

# UCLA

## Other Recent Work

### Title

LGBT Discrimination, Subnational Public Policy, and Law in the United States

### Permalink

<https://escholarship.org/uc/item/18z267dd>

### Authors

Mallory, Christy  
Sears, Brad

### Publication Date

2020

### Data Availability

The data associated with this publication are not available for this reason: Licensing Restrictions

Peer reviewed

# LGBT Discrimination, Subnational Public Policy, and Law in the United States

Christy Mallory and Brad Sears

## Summary and Keywords

LGBT people in the United States continue to experience discrimination because of their sexual orientation and gender identity, despite increasing acceptance of LGBT people and legal recognition of marriage for same-sex couples nationwide. This ongoing discrimination can lead to under- and unemployment, resulting in socioeconomic disparities for LGBT people. In addition, empirical research has linked LGBT health disparities, including disparities in health-related risk factors, to experiences of stigma and discrimination.

Currently, federal statutes in the United States do not prohibit discrimination based on sexual orientation or gender identity in employment, housing, or public accommodations, leaving regulation in this area primarily to state and local governments. This creates a limited and uneven patchwork of protections from discrimination against LGBT people across the country.

Despite public support for LGBT-inclusive non-discrimination laws across the country, in 28 states there are no statewide statutory protections for LGBT people in employment, housing, or public accommodations. To date, only 20 states and the District of Columbia have enacted comprehensive non-discrimination statutes that expressly prohibit discrimination based on both sexual orientation and gender identity in all three of these areas. One additional state has statutes that prohibit sexual orientation discrimination, but not gender identity discrimination, in these areas. One other state prohibits discrimination based on sexual orientation and gender identity in employment and housing, but not in public accommodations.

In states without statutes that prohibit discrimination based on sexual orientation and/or gender identity, there are other policies that afford LGBT people at least some limited protections from discrimination. In some of these states, state executive branch officials have expanded non-discrimination protections for LGBT people under their executive or agency powers. For example, in three states, state government agencies have expanded broad protections from sexual orientation or gender identity discrimination through administrative regulations. And, in 12 states without statutes prohibiting

discrimination against LGBT people, governors have issued executive orders that protect state government employees (and sometimes employees of state government contractors) from discrimination based on sexual orientation and gender identity. In addition, local government ordinances provide another source of protection from discrimination; however, these laws are generally unenforceable in court and provide much more limited remedies than statewide non-discrimination statutes.

In recent years, lawmakers have increasingly attempted to limit the reach of state and local non-discrimination laws, which can leave LGBT people vulnerable to discrimination. For example, some states have passed laws allowing religiously motivated discrimination and others have passed laws prohibiting local governments from enacting their own nondiscrimination ordinances that are broader than state non-discrimination laws. While most of these bills have not passed, the recent increase in the introduction of these measures suggests that state legislatures will continue to consider rolling back non-discrimination protections for LGBT people in the coming years.

Continued efforts are required at both the state and federal levels to ensure that LGBT people are fully protected from discrimination based on their sexual orientation and gender identity throughout the United States, including federal legislation and state-wide bills in over half the states.

## Documented Evidence of Discrimination Against LGBT People

Although public acceptance of LGBT people and LGBT rights is growing in the United States, discrimination against LGBT people continues to be widespread. A public opinion poll conducted by the Public Religion Research Institute (2016) found that 58% of Americans believe that there is still a lot of discrimination against gay and lesbian people, and 62% said that transgender people continue to experience a lot of discrimination. Ongoing discrimination against LGBT people has been documented in a variety of ways, including through surveys, matched-pair studies, complaints to community-based organizations, administrative complaints, court cases, and anecdotal reports from the media.

### Survey Data

In the last decade, several large surveys have documented the prevalence of discrimination against LGBT people in areas such as employment, housing,

public accommodations, and health care. The findings indicate that a significant number of people have experienced discrimination in their lifetimes, and many have had recent experiences of discrimination. For example, a 2017 nationally representative survey conducted by the Center for American Progress found that 25% of LGBT people had experienced some type of discrimination within the prior year (Singh & Durso, 2017).

### Employment Discrimination

A number of recent surveys, including large population-based surveys, have found that many LGBT people have experienced discrimination or harassment in the workplace or fear discrimination by employers. For example, a nationally representative survey conducted in 2017 for NPR, the Robert Wood Johnson Foundation, and the Harvard T.H. Chan School of Public Health found that 22% of LGBTQ respondents said they had been paid less or were not promoted equally and 20% said they had experienced discrimination in applying for jobs because of their sexual orientation or gender identity at some point in their lives (NPR, 2017). LGBTQ people of color were more likely to have experienced sexual orientation or gender identity discrimination than white LGBTQ people (NPR, 2017). In addition, 59% of LGBTQ respondents believed that there were fewer employment opportunities in the area where they lived due to their LGBTQ identity (NPR, 2017). This belief was most common among LGBTQ people living in the South—a region that largely lacks legal protections from sexual orientation and gender identity discrimination. Four out of five LGBTQ respondents from the South (81%) said that LGBTQ people had fewer employment opportunities because of their sexual orientation or gender identity where they lived, compared to 55% of LGBTQ people in the Midwest, 52% of LGBTQ people in the Northeast, and 51% of LGBTQ people in the West (NPR, 2017). Similarly, 50% of LGBTQ respondents to the survey believed that LGBTQ people where they live are paid less for equal work because of their sexual orientation or gender identity (NPR, 2017).

Another nationally representative survey conducted by Pew Research Center (2013) found that 21% of respondents had been treated unfairly by an employer at some point in their lives. Five percent had been treated unfairly by an employer within the year prior to the survey (Pew Research Center, 2013). Types of unfair treatment included being fired, being denied a promotion, and experiencing harassment (Pew Research Center, 2013).

Consistent with the findings from national probability surveys, non-probability surveys conducted during the past decade also find evidence of employment

discrimination based on sexual orientation and gender identity. For example, in response to a 2017 survey of LGBTI people in Jacksonville, Florida, 75% of respondents said they had experienced “everyday discrimination,” such as being treated with less respect or receiving poorer service than other people, within the prior year (Brown & Conron, 2018). The majority of those who reported such experiences said that it was because of their sexual orientation (54%) or sex (37%) (Brown & Conron, 2018). Similarly, a 2012 survey of LGBT people in Anchorage, Alaska, found that 44% of respondents reported having been harassed at work, 16% were forced to leave a job because of harassment, and 15% had been fired because of their sexual orientation or gender identity at some point in their lives (Green, 2012). In addition, 19% of respondents said they had been harassed by landlords or other tenants in Anchorage because of their sexual orientation or gender identity at some point in their lives (Green, 2012). And a number of respondents reported experiencing discrimination in public accommodations: 13% said they had been harassed by a medical care provider, 13% said they had been denied service at a restaurant or bar, and 8% said they had been denied membership or access to a fitness club because of their sexual orientation or gender identity (Green, 2012).

When surveyed separately, transgender respondents often report even higher levels of discrimination. The 2015 U.S. Transgender Survey, the largest survey of transgender people in the United States to date, found that 30% of respondents reported that they had experienced unfair treatment in the workplace in the prior year and 16% of those who had been employed in the prior year reported losing a job due to their gender identity or expression (James et al., 2016). In addition, a 2010 survey of transgender Utahans conducted by Equality Utah found that 67% of respondents had experienced employment discrimination during their lives because of their gender identity (Rosky, Mallory, Smith, & Badget, 2011). Similarly, a 2008 survey of transgender Californians conducted by the Transgender Law Center found that 67% of respondents had experienced employment discrimination at some point in their lives because of their gender identity (Transgender Law Center, 2009).

#### Housing and Public Accommodations Discrimination

Fewer surveys of LGBT people have asked about experiences of discrimination in housing and public accommodations than in employment. Nonetheless, surveys of LGBT people that have included these questions show that high levels of LGBT people report experiencing discrimination in these areas. For example, in response to the NPR/Robert Wood Johnson/Harvard survey, 22% of LGBTQ respondents said they had experienced discrimination while trying to

rent or buy housing and 16% said they had been discriminated against by a doctor or health clinic based on their sexual orientation or gender identity at some point in their lives (NPR, 2017). Similarly, the 2013 Pew survey found that 23% of LGBT people had ever received poor service in a restaurant, hotel, or place of business due to their sexual orientation or gender identity, with 5% reporting such treatment occurring within the last year (Pew Research Center, 2013). And a 2009 national non-probability survey conducted by Lambda Legal found that 56% of LGB respondents said they had experienced discrimination when seeking health care at some point in their lives, with health care professionals using harsh or abusive language, refusing to touch the patient or using excessive precautions, blaming them for their health status, being rough or abusive, or denying them treatment altogether (Lambda Legal, 2010).

As in the employment context, transgender people report higher levels of discrimination in housing and public accommodations than LGB people. For example, nearly one-third (31%) of transgender respondents to the 2015 U.S. Transgender Survey reported experiencing one type of mistreatment in a place of public accommodation because of their gender identity in the prior year (James et al., 2016). More specifically, 14% were denied equal treatment or service, 24% were verbally harassed, and 2% were physically attacked (James et al., 2016). Such discrimination was most common on public transportation (34%) and in retail stores, restaurants, hotels, or theaters (31%) but also occurred in public assistance or government benefit offices (17%), at the Department of Motor Vehicles (14%), and when seeking legal services (6%) (James et al., 2016). In terms of housing, 23% of transgender respondents said they had experienced housing discrimination in the prior year because of their gender identity, and 12% of respondents had experienced homelessness in the prior year because of their gender identity (James et al., 2016). In addition, the 2009 Lambda Legal survey found that 70% of transgender and gender nonconforming respondents reporting ever having experienced discrimination in health care (Lambda Legal, 2010).

### Avoidance of Discrimination

Surveys also show that LGBT people fear discrimination, even if they have not experienced it firsthand. For example, a nationally representative survey conducted in 2018 by the Human Rights Campaign found that 46% of LGBTQ employees were not open about their sexual orientation or gender identity at work. Of those employees, 38% said they were not out at work because they did not want to be stereotyped and 31% said they were not out because they

did not want to lose connections or relationships with co-workers (Fidas & Cooper, 2018). In addition, 13% of survey respondents said they did not report anti-LGBT comments they heard at work to their supervisors because they were afraid they would be fired due to the workplace being unwelcoming of LGBT people (Fidas & Cooper, 2018). In the area of public accommodations, the 2017 Center for American Progress Survey found that 12% of respondents reported that they avoided public places (such as stores or restaurants), 5% avoided public transportation, 7% avoided doctor's offices, and 6.1% avoided getting services they or their family needed out of fear of experiencing discrimination (Singh & Durso, 2017). The study found that transgender respondents and LGB respondents with disabilities were even more likely to avoid public accommodations out of fear of discrimination than their cisgender and non-disabled counterparts (Singh & Durso, 2017). And, in response to the 2015 U.S. Transgender Survey, 20% of transgender people reported that they did not access at least one type of accommodation in the last year due to fear of mistreatment and 77% of transgender people reported taking steps to avoid mistreatment at work, such as hiding or delaying their transition or quitting their job (James et al., 2016).

Often, fear of discrimination results in people spending time and energy concealing their sexual orientation and gender identity from their supervisors, co-workers, doctors, neighbors, and others. For example, the 2018 Human Rights Campaign survey found that 28% of respondents lied about their personal life at work, 20% avoided a special event at work, and 25% avoided certain people at work (Fidas & Cooper, 2018). Seventeen percent of respondents said that they felt exhausted from hiding their sexual orientation at work, and 13% said the same about hiding their gender identity (Fidas & Cooper, 2018). Fear of discrimination may also result in LGBT people leaving their jobs or their communities. The 2017 NPR/Robert Wood Johnson/Harvard survey found that 31% of respondents had considered moving because they had experienced unequal treatment or discrimination based on their sexual orientation or gender identity where they lived (NPR, 2017). Similarly, in response to the 2017 Center for American Progress Survey, 13% of respondents said they made specific decisions about where to work and 19% respondents said they made specific decisions about where to live out of fear of discrimination (Singh & Durso, 2017).

### Matched-Pair Studies

Matched-pair or audit or testing studies have been used to document discrimination against other marginalized groups, such as people of color and

women. In these studies, for example, resumes that are substantively the same are sent out to employers with some resumes indicating that the applicant is LGBT and the others not having such an indicator. Similarly, actors posing as potential renters are sent out to seek apartments, and the responses to their inquiries are tracked and compared. While to date there are fewer such studies focused on discrimination against LGBT people, those that have been conducted support the findings of the surveys described above.

For example, a 2016 study that sent out matched pairs of resumes for women found that resumes with an LGBT indicator had an employer response rate of 12% while resumes without the indicator had a response rate of 17% (Mishel, 2016). In other words, employers were about 30% less likely to request an interview or further information from a woman perceived as LGBTQ compared to one perceived as heterosexual. A study conducted in 2014 by the Equal Rights Center and Freedom to Work (2014) sent matched resumes to eight different employers who were also large contractors for the U.S. federal government. It found that LGBT applicants were 23% less likely to get an interview than even less qualified heterosexual applicants (Equal Rights Center & Freedom to Work, 2014). Similarly, a study published in 2011, which relied on matched resumes for men that were sent out during 2005, found that, overall, the applicants who sent resumes with a gay indicator were 40% less likely to be contacted for an interview than those who sent resumes without a gay indicator (Tilcsik, 2011). The study found that, on average, men perceived as gay had to apply to 14 jobs to get called back for an interview while men perceived as straight had to apply to fewer than 9 jobs to receive a call back (Tilcsik, 2011). In contrast, another large matched resume study published in 2013 did not find evidence of discrimination when resumes were sent out only in four large, more liberal cities with large LGBT communities (Chicago, Dallas, Philadelphia, and San Francisco) (Bailey, Wallace, & Wright, 2013).

In terms of housing discrimination, in 2017 the Urban Institute published a study based on over 2,000 paired tests in the Dallas, Los Angeles, and Washington, D.C. metro areas (Levy et al., 2017). The study found that while housing providers treated lesbians comparably to heterosexual women seeking rental housing, they told gay men about one fewer available rental unit for every 4.2 tests than they told heterosexual men, were slightly less likely to schedule an appointment with gay men, and quoted gay men average yearly rent costs that were \$272 higher (Levy et al., 2017). In addition the study found that housing providers told transgender testers about fewer units than they told cisgender homeseekers (Levy et al., 2017). Similarly, a matched-pairs



study conducted by the U.S. Department of Housing and Urban Development (2012) found that same-sex couples were less likely than heterosexual couples to receive responses when inquiring about available apartments (Friedman, 2013).

### Administrative Complaints

A number of recent studies have collected complaints of discrimination based on sexual orientation and gender identity filed with state agencies that enforce state non-discrimination laws. These studies document the existence of discrimination against LGBT people in a range of areas including public and private sector employment, housing, and public accommodations.

In terms of federal complaints, a 2018 study by the Center for Employment Equity analyzed 9,121 sexual orientation and gender identity employment discrimination complaints filed with the U.S. Equal Employment Opportunity Commission between 2013 and 2016 (Badgett, Baumle, & Boutcher, 2018). The study found that almost half of the complaints were filed by individuals in states without LGBT-inclusive non-discrimination laws (Badgett et al., 2018). The most common employment issue alleged by the complainants was termination (54%), followed by harassment (47%), terms and conditions (29%), discipline (15%), and sexual harassment (14%) (Badgett et al., 2018). Complaints filed by individuals in states without sexual orientation and gender identity non-discrimination laws were more likely to result in a benefit to the complainant than complaints filed in protective states (Badgett et al., 2018).

In addition, several recent studies conducted by the Williams Institute analyzed discrimination complaints filed with state agencies to measure how frequently sexual orientation and gender identity non-discrimination laws are used by LGBT people. The studies separately assessed discrimination filings in three areas: employment, housing, and public accommodations. The analyses indicate that LGBT people file complaints of sexual orientation and gender identity discrimination at similar rates to people of color filing race discrimination complaints and women filing sex discrimination complaints.

Two studies analyzing employment discrimination complaints found that, nationally, race, sex, and sexual orientation or gender identity discrimination complaints are filed at average rates of about 4 to 7 complaints per 10,000 workers per year (Mallory & Sears, 2015; Ramos, Badgett, & Sears, 2008). The most recent study, published in 2015, found that nationally, on average, 4.6 complaints of sexual orientation or gender identity discrimination were filed for every LGBT workers each year; 4.9 complaints of race discrimination were filed

for every 10,000 workers of color each year; and 3.7 complaints of sex discrimination were filed for every 10,000 female workers each year (Mallory & Sears, 2015). The older study, published in 2008, found similar filing rates (Ramos et al., 2008).

The studies analyzing housing and public accommodations discrimination complaints also found that, nationally, race, sex, and sexual orientation or gender identity discrimination complaints were filed at similar rates. However,, filing rates for all protected groups were much lower in the areas of housing and public accommodations compared to employment. The study analyzing housing discrimination complaints found that, on average, 3 complaints of sexual orientation or gender identity discrimination were filed for every 100,000 LGBT adults each year; 5 complaints of race discrimination were filed for every 100,000 adults of color each year; and 1 complaint of sex discrimination was filed for every 100,000 women each year (Mallory & Sears, 2016A). Similarly, the study analyzing public accommodations discrimination complaints found that, on average, 4 complaints of sexual orientation or gender identity discrimination were filed for every 100,000 LGBT adults each year; 3 complaints of race discrimination were filed for every 100,000 adults of color each year; and 1 complaint of sex discrimination was filed for every 100,000 women each year (Mallory & Sears, 2016B).

#### Other Documented Examples of Discrimination

Instances of discrimination against LGBT people have also been documented in complaints to community-based organizations, court cases, the media, and other sources. Recent examples include the following:

- In 2018, several ride-share customers reported being forced to exit vehicles or threatened by drivers due to their sexual orientation or gender identity, including a driver who ejected a young gay male couple in Indianapolis, a driver in California who threatened a transgender woman with physical harm if she did not get out of a moving car, and a driver in Chicago who pointed a gun at her two passengers and used a homophobic slur when forcing them out of her car (Alesia, 2018).
- In September 2017, an elementary school art teacher in Mansfield, Texas, was placed on administrative leave when a parent complained she was “promoting the ‘homosexual agenda.’ ” Stacey Bailey had shown her students a picture of herself with her wife and told a class that artist Jasper Johns had a male partner (Platoff, 2018).

- In September 2016, the U.S. Equal Employment Opportunity Commission filed a complaint against a restaurant group after an investigation found reasonable cause to believe that four gay employees at its Phoenix restaurant were subjected to “open and notorious” harassment based on their sexual orientation. Employees regularly used the term “faggot,” falsely reported that one of the gay male employees had AIDS when he called in sick, and used stereotypes such as a highly exaggerated feminine walk and limp wrist to mock gay men. One of the gay employees was threatened with a knife by another employee who said, “I don’t like homosexuals. . . . I don’t like the way you talk, I told you to stop talking” (Complaint, EEOC v. Royal Dining Group, 2016).
- In 2015, the president of the Jacksonville Area National Organization for Women stated that she had spoken with several LGBT residents who had been asked to leave Jacksonville, Florida, restaurants because of their sexual orientation or gender identity and with a lesbian couple that was asked to remove their preschool children from daycare because of their sexual orientation (Florida Times Union, 2015).
- In 2014, a gay couple reported to the media that they were asked to never return to a restaurant in Pittsburg, Texas, while they were paying for their meal. According to the men as well as the restaurant’s owner, the waitress told them, “We like men to act like men and for ladies to act like ladies,” and, “We just don’t like fags.” When a reporter asked the owner, the waitress’s father, what a man or a woman should act like, he responded, a man is “not supposed to act like a woman. He’s not supposed to come in here in a dress” (KTLV, 2014).
- In 2013, a registered nurse filed a lawsuit against her former employer, the University of Miami, alleging discrimination. According to the nurse, a co-worker consistently made negative comments about LGBT people including that “they should all be tied at the stake, set on fire and burn in hell.” The harassment escalated after the nurse filed a complaint with the human resources department, and the nurse continued to report the incidents to the hospital administrator and other supervisors. Shortly after expressing that she wanted to file another formal complaint, she was terminated (Candina v. University of Miami, 2015).
- In 2010, an auto body shop technician in Indiana brought a sexual harassment claim under Title VII against his employer. Although straight, he claimed that his coworkers made fun of him for being gay and used homophobic epithets against him, including “faggot” and “cocksucker.” They

also insinuated that he was a pedophile. The employee alleged that when he complained to his supervisor, the abuse became worse (Smith v. D. Young Chevrolet, 2012).

## Impact of Discrimination on LGBT People

Stigma and discrimination can result in negative outcomes for LGBT individuals, including economic instability and poor health. Specifically, research has found that gay men and transgender people experience wage gaps and has documented an association between lower earnings and lack of state-level protections from discrimination for LGBT people. Research also indicates that LGBT people, in general, are disproportionately poor, and that social climate and policy are linked determinants of poverty among LGBT communities. In addition, research has linked experiences of stigma and discrimination, as well as living in a state with unsupportive laws and social climate, to health disparities for LGBT people, including higher rates of mood and anxiety disorders, depression, attempted suicide, self-harm, and substance use.

### Economic Instability

#### Wage Gaps for LGBT People

Wage gap analysis has been used by economists to measure employment discrimination against women, people of color, and LGBT people. In a meta-analysis of 31 studies on sexual orientation wage gaps, Klawitter (2014) concluded that almost all studies found an earnings penalty for gay men, with an average of -11%. For lesbians, only a few studies found an earnings penalty as compared to heterosexual women and most found a significant earnings premium, even after controlling for many relevant factors (Klawitter, 2014). On average, the earnings premium for lesbians was +9% (Klawitter, 2014). Klawitter concluded that her analysis “shows evidence consistent with possible discrimination—an earnings penalty—for gay men, but not for lesbians” (2014, p. 21). However, it is important to keep in mind that most lesbians still earn less than most gay and heterosexual men because of the gender wage gap (Badgett & Schneebaum, 2015).

Klawitter (2014) posited several reasons to explain why gay men may face more discrimination in the workplace, including that straight men in the United States have less positive attitudes toward gay men than lesbians and that straight men are more likely to be in wage-determining senior positions than women. She also pointed to several studies suggesting that when gay men and

lesbians are more visible in the workplace, they have lower earnings (Klawitter, 2014). She also noted that other research reviews have found that lesbians who do not fit the norms for femininity have a harder time securing employment (Klawitter, 2014).

In addition, a recent study based on representative data from 35 states found that “transgender individuals have significantly lower employment rates, lower household incomes, higher poverty rates, and worse self-rated health than otherwise similar men who are not transgender” (Carpenter et al., 2019).

A growing body of research supports that, for many LGBT people who face discrimination along multiple axes of inequality, the resulting impact is greater than the sum of the parts. For example, a 2014 study found that the overall wage gap for men of color in same-sex couples was greater than what the sum of the race and sexual orientation wage gaps separately would have predicted. The gap was even more pronounced “in the bottom three quartiles of earnings, indicating that the magnifying negative interaction effects of minority race and sexual orientation status is most pronounced for lower-income workers” (Douglas & Steinberger, 2014, p. 100).

Research also indicates that non-discrimination laws help to close sexual orientation wage gaps. For example, a 2015 study found that the enactment of state level non-discrimination laws increased wages by 4.2% and employment by 2% for gay men (Burn, 2015). Similarly, two 2011 studies reported a significant impact of state non-discrimination laws on annual earnings and found that the laws were associated with a greater number of weeks worked for gay men—especially in private-sector jobs (Baumle & Poston, 2011; Klawitter, 2011). A 2009 study found that in states with a sexual orientation nondiscrimination law, men and women in same-sex couples had a wage premium (3% and 2%, respectively) over states without such a law, and they earned approximately 0.3% more for each year the policy was in effect (Gates, 2009).

### Poverty in the LGBT Community

LGBT people are disproportionately poor, and poverty is concentrated in certain subpopulations within the LGBT community, such as female same-sex couples, people of color, transgender people, young people, and the elderly (Badgett, Durso, & Schneebaum, 2013). For example, key findings from a 2013 study on poverty in the LGBT community include:

- Eight percent of lesbian couples live in poverty, compared to 6% of married differentsex couples.
- Over 20% of children of same-sex couples live in poverty, compared to 12% of children of married different-sex couples.
- African American same-sex couples have poverty rates more than twice that of married different-sex African American couples.
- Female same-sex couples who live in rural areas are much more likely to be poor (14%), compared to lesbian couples in large cities (5%). (Badgett et al., 2013).

Similarly, research on the issue of food insecurity in the LGBT community found that, in the year prior to the survey, more than one in four LGBT adults (27%) experienced a time when they did not have enough money to feed themselves or their family, and nearly half of LGB adults aged 18 to 44 who are raising children (46%) received food stamps (Brown, Romero, & Gates, 2016).

The 2015 U.S. Transgender Survey found that, nationally, nearly one-third of respondents were living at or near the federal poverty line, which is twice the rate of poverty in the U.S. general population (29% vs. 14%) (James et al., 2016). Transgender people of color were more likely to be living in poverty, with 43% of Latino/a, 43% of American Indian, 40% of multiracial, 38% of black, 34% of Middle Eastern, and 32% of Asian respondents reporting that they were living in poverty, compared to 24% of white transgender respondents (James et al., 2016).

In their study on poverty, Badgett et al. (2013) suggested that social climate and policy are linked determinants of LGB poverty:

LGB people who live in non-coastal regions of the U.S. or rural communities are more likely than those in urban and coastal regions to be in poverty. These geographic areas are more likely to have social climates that are less accepting of LGB identities, increasing the stress and discrimination that LGB people face. These locales may also be less likely to offer legal protections that would guard against major life events, such as job loss or health issues that often contribute to poverty. (p. 25)

Building from that thesis, a 2014 report by the Williams Institute linked greater socioeconomic disparities for LGBT people to region, a lack of legal protections, and a poor social climate (Hasenbush, Flores, Kastanis, Sears, & Gates, 2014).

The report found that LGBT Americans face greater social and economic disparities in states without statewide laws prohibiting sexual orientation discrimination and in regions with a poorer social climate and fewer legal protections (Hasenbush et al., 2014). For example, while same-sex couples with children face an income disadvantage when compared to their different-sex married counterparts in all states, that income gap widens from \$4,300 in the states with protective laws to \$11,000 in states that lack such laws (Hasenbush et al., 2014).

### Health Disparities

Experiences of discrimination and harassment, as well as living in a state with unsupportive laws and social climates, have been linked to health disparities for LGBT people. This connection has been recognized by the U.S. Department of Health and Human Services in *Healthy People 2010* and *Healthy People 2020* and the Institute of Medicine of the National Academies (Department of Health and Human Services, 2000; Department of Health and Human Services, 2010; Institute of Medicine, 2011). Research also suggests that antiLGBT laws and policies, stigmatizing campaigns around the passage of anti-LGBT policies, or negative media messaging that draws attention to unsupportive social climates may exacerbate these disparities.

The *minority stress model* suggests that unsupportive social climates, created by antiLGBT prejudice, stigma, and discrimination, expose LGBT individuals to excess stress, which, in turn, causes adverse health outcomes, resulting in health disparities for sexual minorities and transgender individuals compared with heterosexuals (Meyer, 2003). Research that has focused on mental and physical health outcomes of LGBT people supports the minority stress model (American Psychological Association, 2016). This research has demonstrated that both interpersonal experiences of stigma and discrimination, such as being fired from a job for being LGBT, and structural stigma, such as living in a state without LGBT-supportive laws, contribute to minority stress (Hatzenbuehler et al., 2013).

A number of studies have found evidence of links between minority stressors and negative mental health outcomes in LGB people, including a higher prevalence of psychiatric disorders, including depression and psychological distress, as well as loneliness, suicidal intention, deliberate self-harm, and low self-esteem (Huebner, Nemeroff, & Davis, 2005; Huebner, Rebchook, & Kegeles, 2004; McLaughlin, Hatzenbuehler, & Keyes, 2010; Meyer,

1995; Ramirez-Valles, Fergus, Reisen, Poppen, & Zea, 2005; Riggle, Rostosky, & Horne, 2009; Warner et al., 2004; Zakalik & Wei, 2006). Studies have also linked minority stress in LGB people to an increased prevalence of high-risk health-related behaviors, such as tobacco use, drug use, and alcohol disorders (Hatzenbuehler, McLaughlin, Keyes, & Hasin, 2010; Lehavot & Simoni, 2011; McCabe, Bostwick, Highes, West, & Boyd, 2010; Weber, 2008).

For example, a 2016 study by the American Psychological Association based on a nationally representative sample linked experiences of discrimination to increased stress and poorer health for LGBT people (American Psychological Association, 2016). The study found that LGBT adults reported higher average levels of perceived stress (6.0 vs. 5.0 on a 10-point scale) and were more likely to report extreme levels of stress (39% vs. 23%) in the prior 30 days than adults who were non-LGBT (American Psychological Association, 2016). Job stability was a current source of stress for 57% of LGBT adults compared to 36% of non-LGBT adults (American Psychological Association, 2016). The study also found that many LGBT respondents had experienced discrimination. Twenty-three percent of the LGBT adults reported that they had ever been unfairly stopped, searched, questioned, physically threatened or abused by the police; 24% reported being unfairly discouraged by a teacher or advisor to continue their education; and 33% reported being unfairly not hired for a job (American Psychological Association, 2016).

Studies have also linked a lack of legal protections and a poor social climate at the state level to health disparities for LGBT people. For example, in a 2009 study, Hatzenbuehler, Keyes, and Hasin found that an unsupportive state-level legal landscape for LGB people was associated with “higher rates of psychiatric disorders across the diagnostic spectrum, including any mood, anxiety, and substance use disorder” in the LGB population than found in LGB populations in states with more supportive laws (p. 2277). A 2010 study by the same authors found that rates of anxiety, mood disorders, and alcohol use disorder increased significantly for LGB respondents after their state passed a constitutional ban on marriage for same-sex couples, and rates were unchanged in states that did not pass bans (Hatzenbuehler, Keyes, and Hasin, 2010). The authors concluded that their “findings provide the strongest empirical evidence to date that living in states with discriminatory laws may serve as a risk factor for psychiatric morbidity in LGB populations” (Hatzenbuehler, Keyes, & Hasin, 2013, p. 456). Drawing on these findings and prior research, Hatzenbuehler (2016) concluded that “the recent laws that have been passed [anti-LGBT laws in North Carolina and Mississippi], as well the prejudicial attitudes that underlie them, are likely



to have negative consequences for the mental and physical health of LGBT populations.”

Similarly, researchers who used 2011 North Carolina Behavioral Risk Factor Surveillance System data to study health disparities between LGB and non-LGB people in the state noted that the poor legal and social environment for LGB people in the South may exacerbate the disparities:

Of additional concern is that many Southeastern states have failed to incorporate sexual minorities into existing laws (e.g., employment nondiscrimination) or have adopted new anti-LGB policies (e.g., prohibiting legal recognition of same-sex relationships), both of which may create and exacerbate unhealthy social environments for LGB populations, even as evidence of the health impact of local and state policies on LGB health grows. This context may yield health profiles different from New England and the Pacific Northwest, areas that currently have a greater number of policies in place that support LGB and transgender rights.

(Matthews & Lee, 2014, p. e99)

Additionally, research indicates that laws or policies restricting bathroom access for transgender people can negatively impact their health and can put them in danger of verbal and physical harassment. For example, a 2008 survey of transgender and gender nonconforming people in Washington, DC found that 54% of respondents had experienced a physical health problem from trying to avoid public bathrooms, including dehydration, urinary tract infections, kidney infections, and other kidney-related problems (Herman, 2013). Further, 58% of the respondents reported that they “avoided going out in public due to a lack of safe restroom facilities,” 68% reported that they had been verbally harassed in a restroom, and 9% reported that they had been physically assaulted in a restroom (Herman, 2013, p. 76).

While research provides strong support for direct links between anti-LGBT policies or unsupportive environments and negative health outcomes, there may be other related factors that could contribute to the magnitude of observed disparities. For example, researchers have noted that healthier and better-resourced LGBT people may be able to move to more supportive climates than LGBT peers in worse health, which would heighten observed disparities in less accepting places (Hatzenbuehler et al., 2010). Nonetheless, the research indicates that minority stress factors, including a lack of legal

protections, discrimination, and a poor social climate, likely contribute to LGBT health disparities in the United States.

## Public Opinion and Factors That Influence Adoption of Non-Discrimination Policies

Public opinion data in the United States show increasing support for LGBT rights over the past several decades (Flores, 2014). Gallup has specifically tracked attitudes on protections for gay and lesbian people in the workplace for over 50 years. The polls show consistent majority support—even in 1977, 56% of respondents agreed that gay and lesbian people should have equal rights in terms of job opportunities—and that support is increasing over time—89% of respondents agreed with that same statement in 2008 (Flores, 2014). Gallup polls that have specifically asked whether people believe that there should be laws to protect gay and lesbian people from workplace discrimination also find majority support. In 1983, 52% of respondents agreed that legal protections should be in place, and support had increased to 72% in 2013 (Flores, 2014). Few polls have asked about support for transgender workers, but those that have also find that a majority of respondents are in favor of extending non-discrimination protections to include gender identity and that support is increasing over time. For example, a 2011 PRRI poll found that 81% of respondents agreed that legal protections that apply to gay and lesbian people should also apply to transgender people, and 75% agreed that Congress should pass laws to protect transgender people from job discrimination (Flores, 2014; Taylor, Lewis, & Haider-Markel, 2018).

Research has found that public opinion on LGBT rights can influence the adoption of LGBT-supportive laws and policies. In two studies examining policy responsiveness to support for LGBT rights (including non-discrimination laws, marriage, adoption, and other rights), Lax and Phillips (2009, 2012) found that LGBT policies are responsive to public opinion even when controlling for other factors, such as voter ideology and ideology of elected officials. The authors concluded that public opinion on specific policies often “has the largest substantive impact on policy” (p. 164). Similarly when examining the relationship between public opinion and transgender-supportive policy, Flores, Herman, and Mallory (2015) concluded that “[t]he estimates of public opinion on transgender inclusion in non-discrimination laws significantly predict the probability that a policy is in place. On its own, support for the policy explains

over half of the variation in the adoption of the policies, and 90% of the cases are correctly predicted” (p. 4).

Nonetheless, studies suggest that majority support for LGBT rights does not necessarily translate into LGBT-supportive policies. Lax and Phillips (2009) concluded that policy responsiveness and congruence varied across the LGBT issues they studied and, on some less salient issues including non-discrimination laws, “even clear supermajority support seems insufficient for policy adoption” (p. 383). Flores et al. (2015) found majority support for transgender-inclusive workplace protections in every state but in only 18 states with gender identity non-discrimination laws in place. The authors concluded that 81% support is required before a state is likely to adopt a transgender-inclusive non-discrimination law.

Research has also found that a number of other factors influence the adoption of statelevel LGBT-supportive laws. For example, Lax and Phillips (2012) found that institutional features, such as legislative professionalization and term limits for legislators, have a positive effect on responsiveness and congruence. They also found that interest groups can have an impact on policies, though they note that because there are generally interests groups on both sides of an issue, the net impact of interests groups is small. Additionally, Flores et al. (2015) found that the party composition of legislatures can influence the adoption of LGBT-supportive policies: “[a]s legislatures become more strongly democratic, it is more likely transgender-inclusive non-discrimination laws are consistent with majority opinion” (p. 5).

The spread of non-discrimination protections for LGBT people is also due in part to successful litigation strategies. Lambda Legal sought to replicate the successes gained by the civil rights movement through litigation and became the leading organization involved in LGBT rights cases in the 1970s (Haider-Markel & Meier, 1996, 2003). Since then, Lambda and other legal organizations, such as the ACLU and the National Center for Lesbian Rights, have significantly changed the landscape of LGBT rights through the courts. Successes gained by the LGBT movement through litigation include the spread of marriage equality and expansion of existing sex non-discrimination laws to protect LGBT people (Andersen, 2017).

Together, these factors have led to the adoption of a number of federal, state, and local policies in the United States that protect LGBT people from discrimination based on their sexual orientation or gender identity. However, there remains an incomplete patchwork of protections across the country

because federal non-discrimination statutes do not explicitly prohibit discrimination based on these characteristics.

## U.S. Laws and Policies That Prohibit Discrimination Based on Sexual Orientation and Gender Identity

Despite the pervasiveness of discrimination against LGBT people and growing public support for sexual orientation—and gender identity—inclusive non-discrimination laws, in most states and at the federal level there are no explicit statutory protections from such discrimination in employment, housing, public accommodations, and other areas. Federal statutes do not explicitly protect LGBT people in areas where other civil rights protections exist, including employment, housing, public accommodations, education, credit, and jury service; and most states do not include sexual orientation or gender identity as protected characteristics in their state non-discrimination statutes. In some states without comprehensive non-discrimination statutes in place, state executive branch actors have expanded non-discrimination protections to cover LGBT people under their executive or agency powers. In addition, local government ordinances provide another source of protection from discrimination; however, these laws are generally unenforceable in court and provide much more limited remedies than statewide non-discrimination statutes.

### Federal Law

#### Sexual Orientation and Gender Identity Protections

There are no federal statutes explicitly prohibiting discrimination on the basis of sexual orientation and gender identity in employment, housing, public accommodations, education, or jury service. However, there are presidential executive orders that prohibit employment discrimination against federal civil service employees and the employees of federal contractors and subcontractors.<sup>1</sup> Approximately 2% of the U.S. workforce is employed by the federal government, and approximately 20% are employed by federal contractors (Sears, Hunter, & Mallory, 2009). In addition, several U.S. federal agencies prohibit discrimination in programs and services either conducted by or funded by the agency (Equal Access to Housing in HUD, 2012; U.S. Department of Justice, 2017). All of these protections are subject to being reversed by a decision of the current or subsequent president of the United States and his or her administration.

## Sex Discrimination Protections

Although federal statutes do not explicitly prohibit discrimination based on sexual orientation or gender identity, more federal courts and the U.S. Equal Employment Opportunity Commission are beginning to recognize sexual orientation and gender identity discrimination as forms of sex discrimination, which is prohibited by federal statutes. Currently, the Seventh and Second Circuit Courts of Appeals have held that sexual orientation discrimination is prohibited under Title VII of the Civil Rights Act of 1964 as a form of sex discrimination (*Hively v. Ivy Tech Community College*, 2017; *Zarda v. Altitude Express*, 2018). These decisions bring federal non-discrimination protections to people in Illinois,

Indiana, Wisconsin, Connecticut, New York, and Vermont. In addition, the First, Sixth, Seventh, Ninth, and Eleventh Circuit Courts of Appeals have held that gender identity discrimination is a form of sex discrimination prohibited by Title VII, Title IX of the Education Amendments of 1972, or the Equal Protection Clause of the U.S. Constitution (*E.E.O.C. v. R.G. & G.R. Harris Funeral Homes*, 2018; *Barnes v. City of Cincinnati*, 2005; *Glenn v. Brumby*, 2011; *Kastl v. Maricopa Community College School District*, 2009; *Rosa v. Park W. Bank & Trust*, 2000; *Smith v. City of Salem*, 2004; *Whitaker v. Kenosha Unified School District*, 2017). These decisions bring federal non-discrimination protections to people in Maine, New Hampshire, Massachusetts, Rhode Island, Kentucky, Michigan, Tennessee, Illinois, Indiana, Wisconsin, Alabama, Georgia, Florida, Arizona, California, Idaho, Nevada, Montana, Oregon, and Washington. Several federal district courts have issued similar decisions (*E.E.O.C. v. R.G. & G.R.*, 2018; *Fabian v. Hops. of Central Connecticut*, 2016; *Mickens v. General Electric*, 2016; *Dawson v. H&H Elec.*, 2015; *Schroer v. Billington*, 2008).

In finding protections for LGBT people under federal sex non-discrimination laws, most courts have relied on the U.S. Supreme Court's reasoning in *Price Waterhouse v. Hopkins* (1989). In *Price Waterhouse*, the Supreme Court held that Title VII's sex non-discrimination provisions prohibit employers from making decisions based on stereotypes about how men and women should look or behave. This reasoning encompasses discrimination faced by LGBT people, courts have since held, because such discrimination is linked to perceptions about how people of different genders should act, walk, talk, and dress. As the Eleventh Circuit explained, for example, "A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes." (*Glenn v. Brumby*, 2011, p. 1316). And, in the context of sexual orientation discrimination, the Seventh Circuit explained that the lesbian plaintiff "represents the ultimate case of failure to conform to the female

stereotype . . . she is not heterosexual.” (*Hively v. Ivy Tech Community College*, 2017, p. 346). The Supreme Court also recognized in *Oncale v. Sundowner Offshore Services* (1998) that same-sex sexual harassment constitutes discrimination based on sex, though it did not hold that discrimination motivated by an individual’s sexual orientation or gender identity constitutes discrimination because of sex. Prior to the Court’s decisions in *Price Waterhouse* and *Oncale*, federal courts uniformly refused to interpret sex non-discrimination provisions to prohibit discrimination based on sexual orientation and gender identity (Harrison, 2018, pp. 108-109).

Recently, some courts have also identified a more direct connection between sex discrimination and discrimination based on sexual orientation or gender identity. For example, in a case involving sexual orientation discrimination, the Second Circuit stated, “Because one cannot fully define a person’s sexual orientation without identifying his or her sex, sexual orientation is a function of sex. . . . Logically, because sexual orientation is a function of sex and sex is a protected characteristic under Title VII, it follows that sexual orientation is also protected” (*Zarda v. Altitude Express*, 2018). And, when deciding a case brought by a transgender plaintiff, the U.S. District Court for the District of D.C. stated, “The evidence establishes that the [defendant] was enthusiastic about hiring David Schroer—until she disclosed her transsexuality. The [defendant] revoked the offer when it learned that a man named David intended to become, legally, culturally, and physically, a woman named Diane. This was discrimination because . . . of sex” (*Schroer v. Billington*, 2008). These cases represent a trend toward federal courts broadly interpreting sex nondiscrimination laws to prohibit discrimination against LGBT people.

However, some federal courts remain reluctant to interpret sex non-discrimination provisions to cover discrimination based on sexual orientation and gender identity. For example, in 2017, the Eleventh Circuit Court of Appeals decided in *Evans v. Georgia Regional Hospital* (2017) that Title VII does not prohibit discrimination based on sexual orientation, following its earlier decision in *Blum v. Gulf Oil Corporation* (1979). And, in 2007, the Tenth Circuit held in *Etsitty v. Utah Transit Authority* (2007) that discrimination based on gender identity did not constitute a form of discrimination based on sex. These courts have reasoned that sexual orientation and gender identity are not forms of sex discrimination because the plain meaning of the term “sex” refers to biological differences between men and women and is distinct from the meanings of the terms “sexual orientation” and “gender identity” and because Congress did not intend to prohibit discrimination based on sexual orientation

or gender identity when it enacted federal laws that prohibit discrimination based on sex.

In addition to decisions by federal courts, the federal agency that enforces federal statutes that prohibit discrimination in employment, the U.S. Equal Employment Opportunity Commission (EEOC), interprets Title VII's sex non-discrimination provisions to prohibit discrimination based on sexual orientation and gender identity. As such, the agency accepts and enforces complaints alleging sexual orientation and gender identity discrimination (U.S. EEOC). This provides an administrative enforcement mechanism for discrimination in employment available to LGBT people in all 50 states. As noted above, a 2018 study by the Center for Employment Equity identified over 9,000 sexual orientation and gender identity employment discrimination complaints filed with the EEOC between 2013 and 2016 (Badgett et al., 2018).

## State Non-Discrimination Statutes

### Sexual Orientation and Gender Identity Protections

As of June 2018, 22 states and the District of Columbia have enacted statutes that prohibit discrimination based on sexual orientation and/or gender identity in employment and other areas. However, these statutes vary in terms of the scope of protections they offer.

Twenty states and the District of Columbia have enacted comprehensive non-discrimination statutes that prohibit discrimination based on sexual orientation and gender identity in employment, housing, and public accommodations. These states are California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New York, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington.<sup>2</sup> Some of these states also prohibit discrimination in other areas. For example, 12 of these states and Washington, D.C. have statutes that specifically prohibit discrimination based on sexual orientation and gender identity in the extension of credit: Colorado, Connecticut, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, New York, Rhode Island, Vermont, and Washington.<sup>3</sup> And 12 of these states and Washington, D.C. also have statutes specifically prohibiting discrimination based on sexual orientation and gender identity in education: California, Connecticut, Illinois, Iowa, Maine, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Washington.<sup>4</sup>

In addition to the 20 states with comprehensive non-discrimination laws, some states have more limited statutory protections from discrimination. State statutes in Wisconsin prohibit discrimination based on sexual orientation in employment, housing, and public accommodations but do not prohibit discrimination based on gender identity.<sup>5</sup> And Utah's non-discrimination law prohibits discrimination based on sexual orientation and gender identity in housing and employment but not in public accommodations or other areas.<sup>6</sup>

### Sex Discrimination Protections

Even in states without statutes that explicitly prohibit sexual orientation and gender identity discrimination, state administrative agencies and courts could follow the EEOC and federal court decisions described above and protect LGBT people under state statutes that prohibit sex discrimination. In some states without explicit statutory protections from discrimination, or with more limited statutory protections, state administrative agencies have expanded non-discrimination protections to cover LGBT people under their executive or agency powers.

In three states, Michigan, Montana, and Pennsylvania, state administrative agencies have interpreted their state's sex non-discrimination laws to also prohibit discrimination based on sexual orientation and/or gender identity. The non-discrimination laws in these three states prohibit discrimination in employment, housing, and public accommodations and other areas.<sup>7</sup> Thus, the interpretive guidance documents effectively extend broad administrative protections from discrimination to LGBT people in Montana, Michigan, and Pennsylvania.

In 2018, the Michigan Civil Rights Commission issued guidance stating that the Commission would interpret the sex non-discrimination provisions in Michigan's statewide nondiscrimination law, the Elliot-Larsen Civil Rights Act, to include discrimination based on sexual orientation and gender identity (Michigan Department of Civil Rights, 2018). The Michigan Civil Rights Commission is authorized to enforce complaints and award the same remedies available through a court action, including injunctive relief, compensatory damages such as back pay or for emotional distress, and attorney's fees.<sup>8</sup>

After Republican state legislators called upon the state's attorney general, Bill Schuette, to reverse the statement (Gray, 2018), he issued an opinion stating that the Commission had overstepped its authority because "it is not the role of the Civil Rights Commission to 'update' a statute" and "under Michigan law, the mechanism for evolution of statutory law is legislation" (Michigan Attorney



General Opinion, 2018). Because the Civil Rights Commission's language is "contrary to ELCRA's plain language," Schuette argued, it is invalid (Michigan Attorney General Opinion, 2018). However, the state has since elected a new attorney general who is supportive of LGBT rights and is reviewing the former's attorney general's position on the state non-discrimination law (Howard, 2019; Osorio, 2019). The Civil Rights Commission has also said that it will continue to stand by its interpretation. At least one conservative legal group is planning to challenge the interpretation in court (Pluta, 2018).

Similarly, the Pennsylvania Human Relations Commission issued guidance in 2018 interpreting the sex non-discrimination provisions of the Pennsylvania Human Relations Act to also prohibit discrimination based on sexual orientation and gender identity (Pennsylvania Human Relations Committee, 2018). The Pennsylvania Human Relations Commission is authorized to enforce the law and may order appropriate relief if it finds that unlawful discrimination occurred.<sup>9</sup>

In addition, the Montana Human Rights Bureau has stated that in light of guidance issued by the U.S. Equal Employment Opportunity Commission, it interprets Montana's sex nondiscrimination laws to prohibit discrimination based on sexual orientation and gender identity. The Montana Human Rights Bureau also has the power to accept and enforce complaints and may award the same remedies as a court, with the exception of attorney's fees (Montana Department of Labor and Industry, N.D.). In Montana, a prevailing party must bring a separate civil action for attorney's fees, but otherwise remedies are the same as those available through a court.<sup>10</sup>

Finally, while not officially interpreting the state's non-discrimination statute to prohibit discrimination based on sexual orientation or gender identity, the Ohio Civil Rights Commission provides some resources to individuals who have experienced such discrimination. On its website, the Commission states that courts have found viable sexual orientation and gender identity discrimination claims on the theory that such discrimination is rooted in impermissible sex stereotypes and notes that state government employees are protected from sexual orientation and gender identity discrimination through an executive order (Ohio Civil Rights Commission, 2018). The Commission therefore provides guidance for anyone who may want to file a claim of sexual orientation or gender identity discrimination, stating that it will "take all reasonable steps to determine whether the Commission has jurisdiction to investigate a complaint .

. . [or] take all necessary action to transfer a case or provide other resources or support” (Ohio Civil Rights Commission, 2018).

In addition, many courts interpret state laws consistent with federal courts’ interpretations of analogous federal laws, or at least consider such interpretations to be persuasive (*Arismendez v. Nightingale Home Health Center*, 2007; *La Day v. Catalyst*, 2002; *Payne v. WS Services*, 2016). Some courts have specifically indicated that they will interpret state sex non-discrimination laws to prohibit sexual orientation and gender identity discrimination to the same extent as similar federal laws (*Arnold v. Heartland Dental*, 2015; *Carpenter v. UnitedHealth Group*, 2017; *Carr v. Humble Independent School District*, 2018; *Lampley v. Missouri Commission on Human Rights*, 2017; *Vollmar v. SPS Techs.*, 2016). For example, in *Carr v. Humble Independent School District* (2018), a federal district court in Texas stated that a sexual orientation employment discrimination claim would be analyzed the same under the state’s employment non-discrimination law and Title VII (*Carr v. Humble Independent School District*, 2018).

Other courts, though, have remained unwilling to decide that discrimination based on sexual orientation or gender identity are forms of actionable sex discrimination under state law. For example, a district court in Florida rejected a claim of sex discrimination under both Title VII and the Florida Civil Rights Act, stating that the plaintiff failed to allege discriminatory treatment based on sex stereotypes and was in fact claiming to have been discriminated against based on sexual orientation—a form of discrimination not expressly prohibited by the laws (*Candina v. University of Miami*, 2015). Further, in some areas, even a clear ruling in a federal court of appeals would be unlikely to affect interpretation of state law. In Tennessee, for example, the state non-discrimination statute defines “sex” as only “the designation of an individual person as male or female as indicated on the individual’s birth certificate.”<sup>11</sup> Given this language, courts would not likely interpret the law to prohibit discrimination based on sexual orientation even under a sex stereotyping theory, and, since the state refuses to alter the birth certificates of transgender people,<sup>12</sup> courts would most likely also reject most, if not all, gender identity discrimination claims.

### State Executive Orders

Gubernatorial executive orders offer a limited source of protection for LGBT workers in some states without sexual orientation—and gender identity—inclusive non-discrimination statutes. In 12 states without explicit statutory

protections from discrimination based on sexual orientation or gender identity, governors have issued such executive orders that protect LGBT people from discrimination. These states are: Alaska, Arizona, Indiana, Kansas, Kentucky, Michigan, Missouri, Montana, North Carolina, Ohio, Pennsylvania, and Virginia.<sup>13</sup> The executive orders vary in terms of the scope of protections they offer. Executive orders in Alaska, Arizona, Missouri, and Ohio prohibit discrimination based on sexual orientation but do not include gender identity. Both sexual orientation and gender identity are included as protected characteristics in the other eight states' executive orders (Indiana, Kansas, Kentucky, Michigan, Montana, North Carolina, Pennsylvania, and Virginia). Additionally, executive orders in seven of the states only protect state government employees from discrimination (Alaska, Arizona, Indiana, Kentucky, Michigan, Missouri, and Ohio). In the other five states, the executive orders further extend protections from discrimination to employees of state government contractors (Kansas, Montana, North Carolina, Pennsylvania, and Virginia). In addition, nine states that have statutes that explicitly prohibit discrimination based on sexual orientation and gender identity also have gubernatorial executive orders that prohibit discrimination against executive branch employees and/or state government contractors based on these characteristics: California, Delaware, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Washington, and Wisconsin.<sup>14</sup> Although the orders in these states are important symbolically, they do not offer protections to employees that are not otherwise provided by statutes in these states, with the exception of Wisconsin's order, which protects transgender executive branch employees.

Although executive orders are an important source of protection for LGBT people in states without inclusive non-discrimination statutes, the orders often lack meaningful enforcement mechanisms and are often temporary. Ten of the 12 executive orders protecting LGBT employees are unenforceable in court or through an administrative agency. Only Ohio's executive order expressly provides that the order can be enforced by the Equality Opportunity Division of the Ohio Department of Administrative Services, the Ohio Civil Rights Commission, or the U.S. EEOC. In the remaining 11 states, the executive orders are enforced by individual agencies and departments, and the corrective action they may take is often unclear. For example, Michigan's executive order provides that state officials may take "appropriate corrective and remedial action" if a violation occurs, and Arizona's executive order states that violations "shall be a cause for discipline, up to and including termination." Further, few of the orders require administrators to report on their programs, and those that do generally do not specify reporting requirements, instead leaving a great

deal of discretion to administrators. For example, Indiana's executive order directs administrators to "develop and maintain . . . reports," and Pennsylvania's executive order requires "periodic on-site reviews and audits." Finally, only four states require employee and management training, and only Alaska provides for customer-service training for employees who work with the public.

In addition to lacking enforcement mechanisms and remedies comparable to state nondiscrimination laws, executive orders are also less stable than statutes and can expire or be rescinded by a new administration. For example, in 2007, Kansas Governor Kathleen Sebelius issued an executive order protecting state government employees from discrimination based on sexual orientation and gender identity, but the order was rescinded by Governor Sam Bownback when he took office in 2015 (Wilson, 2015). Ohio's current order is set to expire at the end of Governor Mike DeWine's time in office, and a new governor would have to reissue the order for the protections to remain in place.<sup>15</sup> Executive orders are also vulnerable to judicial invalidation (*Louisiana Dep't of Justice v. Edwards*, 2017).

### Local Ordinances

More than 200 municipalities have enacted local ordinances that prohibit discrimination based on sexual orientation and gender identity (Pizer, Sears, Mallory, & Hunter, 2012). Many of these municipalities are in states without state-level non-discrimination protections for LGBT people (Movement Advancement Project, Local Non-Discrimination Ordinances). While these ordinances are symbolically important for LGBT people, they offer much weaker protections than state non-discrimination statutes. Several academic studies indicate that local sexual orientation and gender identity non-discrimination ordinances are often not fully implemented, lack meaningful enforcement mechanisms, and provide limited remedies (Colvin, 2007; Riccucci & Gossett, 1996; Rubenstein, 2001). Even where the ordinances include enforcement mechanisms, local administrative agencies often lack the resources and knowledge required to fully enforce them (Riccucci & Gossett, 1996).

In addition, in some states, state laws and constitutional provisions limit local governments' authority to enact non-discrimination ordinances. For example, state statutes in Arkansas<sup>16</sup> and Tennessee<sup>17</sup> prohibit local governments from enacting non-discrimination ordinances that are broader than the states' non-discrimination laws. Because non-discrimination laws in those states do not prohibit discrimination based on sexual orientation or gender identity, localities

may not prohibit such discrimination by ordinance. And in other states such as Virginia, state statutes grant only very limited, specific powers to local governments, which could preclude them from enacting their own non-discrimination ordinances and other LGBT-supportive policies (Gossett, 1999). If localities in these states attempt to pass LGBT-supportive policies, they are at risk of being challenged in court by the state (Gossett, 1999).

## Religious Exemptions

Non-discrimination protections for LGBT people may be undermined by state laws and constitutional provisions that allow religiously affiliated organizations or individual religious adherents to discriminate based on their religious or moral beliefs. These statutes and constitutional provisions appear in several forms. First, some state non-discrimination laws exempt religiously affiliated organizations from having to comply with the law generally or, in some instances, with the sexual orientation and gender identity non-discrimination requirements specifically. Second, some states have enacted laws that allow religious adherents, whether or not they are affiliated with a religious organization, to refuse to provide certain services based on religious objection. Third, some states have enacted religious freedom laws that restrict the state from burdening individuals' religious exercise. And fourth, some state constitutions provide protections for religious freedom similar to protections offered by the U.S. Constitution. Religious organizations and individuals have increasingly relied on these various provisions to argue that they may lawfully discriminate against LGBT people (Elane Photography v. Willock, 2013; Gifford v.

McCarthy, 2016; Klein v. Oregon Bureau of Labor and Industries, 2017; Washington v. Arlene's Flowers, 2017). In all of the cases decided to date, courts have held that federal and state constitutional free exercise protections do not exempt those providing goods or services to the public from having to comply with non-discrimination laws.<sup>18</sup>

## Exemptions to Non-Discrimination Laws for Religious Organizations

A number of state non-discrimination statutes include carve-outs for religiously affiliated organizations, meaning that religious organizations, as defined by the statute, are not required to comply with non-discrimination requirements that apply to other employers, landlords, public accommodations, and any others bound by the laws (Sears et al., 2009). Some of these state laws exempt religiously affiliated organizations from complying with the non-discrimination laws generally. For example, New Hampshire's non-discrimination statute does

not apply to any employer that is a “religious association or corporation, if such . . . association or corporation is not organized for private profit.”<sup>19</sup> Similarly, New York’s public accommodations law states that “a corporation incorporated under the benevolent orders law or described in the benevolent orders law but formed under any other law of this state or a religious corporation incorporated under the education law or the religious corporations law shall be deemed in its nature distinctly private” and therefore exempt from the public accommodations law.<sup>20</sup>

Other state laws specifically exempt religiously affiliated organizations from having to comply with the sexual orientation and gender identity non-discrimination requirements but do not exempt the organizations from having to comply with other requirements, such as those prohibiting race or disability discrimination. For example, Delaware’s non-discrimination law, in defining the employers to which the law applies, states that

the term “employer” with respect to discriminatory practices based upon sexual orientation does not include religious corporations, associations or societies whether supported, in whole or in part, by government appropriations, except where the duties of the employment or employment opportunity pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation.<sup>21</sup>

### Religious Exemption Laws Allowing Religious Adherents to Refuse to Provide Certain Services

Several states have enacted laws that allow service providers or employers, regardless of whether they are religiously affiliated organizations, to refuse to provide certain services or employment based on religious or moral objection. Currently, 13 states have one or more of these types of laws. Specifically, 10 states have laws that allow child welfare agencies to refuse to serve children or families based on their religious beliefs;<sup>22</sup> four states have laws that allowed medical professionals to refuse to provide care based on religious beliefs;<sup>23</sup> three states have laws that allowed government officials to refuse to perform marriages based on religious beliefs;<sup>24</sup> and one state has a broad law that allowed individuals and private businesses to discriminate against LGBT people based on religious beliefs in a range of settings including employment, housing, and public accommodations.<sup>25</sup>

## State Religious Freedom Laws

Since the 1990s, states have been enacting their own laws modeled after the federal Religious Freedom Restoration Act. These laws, often referred to as RFRA, provide that states may not substantially burden an individual's religious exercise unless the state is using the least restrictive means to further a compelling government interest.<sup>26</sup> Thus, these laws do not act as a complete exemption to the laws like the statutes described above, but rather require courts to consider both the burden on the religious individual of having to comply with the non-discrimination law and the strength of the government's interest in prohibiting discrimination. Currently, 21 states have religious freedom laws modeled after the federal RFRA (National Conference of State Legislatures, 2017).

## Statute Constitutional Free Exercise Protections

State constitutions, like the federal constitution, also provide protections from government actions that burden religious freedom. The free exercise clauses of many state constitutions provide more limited protections for religious exercise than state and federal RFRA and other state religious exemption laws. In *Employment Division v. Smith* (1990), the U.S. Supreme Court held that the federal Free Exercise Clause does not shield religious objectors from laws that are neutral toward religion and generally applicable, even if they have a restrictive effect on religious conduct. Many state constitutional free exercise clauses have been interpreted to offer the same scope of protection as the federal Free Exercise Clause consistent with the Court's decision in *Smith* (Parsell, 1993). However, some state constitutional free exercise clauses have been interpreted to offer stronger protections for religious objectors. In these states, courts have applied constitutional free exercise protections much like a RFRA—requiring the state to show that it has used the least restrictive means to further a compelling government interest if it has placed a substantial burden on religious exercise (Parsell, 1993).

## The Future of State Non-Discrimination Laws

### Non-Discrimination Bills

Though state legislators frequently introduce bills that would expand their states' nondiscrimination laws to include sexual orientation and gender identity, few of these bills have passed in recent years. In 2018, New Hampshire added protections from gender identity discrimination to its existing non-discrimination laws, which already included sexual orientation.<sup>27</sup>

Massachusetts added gender identity to its public accommodations nondiscrimination law, which also already included sexual orientation, in 2016.<sup>28</sup> In 2015, Utah added protections from both sexual orientation and gender identity to its existing employment and housing non-discrimination laws.<sup>29</sup> Before then, Delaware had been the most recent state to add both characteristics to its non-discrimination laws in 2009.<sup>30</sup>

Similar legislative efforts to add sexual orientation and gender identity protections have failed in most other states without inclusive laws. For example, in the 2017–2018 state legislative sessions, 44 bills to expand non-discrimination protections to include LGBT people were introduced in 18 states (ACLU, 2018). Only New Hampshire’s bill became law.<sup>31</sup> None of the other bills made it to a full vote in a legislative house (ACLU, 2018). Despite slow progress, however, the large number of bills introduced indicates that state legislators across the country will continue to push for expanding non-discrimination laws to protect LGBT people.

### Religious Exemption Bills

State legislatures are also increasingly considering religious exemption bills, which can negatively impact LGBT people seeking employment, housing, or goods and services. As described above, these bills can take several forms. Most recently, states have passed bills that allow religious adherents to discriminate based on religious beliefs in specific areas, such as child welfare or provision of marriage-related services. Like recent efforts to expand non-discrimination protections, most recent legislative efforts to create religious exemptions have failed (ACLU, 2018). For example, 15 religious exemption bills were introduced in the 2017–2018 state legislative sessions, and 3 were passed into law (ACLU, 2018). Kansas, Oklahoma, and South Carolina enacted laws that allow child welfare agencies to refuse to serve children or families based on their religious beliefs.<sup>32</sup> The increasingly frequent introduction of religious exemption bills signals that legislatures will continue to grapple with these proposals as they also consider expanding non-discrimination protections for LGBT people.

### Legal Challenges

Sexual orientation and gender identity non-discrimination laws will likely continue to face legal challenges brought under federal and state constitutions. In 2018, the U.S. Supreme Court decided *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (2018), in which a baker refused to design a cake to



celebrate a same-sex couple's wedding celebration, claiming that he was entitled to an exemption from Colorado's public accommodations law due to his religious belief that marriage should only be between one man and one woman (*Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 2018). He brought both a religious freedom claim and a freedom of speech claim, arguing that a state law requiring him to design and bake a cake for a same-sex marriage violated these constitutional rights (*Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 2018). While lower courts all found for the plaintiff couple, the U.S. Supreme Court overturned those rulings (*Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 2018). The Court held in favor of the baker on the grounds that statements made by Colorado Civil Rights Commission during administrative proceedings showed animus toward religion (*Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 2018). The Court did not ultimately decide whether the First Amendment requires exemptions to non-discrimination laws for religious adherents. Given that similar cases are currently being litigated in other states, the Court will likely address this issue within the next few years (Sherman, 2018).

## Conclusion

In the absence of federal legislation prohibiting sexual orientation and gender identity discrimination in employment, housing, and public accommodations, state-level legal protections are particularly important for LGBT people. In 2018, most states still lacked LGBT-inclusive non-discrimination statutes and other local or administrative protections varied across the country, creating a patchwork of uneven laws prohibiting discrimination against LGBT people. Even where non-discrimination protections exist, religious adherents have relied on state and constitutional provisions to argue that they should be allowed to discriminate against LGBT people despite protective laws. Continued efforts are required at both the state and federal levels to ensure that LGBT people are fully protected from discrimination based on their sexual orientation and gender identity throughout the United States.

## References

ACLU. (2018). *Legislation affecting LGBT rights across the country*.

Alesia, M. (2018, May 18). Lyft driver in Indianapolis orders gay couple out of his car after they kiss. *Indy Star*.

American Psychological Association. (2016). *Stress in America: The impact of discrimination. Stress in America™ Survey*.

Andersen, E. (2017). Transformative events in the LGBTQ rights movement. *Indiana Journal of Law and Social Equality*, 5(2), 441-475.

*Arismendez v. Nightingale Home Health Ctr.*, 493 F.3d 602, 606-07 (5th Cir. 2007).

*Arnold v. Heartland Dental*, 101 F. Supp. 3d 1220, 1224 (M.D. Fla. 2015).

Badgett, M., & Schneebaum, A. (2015). *The impact of wage equality on sexual orientation poverty gaps*. Los Angeles: The Williams Institute.

Badgett, M., Baumle, A., & Boutcher, S. (2018). *Evidence from the frontlines on sexual orientation and gender identity discrimination*. Amherst, MA: Center for Employment Equity.

Badgett, M., Durso, L. E., & Schneebaum, A. (2013). *New patterns of poverty in the lesbian, gay, and bisexual community*. Los Angeles: The Williams Institute.

Bailey, J., Wallace, M., & Wright, B. (2013). Are gay men and lesbians discriminated against when applying for jobs? A four-city, Internet-based field experiment. *Journal of Homosexuality*, 60(6), 873-894.

*Barnes v. City of Cincinnati*, 401 F.3d 729, 738 (6th Cir. 2005).

Baumle, A. K., & Poston, D. L. (2011). The economic cost of homosexuality: Multilevel analyses. *Social Forces*, 89(3), 1005-1031.

*Blum v. Gulf Oil Corp.*, 597 F.2d 936 (5th Cir. 1979).

Brown, T. N., & Conron, K. J. (2018). *Jacksonville-area community assessment*. Los Angeles: The Williams Institute.

Brown, T. N., Romero, A. P., & Gates, G. (2016). *Food insecurity and SNAP participation In the LGBT community*. Los Angeles: The Williams Institute.

Burn, I. (2015). Legal differences in state non-discrimination laws and the effect of employment protections for gay men. *SSRN Electronic Journal*.

*Candina v. University of Miami*, 185 F. Supp. 3d 1343, 1352 (S.D. Fla. 2015).

Carpenter, C., Eppink, S. T., & Gonzales, G. (2019). *Transgender status, gender identity, and socioeconomic outcomes in the United States employment, and income*.

*Carpenter v. UnitedHealth Group*, No. 17-60429-CIV, 2017 WL 9360866, at \*2 (S.D. Fla. November 7, 2017).

*Carr v. Humble Indep. Sch. Dist.*, No. 4:17-CV-0773, 2018 WL 1064583, at \*5 (S.D. Tex. February 23, 2018).

Colvin, Roddrick. (2007). The rise of transgender-inclusive laws: how well are municipalities implementing supportive nondiscrimination public employment policies? *Review of Public Personnel Administration*, 27(4), 336-360.

Compl. 30, *EEOC v. Royal Dining Group*, No. 2:16-cv-03313 (D. Ariz. September 29, 2016), ECF No. 1.

KTLV. (2014). *Couple says they were asked not to come back to East Texas restaurant because they are gay*.

*Dawson v. H&H Elec. Inc.*, No 4:14CV00583 SWW, 2015 WL 5437101 (E.D. Ark. September 15, 2015).

Douglas, J. H., & Steinberger, M. D. (2014). The sexual orientation wage gap for racial minorities. *Industrial Relations: A Journal of Economy and Society*, 54(1), 59–108. *E.E.O.C. v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 574 (6th Cir. 2018).

*Elane Photography v. Willock*, 309 P.3d 53 (2013).

*Employment Division v. Smith*, 494 U.S. 872 (1990).

Equal Access to Housing in HUD Programs, § 77 Fed. Reg. 5,662, 5,672 *et seq.* (2012).

*Etsitty v. Utah Transit Auth.*, 502 F.3d 1215 (10th Cir. 2007).

*Evans v. Ga. Reg'l Hops.*, 8350 F.3d 1248 (11th Cir. 2017).

*Fabian v. Hops. of Central Conn.*, 172 F. Supp. 3d 509, 526 (D. Conn. 2016).

Fidas, D., & Cooper, L. (2018). *A workplace divided: Understanding the climate for LGBTQ workers nationwide*. Washington, DC: The Human Rights Campaign Foundation.

Florida Times Union. (2015, March 3). It's a myth to claim Jacksonville's LGBT residents aren't experiencing discrimination. *Florida Times Union*.

Flores, Andrew. (2014). *National Trends in Public Opinion on LGBT Rights in the United States*. Los Angeles

Flores, Andrew, Jody Herman, & Christy Mallory. (2015). Transgender inclusion in state non-discrimination policies: The democratic deficit and political powerlessness. *Research & Politics*, 2(4), 1-8.

Friedman, S. (2013). An estimate of housing discrimination against same-sex couples. Washington, DC: U.S. Department of Housing and Urban Development Office of Policy Development and Research.

Gates, G. (2009). The impact of sexual orientation anti-discrimination policies on the wages of lesbians and gay men. UCLA CCPR Population Working Papers.

*Gifford v. McCarthy*, 23 N.Y.S.3d 422 (2016).

*Glenn v. Brumby*, 663 F.3d 1312, 1320 (11th Cir. 2011).

Gossett, Charles. (1999). Dillon's Rule and gay rights: state control over local efforts to protect the rights of lesbians and gay men. In Riggle, E. & Tadlock, B. (Eds.), *Gays and Lesbians in the Democratic Process: Public Policy, Public Opinion, and Political Representation* (pp. 62–88). New York: Columbia University Press.

Gray, K. (2018, July 20). GOP leaders want AG Bill Schuette to reverse LGBT protections ruling. *Detroit Free Press*.

Green, M. S. (2012). *Anchorage LGBT discrimination survey: Final report*. Anchorage, AK: Identity.

Haider-Markel, D. P., & Meier, K. J. (1996). The politics of gay and lesbian rights: Expanding the scope of the conflict. *Journal of Politics*, 58(2), 332–349.

- Haider-Markel, D. P., & Meier, K. J. (2003). Legislative victory, electoral uncertainty: Explaining outcomes in the battles over lesbian and gay civil rights. *Review of Policy Research*, 20(4), 671-690.
- Harrison, J. B. (2018). Because of Sex. *Loyola L.A. Law Review*, 51, 91-198.
- Hasenbush, A., Flores, A. R., Kastanis, A., Sears, B., & Gates, G. J. (2014). *The LGBT divide: A data portrait of LGBT people in the midwestern, mountain & southern states*. Los Angeles: The Williams Institute.
- Hatzenbuehler, M. L. (2016, April 26). The health consequences of hate. Columbia Mailman School of Public Health.
- Hatzenbuehler, M. L., Jun, H., Corliss, H. L., & Austin, S. B. (2013). Structural stigma and cigarette smoking in a prospective cohort study of sexual minority and heterosexual youth. *Annals of Behavioral Medicine*, 47(1), 48-56.
- Hatzenbuehler, M. L., Jun, H., Corliss, H. L., & Austin, S. B. (2013). Structural stigma and cigarette smoking in a prospective cohort study of sexual minority and heterosexual youth. *Annals of Behavioral Medicine*, 47(1), 48-56.
- Hatzenbuehler, M. L., Keyes, K. M., & Hasin, D. S. (2009). State-level policies and psychiatric morbidity in lesbian, gay, and bisexual populations. *American Journal of Public Health*, 99(12), 2277.
- Hatzenbuehler, M. L., McLaughlin, K. A., Keyes, K. M., & Hasin, D. S. (2010). The impact of institutional discrimination on psychiatric disorders in lesbian, gay, and bisexual populations: A prospective study. *American Journal of Public Health*, 100(3), 452.
- Herman, J. L. (2013). *Gendered restrooms and minority stress: The public regulation of gender and its impact on transgender people's lives*. Los Angeles: The Williams Institute.
- Hively v. Ivy Tech Cmty. College*, 853 F.3d 339, 351 (7th Cir. 2017).
- Howard, J. (2019, April 21). Michigan AG Dana Nessel made the right call on LGBT adoptions. *Detroit Free Press*.
- Huebner, D. M., Nemeroff, C. J., & Davis, M. C. (2005). Do hostility and neuroticism confound associations between perceived discrimination and depressive symptoms? *Journal of Social and Clinical Psychology*, 24(5), 723.
- Huebner, D. M., Rebchook, G. M., & Kegeles, S. M. (2004). Experiences of harassment, discrimination, and physical violence among young gay and bisexual men. *American Journal of Public Health*, 94(7), 1200.
- IOM (Institute of Medicine). (2011). *The health of lesbian, gay, bisexual, and transgender people: Building a foundation for better understanding*. Washington, DC: National Academies Press.
- James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The report of the 2015 U.S. transgender survey*. Washington, DC: National Center for Transgender Equality.

Kail, B. L., Acosta, K. L., & Wright, E. R. (2015). State-level marriage equality and the health of same-sex couples. *American Journal of Public Health, 105*(6), 1101.

*Kastl v. Maricopa Cty. Cmty. Coll. Dist.*, 325 F. App'x 492, 493 (9th Cir. 2009).

Klawitter, M. (2011). Multilevel analysis of the effects of antidiscrimination policies on earnings by sexual orientation. *Journal of Policy Analysis and Management, 30*(2), 334-358.

Klawitter, M. (2014). Meta-analysis of the effects of sexual orientation on earnings. *Industrial Relations: A Journal of Economy and Society, 54*(1), 4-32.

*Klein v. Or. Bureau of Labor and Industries*, 289 Or. App. 507 (2017).

*La Day v. Catalyst Tech.*, 302 F.3d 474, 477 (5th Cir. 2002).

*Louisiana Dep't of Justice v. Edwards*, 2017-0173 (La. App. 1st Cir. November 1, 2017).

Lambda Legal. (2010). When health care isn't caring: Lambda Legal's survey on *discrimination against LGBT people and people living with HIV*. New York: Lambda Legal.

*Lampley v. Missouri Comm'n on Human Rights*, No. WD 80288, 2017 WL 4779447, at \*2 (Mo. Ct. App. October 24, 2017), reh'g and/or transfer denied (November 16, 2017), *sustained and cause ordered transferred* (January 23, 2018).

Lax, Jeffrey R., & Justin H. Phillips. (2009). Gay rights in the states: public opinion and policy responsiveness. *American Political Science Review, 103*(3), 367-386.

Lax, Jeffrey R., & Justin H. Phillips. (2012). The democratic deficit in the states. *American Journal of Political Science, 56*(1), 148-166.

Lehavot, K., & Simoni, J. M. (2011). The impact of minority stress on mental health and substance use among sexual minority women. *Journal of Consulting and Clinical Psychology, 79*(2), 159.

Levy, D. K., Pitingolo, R., Wissoker, D., Sewell, S., Aranda, C. L., Santos, R., & Howell, B. (2017). *A paired-testing pilot study of housing discrimination against same-sex couples and transgender individuals*. Washington, DC: Urban Institute.

Mallory, C., & Sears, B. (2015). *Evidence of employment discrimination based on sexual orientation and gender identity: An analysis of complaints filed with state enforcement agencies, 2008-2014*. Los Angeles: The Williams Institute.

Mallory, C., & Sears, B. (2016a). *Evidence of discrimination in public accommodations based on sexual orientation and gender identity: An analysis of complaints filed with state enforcement agencies, 2008-2014*. Los Angeles: The Williams Institute.

Mallory, C., & Sears, B. (2016b). *Evidence of housing discrimination based on sexual orientation and gender identity: An analysis of Complaints Filed with State Enforcement Agencies, 2008-2014*. Los Angeles: The Williams Institute.

*Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

Matthews, D. D., & Lee, J. G. (2014). A profile of North Carolina lesbian, gay, and bisexual health disparities, 2011. *American Journal of Public Health, 104*(6), 98.

Mays, V. M., & Cochran, S. D. (2001). Mental health correlates of perceived discrimination among lesbian, gay, and bisexual adults in the United States. *American Journal of Public Health, 91*(11), 1869.

McCabe, S. E., Bostwick, W. B., Hughes, T. L., West, B. T., & Boyd, C. J. (2010). The relationship between discrimination and substance use disorders among lesbian, gay, and bisexual adults in the United States. *American Journal of Public Health, 100*(10), 1946.

McLaughlin, K. A., Hatzenbuehler, M. L., & Keyes, K. M. (2010). Responses to discrimination and psychiatric disorders among black, Hispanic, female, and lesbian, gay, and bisexual individuals. *American Journal of Public Health, 100*(8), 1477.

Meyer, I. H. (1995). Minority stress and mental health in gay men. *Journal of Health and Social Behavior, 36*(1), 38.

Meyer, I. H. (2003). Prejudice, social stress, and mental health in lesbian, gay, and bisexual populations: Conceptual issues and research evidence. *Psychological Bulletin, 129*(5), 674-697.

Michigan Attorney General Opinion No. 703514. (2018, July 20).

Michigan Department of Civil Rights. (2018, July 12). *Michigan Civil Rights Commission votes to issue interpretive statement on meaning of "sex" in Elliott-Larsen Civil Rights Act.* Press release.

*Mickens v. General Electric Co.*, No. 3:16CV-00603, 2016 WL 7015665 (W.D. Ky. November 29, 2016).

Mishel, E. (2016). Discrimination against queer women in the U.S. workforce: A résumé audit study. *Socius: Sociological Research for a Dynamic World, 2*, 1-3.

Montana Department of Labor & Industry. (n.d.). Guide to Montana's discrimination laws.

Montana Department of Labor & Industry. (n.d.). Sex discrimination and sexual harassment.

Movement Advancement Project. (n.d.). *Local non-discrimination ordinances.*

National Conference of State Legislatures. (2017, May 5). *State religious freedom restoration acts.*

NPR, Robert Wood Johnson Foundation, & Harvard T.H. Chan School of Public Health. (2017). *Discrimination in America: Experiences and views of LGBTQ Americans.* Washington, DC: NPR.

N.Y.S. Division of Human Rights. (n.d.). *Investigative procedure.*

N.Y.S. Division of Human Rights. (n.d.). *Overview.*

Ohio Civil Rights Commission. (2018). *Discrimination based on sexual orientation, stereotyping and gender identity.*

*Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75 (1998).

Osorio, C. (2019, February 2). Michigan attorney general to review predecessor's opinion on LGBT protections. *Oakland Press.*

Pennsylvania Human Relations Committee. (2018). *Pa. Hum. Rel. Comm. guidance on discrimination on the basis of sex under the Pennsylvania Human Relations Act*.

Parsell, S. G. (1993). Revitalization of the free exercise of religion under state constitutions: response to *Employment Division v. Smith*. *Notre Dame Law Review*, 68(4), 747.

*Payne v. WS Services*, 216 F. Supp. 3d 1304 (W.D. Okla. 2016).

Pew Research Center. (2013, June 13). *A survey of LGBT Americans*.

Pizer, J. C., Sears, B., Mallory, C., & Hunter, N. D. (2012). Evidence of persistent and pervasive workplace discrimination against LGBT people: The need for federal legislation prohibiting discrimination and providing for equal employment benefits, 45 *Loy. L.A. L. Rev.* 715 (2012).

Platoff, E. (2018, May 24). A gay Texas teacher is on leave after she showed students a photo of her wife. She has few legal protections. *Texas Tribune*.

Pluta, R. (2018, May 23). Michigan Civil Rights Commission taking LGBT discrimination complaints. *Interlochen Public Radio*.

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

PRRI. (2016). PRRI—American values atlas.

Ramirez-Valles, J., Fergus, S., Reisen, C. A., Poppen, P. J., & Zea, M. C. (2005). Confronting stigma: Community involvement and psychological well-being among HIV-positive Latino gay men. *Hispanic Journal of Behavioral Sciences*, 27(1), 101.

Ramos, C., Badgett, M., & Sears, B. (2008). *Evidence of employment discrimination on the basis of sexual orientation and gender identity: Complaints filed with state enforcement agencies 1999–2007*. Los Angeles: The Williams Institute.

Riccucci, N. M., & Gossett, C. W. (1996). Employment discrimination in state and local government: The lesbian and gay male experience. *American Review of Public Administration*, 26(2), 175.

Riggle, E. D., Rostosky, S. S., & Horne, S. G. (2009). Marriage amendments and lesbian, gay, and bisexual individuals in the 2006 election. *Sexuality Research and Social Policy*, 6(1), 80.

*Rosa v. Park W. Bank & Tr. Co.*, 214 F.3d 213, 216 (1st Cir. 2000).

Rosky, C., Mallory, C., Smith, J., & Badgett, M. (2011). *Employment discrimination against LGBT Utahns*. Los Angeles: The Williams Institute.

Rubenstein, W. B. (2001). Do gay rights laws matter? An empirical assessment. *Southern California Law Review*, 75.

Samelius, L., & Wagberg, E. (2005). Sexual orientation and gender identity issues in development. *Sida*.

*Schroer v. Billington*, 577 F. Supp. 2d, 293 (D.D.C. 2008).

Sears, B., Hunter, N. D., & Mallory, C. (2009). Documenting discrimination on the basis of sexual orientation and gender identity in state employment: *Analysis of scope and*

enforcement of state laws and executive orders prohibiting discrimination *against LGBT people*. Los Angeles: The Williams Institute.

Sears, B., & Mallory, C. (2011). *Documented evidence of employment discrimination & its effects on LGBT people*. Los Angeles: The Williams Institute.

Sherman, M. (2018, May 29). U.S. Supreme Court decision on Colorado's Masterpiece Cakeshop case won't be justices' last word on LGBT rights. *The Denver Post*.

Singh, S., & Durso, L. E. (2017, May 02). Widespread discrimination continues to shape LGBT people's lives in both subtle and significant ways.

*Smith v. City of Salem*, 378 F.3d 566, 572 (6th Cir. 2004).

*Smith v. D. Young Chevrolet*, No. 1:10-CV-1706-WTL-TAB, 2012 WL 1605640, at \*1 (S.D. Ind. May 8, 2012).

Taylor, J., Lewis, D., & Haider-Markel, D. (2018). *The remarkable rise of transgender rights*. Ann Arbor: University of Michigan Press.

The Equal Rights Center, & Freedom to Work. (2014). Federal contractors show antiLGBT hiring bias: Better qualified LGBT applicants 23% less likely to be called back for interviews. *The Equal Rights Center & Freedom to Work*.

The Williams Institute. (2014, December 18). *LGBT Americans face greater social and economic disparities in the south, midwest, and mountain states*. Press release.

Tilcsik, A. (2011). Pride and prejudice: Employment discrimination against openly gay men in the United States.

Transgender Law Center. (2009). *The state of transgender California report*. San Francisco: Transgender Law Center.

U.S. Department of Health and Human Services. (2000). *Healthy people 2010: Understanding and improving health* (2nd ed.). Washington, DC: U.S. Department of Health and Human Services.

U.S. Department of Health and Human Services. (2010). *Healthy people 2020*. Washington, DC: Department of Health and Human Services.

U.S. Department of Labor: Wage and Hour Division. (2016). *Paid sick leave*. Washington, DC: U.S. Department of Labor: Wage and Hour Division.

U.S. Department of Justice. (2017). *DOJ grants financial guide*. Washington, DC: U.S. Department of Justice.

U.S. Equal Employment Opportunity Commission. (n.d.). *What you should know about EEOC and The Enforcement Protections for LGBT workers*.

*Vollmar v. SPS Techs.*, No. CV 15-2087, 2016 WL 7034696, at \*3 n.3 (E.D. Pa. December 2, 2016).

Warner, J., McKeown, É, Griffin, M., Johnson, K., Ramsay, A., Cort, C., & King, M. (2004). Rates and predictors of mental illness in gay men, lesbians and bisexual men and women. *British Journal of Psychiatry*, 185(6), 479.



Wash. v. Arlene's Flowers, 389 P.3d 543 (Wash. 2017).

Weber, G. (2008). Using to numb the pain: Substance use and abuse among lesbian, gay, and bisexual individuals. *Journal of Mental Health Counseling*, 30(1), 31.

*Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034, 1048 (7th Cir. 2017).

Wilson, R. (2015, February 10). Kansas governor rescinds LGBT protections for state employees. *Washington Post*.

Zakalik, R. A., & Wei, M. (2006). Adult attachment, perceived discrimination based on sexual orientation, and depression in gay males: Examining the mediation and moderation effects. *Journal of Counseling Psychology*, 53(3), 302.

*Zarda v. Altitude Express*, 883 F.3d 100, 132 (2d Cir. 2018).

Notes:

(1.) Exec. Order No. 13,672, 3 C.F.R. 282-283 (2014).

(2.) Statutes prohibiting employment discrimination: CAL. GOV. CODE §§ 12940-12952 (2017); COLO. REV. STAT. §§ 24-34-401 to 24-34-406 (2017); CON. GEN. STAT. §§ 46a-60, -81c (2017); D.C. CODE §§ 2-1402.11 to 2-1402.01 (2017); DEL. CODE ANN. tit 19, §§ 710-719A (2017); HAW. REV. STAT. §§ 378-1 to 378-393 (2017); 775 ILL. COMP. STAT. 5/2-101 to 5/2-107 (2017); IOWA CODE § 216.6 (2017); ME. REV. STAT. ANN. tit. 5, §§ 4572-4576 (2017); MD. CODE ANN., STATE GOV'T §§ 20-601 to 20-610 (2016); MASS. GEN. LAWS ch. 151B, §§ 1-10 (2017); MINN. STAT. § 363A.08 (2017); NEV. REV. STAT. §§ 631.310-613.435 (2017); N.H. REV. STAT. § 354-A:7 (2017); N.J. REV. STAT. § 10:5-12 (2016); N.M. STAT. § 28-1-7 (2017); OR. REV. STAT. § 659A.001-.036 (2017); R.I. GEN. LAWS §§ 28-5-1 to 28-5-42 (2017); UTAH CODE ANN. §§ 34A-5-101 to 34A-5-112 (2017); VT. STAT. ANN. tit. 21, § 495 (2017); WASH. REV. CODE § 49-60-180 (2017).

Statutes prohibiting housing discrimination: CAL. GOV. CODE §§ 12955-12957 (2017); COLO. REV. STAT. §§ 24-34-501 to 24-34-510 (2017); CON. GEN. STAT. §§ 46a-64b, -81e (2017); D.C. CODE §§ 2-1402.21 to 2-1402.24 (2017); DEL. CODE ANN. tit. 6, §§ 4600- 4620 (2017); HAW. REV. STAT. § 515-3 (2017); 775 ILL. COMP. STAT. 5/3-101 to 5/3-106 (2017); IOWA CODE § 216.8 (2017); ME. REV. STAT. tit. 5, §§ 4581-4583 (2017); MD. CODE ANN., STATE GOV'T §§ 20-701 to 20-710 (2016); MASS. GEN. LAWS ch. 151B, §§ 1-10 (2017); MINN. STAT. § 363A.09 (2017); NEV. REV. STAT. §§ 118.010-118.120 (2017); N.H. REV. STAT. § 354-A:10 (2017); N.J. REV. STAT. § 10:5-12.5 (2016); N.M. STAT. § 28-1-7 (2017); OR. REV. STAT. § 659A.400-.417 (2017); R.I. GEN. LAWS §§ 34-37-1 to 34-37-11 (2017); UTAH CODE ANN. §§ 57-21-1 to 57-21-14 (2017); VT. STAT. ANN. tit. 9, § 4503 (2017); WASH. REV. CODE § 49-60-222 (2017).

Statutes prohibiting discrimination in public accommodations: CAL CIV. CODE § 51 (2017); COLO. REV. STAT. §§ 24-34-601 to 24-34-605 (2017); CON. GEN. STAT. §§ 46a-64, -81d (2017); D.C. CODE §§ 2-1402.31 (2017); DEL. CODE ANN. tit. 6, §§ 4500-4513 (2017); HAW. REV. STAT. §§ 489-1 to 489-23 (2017); 775 ILL. COMP. STAT. 5/5-101 to 5/5-106 (2017); IOWA CODE § 216.7 (2017); ME. REV. STAT. tit. 5, §§ 4591 to 4594-G (2017); MD. CODE ANN., STATE GOV'T §§ 20-301 to 20-306 (2016); MASS. GEN. LAWS ch. 272, §§ 92, 98 (2017); MINN. STAT. § 363A.11 (2017); NEV. REV. STAT. §§ 651.005- 651.120 (2017); N.H. REV. STAT. § 354-A:17 (2017); N.J. REV. STAT. § 10:5-4, 10:5-12

(2016); N.M. Stat. § 28-1-7 (2017); OR. REV. STAT. § 659A.421 (2017); R.I. GEN. LAWS § 11-24-2 (2017); VT. STAT. ANN. tit. 9, § 4502 (2017); WASH. REV. CODE § 49-60-215 (2017); WIS. STAT. § 106.52 (2017).

(2.) COLO. REV. STAT. § 5-3-210 (2017); CON. GEN. STAT. §§ 46a-66, -81f (2017); D.C. CODE §§ 2-1402.31 (2017); 775 ILL. COMP. STAT. 5/4-101 to 5/4-104 (2017); IOWA CODE § 216.10 (2017); ME. REV. STAT. tit. 5, §§ 4595-4598; MINN. STAT. § 363A.16 (2017); N.J. REV. STAT. § 10:5-12 (2016); N.M. STAT. § 28-1-7 (2017); N.Y. EXEC. LAW § 296-A (2017); R.I. GEN. LAWS § 34-37-4.3 (2017); VT. STAT. ANN. tit. 8, § 10403 (2017); WASH. REV. CODE § 49-60-176 (2017).

(3.) COLO. REV. STAT. § 5-3-210 (2017); CON. GEN. STAT. §§ 46a-66, -81f (2017); D.C. CODE §§ 2-1402.31 (2017); 775 ILL. COMP. STAT. 5/4-101 to 5/4-104 (2017); IOWA CODE § 216.10 (2017); ME. REV. STAT. tit. 5, §§ 4595-4598; MINN. STAT. § 363A.16 (2017); N.J. REV. STAT. § 10:5-12 (2016); N.M. STAT. § 28-1-7 (2017); N.Y. EXEC. LAW § 296-A (2017); R.I. GEN. LAWS § 34-37-4.3 (2017); VT. STAT. ANN. tit. 8, § 10403 (2017); WASH. REV. CODE § 49-60-176 (2017).

(4.) CAL. EDUC. CODE § 234 (2017); CON. GEN. STAT. § 10-15c (2017); D.C. CODE §§ 2-1402.41 to 2-1402.42 (2017); 775 ILL. COMP. STAT. 5/5A-101 to 5/5A-102 (2017); IOWA CODE § 216.9 (2017); ME. REV. STAT. tit. 5, §§ 4601-4604 (2017); MASS. GEN. LAWS ch. 76, § 5 (2017); MINN. STAT. § 363A.13 (2017); N.J. REV. STAT. § 10:1-5 (2016); OR. REV. STAT. § 659.850 (2017); R.I. GEN. LAWS 16-21-33 (2017); VT. STAT. ANN. tit. 9, § 4502 (2017); WASH. REV. CODE § 28A.642.010 (2017).

(5.) N.Y. EXEC. LAW § 296 (2017); WIS. STAT. §§ 111.31-111.395 (employment), 106.50 (housing), 106.52 (public accommodations).

(6.) UTAH CODE ANN. §§ 34A-5-101 to 34A-5-112 (employment), 57-21-1 to 57-21-14 (housing).

(7.) N.Y. EXEC. LAW § 296; MICH. COMP. LAWS § 37.2102; MONT. CODE §§ 49-2-301 to 49-2-311.

(8.) MICH. COMP. LAWS 37.2605 (Public Act 453 of 1976).

(9.) 43 PA. CONS. STAT. § 959(f)(1) (2017).

(10.) MONT. CODE ANN. § 49-2-505, -506.

(11.) TENN. CODE ANN. § 4-21-102.

(12.) TENN. CODE ANN. § 68-3-203(d).

(13.) Alaska Admin. Order No. 195 (March 5, 2002); Ariz. Exec. Order No. 2003-22 (June 21, 2003); Ind. Gov. Policy Statement (April 26, 2005); Ky. Exec. Order No. 2008-473 (June 6, 2008); Mich. Exec. Order No. 2007-24 (November 21, 2007); Mo. Exec. Order No. 10-24 (July 9, 2010); N.C. Exec. Order No. 24 (2017) (October 18, 2017); Mont. Exec. Order No. 04-2016 (January 18, 2016); Ohio Exec. Order No. 2011-05K (January 21, 2011); Penn. Exec. Order No. 2016-05 (April 7, 2016); Va. Exec. Order. No. 1 (2018) (January 13, 2018).

(14.) Cal. Exec. Order No. B-59-79 (April 4, 1979); Del. Exec. Order No. 8 (August 11, 2009); Mass. Exec. Order No. 526 (February 7, 2011); Freedom for All Americans. (2018).  
*Minnesota: LGBTQ Non-Discrimination Protections in the States* (describing Minnesota's

executive order); N.H. Exec. Order No. 2016-04 (June 30, 2016); Freedom for All Americans. (2018). *New Mexico: LGBTQ Non-Discrimination Protections in the States* (describing New Mexico's executive order); N.Y. Exec. Order No. 33 (December 16, 2009); Wash. Exec. Order No. 91-06 (September 27, 1993); Wis. Exec. Order No. 1 (January 7, 2019).

(15.) Ohio Exec. Order No. 2019-05D 2019.

(16.) ARK. CODE ANN. §§ 14-1-401 to 14-1-403 (2017).

(17.) TENN. CODE ANN. § 7-51-1802 (2017).

(18.) See cases above. Note that in *Masterpiece Cakeshop* a Colorado baker argued that the federal Constitution's free exercise and free speech clauses exempt him from having to make a cake for a same-sex couple, as the state's non-discrimination law requires. Though the Court found in favor of the baker, it did not ultimately reach the question of whether the free exercise clause exempts him from having to comply with the state's nondiscrimination law. *Masterpiece Cakeshop v. Colo. Civil Rights Comm.*, 138 S. Ct. 1719 (2018). Similarly, in *Dep't of Fair Employment and Housing v. Cathy's Creations*, the baker also raised a free exercise defense based on the federal constitution. The court did not reach that argument, however, because it decided that a baker's refusal to create a cake for a same-sex couple's wedding was protected speech under the First Amendment's Free Speech Clause, reasoning that application of California's non-discrimination law to the baker amounted to compelled speech. *Dep't of Fair Employment & Housing v. Cathy's Creations*, No. BCV-17-102855 (Cal. Super. Ct. February 5, 2018).

(19.) N.H. REV. STAT. ANN. § 354-A:2 (VII) (2017).

(20.) N.Y. EXEC. LAW § 292(9) (2017).

(21.) DEL. CODE ANN. tit. 19, § 710(7) (2017).

(22.) H.B. 24, 2017 Leg., Reg. Sess. (Ala. 2017) (enacted); S.B. 284, 2018 Leg., Reg. Sess. (Kan. 2018) (enacted); MICH. COMP. LAWS § 722.224e (2017); MISS. CODE ANN. § 11-62-1 *et seq.* (2017); N.D. CENT. CODE § 50-12-07.1 (2017); S.B. 1140, 2018 Leg., Reg. Sess. (Okla. 2018) (enacted); H.B. 4950, 2018 Leg. Sess. (S.C. 2018) (enacted); S.D. CODIFIED LAWS § 26-6-38 (2018); TEX. HUM. RES. CODE ANN. § 45 (2017); VA. CODE ANN. § 57-1 *et seq.* (2017).

(23.) ALA. CODE § 22-21-B1 *et seq.* (2017); 745 ILL. COMP. STAT. 70/1 (2017); MISS. CODE ANN. § 11-62-1 *et seq.* (2017); VA. CODE ANN. § 63.2-1709.3 (2017).

(24.) MISS. CODE ANN. § 11-62-1 *et seq.* (2017); N.C. GEN. STAT. § 51-55.5 (2017); UTAH CODE ANN. § 63G-20-101 (2017).

(25.) MISS. CODE ANN. § 11-62-1 *et seq.* (2017).

(26.) 42 U.S.C. § 2000bb *et seq.* (2017).

(27.) H.B. 1319, 2018 Leg., Reg. Sess., (N.H. 2018) (enacted).

(28.) Massachusetts state law already prohibited discrimination based on sexual orientation in employment, housing, and public accommodations and based on gender identity in employment and housing. MASS. GEN. LAWS ch. 151B, §§ 1-10; ch. 272, §§ 92, 98 (2017).

(29.) UTAH CODE ANN. §§ 34A-5-101 to 34A-5-112; 57-21-1 to 57-21-14 (2017).

(30.) DEL. CODE ANN. tit 19, §§ 710-719A; tit. 6, §§ 4600-4620, 4500-4513 (2017).

(31.) H.B. 1319, 2018 Leg., Reg. Sess., (N.H. 2018) (enacted).

(32.) S.B. 284, 2018 Leg., Reg. Sess., (Kan. 2018) (enacted); S.B. 1140, 2018 Leg., Reg. Sess., (Okla. 2018) (enacted); H.B. 4950, 2018 Leg. Sess. (S.C. 2018) (enacted).