836 (2014), *available at* <http://www.danvilleky.org/DocumentCenter/View/2137>.

²⁹ FRANKFORT, KY., CODE § 96.01 *et seq.* (2014).

³⁰ MOREHEAD, KY., CODE § 96.01 *et seq.* (2014).

³¹ Dan Berry, *Sewers, Curfews, and a Ban on Gay Bias*, N.Y. TIMES, Jan. 28, 2013, <http://www.nytimes.com/2013/01/29/us/vicco-kentucky-passes-ban-on-gay-bias.html?pagewanted=all&r=0>.

³² LOUISVILLE-JEFFERSON CTY., KY., CODE § 92.01 *et seq.* (2014).

³³ LEXINGTON-FAYETTE CTY., KY. CODE § 2-33 (2014).

³⁴ FRANKFORT, KY., CODE § 96.18; MOREHEAD, KY., CODE § 96.11.

³⁵ KY. COMM. HUM. RIGHTS, *supra* note 23 at 29.

³⁶ Calculated by authors using data from the American Community Survey, 2010-2012 3-Year-Estimates & 2008-2012 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 Aug. 11, 2014).

³⁷ *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>.

³⁸ *Id.*

³⁹ 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>.

⁴⁰ 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.

⁴¹ Andras Tilcsik, *Pride and Prejudice: Employment Discrimination against Openly Gay Men in the United States*, 117 AM. J. SOC. 586, 590-93 (2011).

⁴² Exec. Order No. 13,672, 79 Fed. Reg. 42,971 (July 23, 2014).

⁴³ 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).

⁴⁴ 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.

⁴⁵ Human Rights Campaign, Corporate Employer Database, http://asp.hrc.org/issues/workplace/search.asp?form=private_detailed_search.aspx (search for Headquarters State: Kentucky; Key Policies: Sexual Orientation in Non-discrimination Policy; and Includes Policy: Yes).

⁴⁶ Human Rights Campaign, Corporate Employer Database, http://asp.hrc.org/issues/workplace/search.asp?form=private_detailed_search.aspx (search for Headquarters State: Kentucky; Key Policies: Gender Identity in Non-discrimination Policy; and Includes Policy: Yes).

⁴⁷ Univ. of Kentucky, Employment/Recruiting: Publication, Advertisements and Web Sites, <http://www.uky.edu/Home/Web/eo/statements.html> (last visited Aug. 27, 2014).

⁴⁸ Office of Equal Employment Opportunity, Western Kentucky Univ., <http://www.wku.edu/eoo/> (last visited Aug. 27, 2014).

⁴⁹ LGBT Center, Univ. Of Louisville, Nondiscrimination Policy, <http://louisville.edu/lgbt/resources-for-students-and-employees/resources-for-students/nondiscrimination-policy> (last visited Aug. 27, 2014).

⁵⁰ Eastern Kentucky University, Equal Opportunity/Affirmative Action Statement (Non-Discrimination Policy), Apr. 4, 2011, http://policies.eku.edu/sites/policies.eku.edu/files/policies/nondiscrimination_82514_0.pdf.

⁵¹ Northern Kentucky Univ., Career Development, Non-Discrimination Policy, <http://chaselaw.nku.edu/careers/employers/nondiscrimination.html> (last visited Aug. 27, 2014).

⁵² Univ. Of Louisville, *supra* note 49.

⁵³ Memorandum from The Schapiro Group to Kentucky Statewide Fairness Coalition (Feb. 2, 2011), *available at* <http://www.fairness.org/LinkClick.aspx?fileticket=ZrZ%2bIl3ZZrc%3d&tabid=594>.

⁵⁴ 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).

⁵⁵ 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).

⁵⁶ 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).

⁵⁷ *Id.*

⁵⁸ *See Workplace*, THE WILLIAMS INST., <http://williamsinstitute.law.ucla.edu/category/research/workplace/> (last updated Dec. 10, 2013).

⁵⁹ Gary J. Gates & Frank Newport, *supra* note 1.

⁶⁰ 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.

⁶¹ “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 56.

⁶² 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 56.

⁶³ BADGETT, RAMOS & SEARS, *supra* note 56, at 5.

⁶⁴ KY. COMM. HUM. RIGHTS, *supra* note 23 at 11.

⁶⁵ *Id.*

⁶⁶ KY. OFFICE OF THE STATE BUDGET DIR., *supra* note 23 at 22.