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# Gender Identity and Sexual Orientation Discrimination in the Workplace

## A Practical Guide

**Chapter 40: Employment Discrimination Against LGBT People: Existence and Impact**

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CHAPTER 40

# EMPLOYMENT DISCRIMINATION AGAINST LGBT PEOPLE: EXISTENCE AND IMPACT

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## I. INTRODUCTION

Although various authorities have found that sexual orientation and gender identity have no relationship to workplace performance,[1] during the past four decades a large body of research using a variety of methodologies has consistently documented high levels of discrimination against lesbian, gay, bisexual, and transgender (LGBT) people at work. This chapter reviews

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[1]More than 15 federal and state courts and a number of legal scholars have concluded that sexual orientation is not related to an individual's ability to contribute to society or perform in the workplace. BRAD SEARS, NAN HUNTER, & CHRISTY MALLORY, DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION & GENDER IDENTITY IN STATE EMPLOYMENT 4-1 (Sept. 2009), *available at* http://williamsinstitute.law.ucla.edu/research/workplace/documenting-discrimination-on-the-basis-of-sexual-orientation-and-gender-identity-in-state-employment [hereinafter DOCUMENTING DISCRIMINATION]. Indeed, every court that has considered this criterion when determining whether sexual orientation is a suspect class has reached the same conclusion. *Id.* at 2. For example, in 2008, the Connecticut Supreme Court found that "the characteristic that defines the members of this group—attraction to persons of the same sex—bears no logical relationship to their ability to perform in society, either in familial relations or otherwise as productive citizens. Kerrigan v. Commissioner of Public Health, 957 A.2d 407, 432 (Conn. 2008) (holding that the Connecticut Constitution protects the right of same-sex couples to marry). Similarly, in 2004, a justice on the Montana Supreme Court found that "there is no evidence that gays and lesbians do not function as effectively in the workplace or that they contribute any less to society than do their heterosexual counterparts." Snetsinger v. Montana Univ. Sys., 104 P.3d 445, 455 (Mont. 2004) (Nelson, J., concurring). *See also* Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 967 (N.D. Cal. 2010), *aff'd sub nom.* Perry v. Brown, 671 F.3d 1052 (9th Cir. 2012), *vacated on other ground sub nom.* Hollingsworth v. Perry, 570 U.S. ___, 133 S. Ct. 2652, 118 FEP 1446 (2013) (in holding that California's defense of marriage law violated the Fourteenth Amendment to the U.S. Constitution, the court found that " '[c]ourts and legal scholars have concluded that sexual orientation is not related to an individual's ability to contribute to society or perform in the workplace' ").

For a more extensive discussion of the topics in this chapter, *see* Jennifer C. Pizer, Brad Sears, Christy Mallory, & Nan D. Hunter, *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), *available at* http://digitalcommons.lmu.edu/llr/vol45/iss3/3.

[*Editor's Note*: The research conducted by, the reports prepared by, and the testimony presented by the Williams Institute have been relied on by congressional committees in their work on the Employment Non-Discrimination Act, which is discussed in Chapter 19 (The Employment Non-Discrimination Act: Its Scope, History, and Prospects), including in the September 2013 report of the U.S. Senate Committee on Health, Education, Labor, and Pensions. *See* S. REP. NO. 113-105, at 5, 14–18 (Sept. 12, 2013), *available at* www.gpo.gov/fdsys/pkg/CRPT-113srpt105/pdf/CRPT-113srpt105.pdf. *See also A Broken Bargain: Discrimination, Fewer Benefits and More Taxes for LGBT Workers,* MOVEMENT ADVANCEMENT PROJECT (June 2013), www.lgbtmap.org/lgbt-workers.]

recent research regarding such discrimination as well as regarding the effects of such discrimination on LGBT people. The latter research shows that discrimination has negative effects on LGBT people in terms of health, wages, job opportunities, productivity in the workplace, and job satisfaction.

Widespread and continuing employment discrimination against LGBT people has been documented in scientific field studies, controlled experiments, academic journals, court cases, state and local administrative complaints, complaints to community-based organizations, and in newspapers, books, and other media. Further, federal, state, and local courts, legislative bodies, and administrative agencies have acknowledged that LGBT people have faced widespread discrimination in employment. Results from all of these sources are discussed below.

## II. Research Has Documented Widespread and Persistent Workplace Discrimination Against LGBT People

### A. Surveys of LGBT Employees and Their Non-LGBT Coworkers

#### *1. Probability Surveys*

In the past decade, several surveys using probability samples[2] representative of the U.S. population, including the General Social Survey (GSS), have shown that a large proportion of LGBT people experience discrimination in the workplace because of their sexual orientation and/or gender identity. The 2008 GSS, conducted by the National Opinion Research Center at the University of Chicago, has been a reliable source for monitoring social and demographic changes in the United States since 1972. The 2008 GSS marks the first time that survey participants were asked about their sexual orientation, and the survey that year included a module of questions about the experience of "coming out," relationship status and family structure, workplace and housing discrimination, and health insurance coverage.[3] Results from the 2008 GSS include the following:

- Of the nationally representative sample of lesbian, gay, and bisexual (LGB)-identified people, 42 percent had experienced at least one form of employment discrimination because of their sexual orientation at some point in their lives, and 27 percent had experienced such discrimination during the five years immediately before the survey.[4]

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[2]Probability surveys use sampling methods that ensure that the group surveyed has the same demographic characteristics as the broader population being studied. As such, the results from these surveys can be generalized to the LGBT population as a whole.

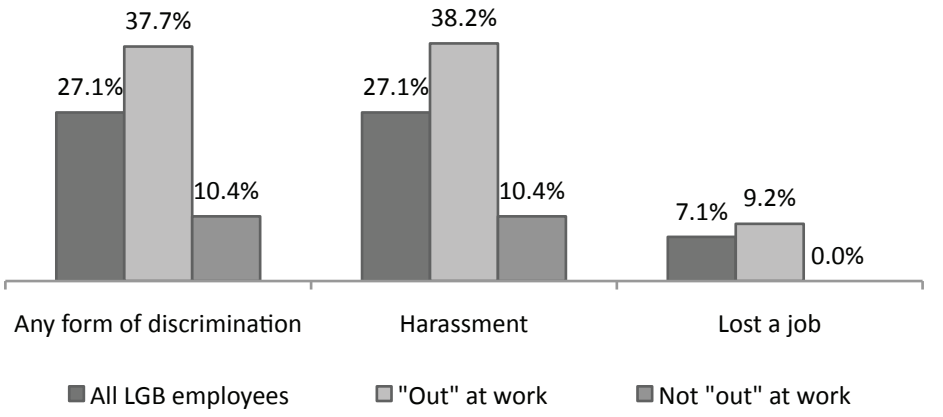
[3]Gary J. Gates, Sexual Minorities in the 2008 General Social Survey: Coming Out and Demographic Characteristics 1 (Oct. 2010), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Sexual-Minorities-2008-GSS-Oct-2010.pdf.

[4]Brad Sears & Christy Mallory, Documented Evidence of Employment Discrimination & Its Effects on LGBT People 4 (July 2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf.

- Harassment was the most frequently reported form of sexual orientation–based discrimination by respondents who were open about being LGB in the workplace (35 percent reported having been harassed, and 27 percent reported that they had been harassed within the five years immediately before the survey), followed by losing a job (16 percent reported having lost a job, and 7 percent reported that they had lost a job within the five years immediately before the survey).[5]
- Of respondents who reported that they were open in the workplace about being LGB, 56 percent had experienced at least one form of employment discrimination because of their sexual orientation at some point in their lives, and 38 percent had experienced employment discrimination within the five years immediately before the survey.[6]
- In comparison, of the LGB respondents who reported that they were *not* open in the workplace about being LGB, 10 percent had experienced at least one form of sexual orientation–based discrimination within the five years immediately before the survey.[7]
- Of the LGB-identified respondents who were employed by federal, state, or local government, 25 percent reported having experienced employment discrimination because of their sexual orientation during the five years immediately before the survey.[8]

These results are summarized in Exhibit 40.1.

**Exhibit 40.1. Discrimination Based on Sexual Orientation During the Five Years Immediately Before the Survey, General Social Survey, 2008**[a]




[a] BRAD SEARS & CHRISTY MALLORY, DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 5 (July 2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf.

[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*

Results from other surveys using probability samples representative of the U.S. population include the following:

- In a survey conducted in 2013, 21 percent of LGBT respondents reported being treated unfairly by an employer in hiring, pay, or promotions.[9]
- In a survey conducted in 2007, 10 percent of LGB respondents reported that they were fired or denied a promotion because of their sexual orientation.[10]
- In a survey conducted in 2009, 58 percent of LGB respondents reported hearing derogatory comments about sexual orientation and gender identity in their workplaces.[11]

### 2. *Nonprobability Surveys*

Because there are few nationally representative probability surveys that gather data on employment discrimination against LGBT people, it is helpful to look at results from national and local nonprobability surveys[12] for a more complete picture of the experiences of LGBT employees. Consistent with the nationally representative surveys, recent national and local nonprobability surveys reveal a pattern of discrimination against LGBT people as follows:

- In 2009, 19 percent of LGBT staff and faculty surveyed at colleges and universities across the country reported that they had "personally experienced exclusionary, intimidating, offensive," "hostile," and/or "harassing" behavior on campus—in the year before interview alone.[13]
- In 2009, 44 percent of LGBT respondents to a national survey reported having faced some form of discrimination at work.[14]
- In 2010, 43 percent of LGB people surveyed in Utah reported that they have experienced discrimination in employment; 30 percent had experienced some form of workplace harassment on a weekly basis during the previous year.[15]

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[9]Pew Research Center, A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times 1 (June 13, 2013), *available at* www.pewsocialtrends.org/files/2013/06/SDT_LGBT-Americans_06-2013.pdf.

[10]Gregory M. Herek, *Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States: Prevalence Estimates From a National Probability Sample*, 24 J. Interpersonal Violence 54, 64 (2009), *available at* http://dx.doi.org/10.1177/0886260508316477.

[11]Human Rights Campaign, Degrees of Equality: A National Study Examining Workplace Climate for LGBT Employees 5 (2009), *available at* www.hrc.org/resources/entry/degrees-of-equality.

[12]Nonprobability surveys use sampling methods that do not necessarily ensure that the group surveyed has the same demographic characteristics as the broader population being studied. As such, the results from these surveys may not be generalizable to the LGBT population as a whole.

[13]Sue Rankin et al., The State of Higher Education for LGBT People (2010), *available at* www.campuspride.org/research/projects-publications.

[14]Out & Equal Workplace Advocates, 2009 Out & Equal Workplace Survey 2 (Oct. 2009), *available at* http://outandequal.org/documents/2009Out&EqualWorkplaceSurvey.pdf.

[15]Clifford Rosky et al., Employment Discrimination against LGBT Utahns 1 (Jan. 2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Rosky-Mallory-Smith-Badgett-Utah-Emp-Discrim-Jan-11.pdf.

- In 2010, 27 percent of LG people surveyed in Colorado reported that they had experienced employment discrimination.[16]
- In 2010, 30 percent of LGBT people surveyed in South Carolina reported that they had experienced employment discrimination based on their sexual orientation or gender identity.[17]
- In 2011, 44 percent of LGBT people surveyed in Anchorage, Alaska, reported that they had been harassed by their employer or other employees.[18]

LGBT respondents were asked more specific questions about the type of discrimination they had experienced in nine of these nonprobability studies. Results of the studies were in the following ranges:

- 8 to 17 percent reported that they were fired or denied employment based on their sexual orientation.
- 10 to 28 percent reported that they were denied a promotion or given negative performance evaluations.
- 7 to 41 percent reported that they were verbally/physically abused or had their workspace vandalized.
- 10 to 19 percent reported receiving unequal pay or benefits.[19]

Even higher percentages of transgender people report experiencing employment discrimination or harassment. When transgender respondents were surveyed separately in six recent nonprobability studies, the percentage reporting employment discrimination and/or harassment ranged from 52 to 78 percent:

- A 2009 survey of transgender individuals in California revealed that 70 percent of respondents reported having experienced workplace discrimination related to their gender identity.[20]
- In 2010, 67 percent of transgender respondents to a survey of LGBT individuals in Utah reported that they had experienced discrimination

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[16]ONE COLORADO EDUCATION FUND, A CONVERSATION WITH COLORADANS 6 (2010), *available at* www.one-colorado.org/wp-content/uploads/2010/10/SurveyResults_BigBook.pdf.

[17]SOUTH CAROLINA EQUALITY, A SURVEY OF SOUTH CAROLINA'S LESBIAN, GAY, BISEXUAL, AND TRANSGENDER COMMUNITY (2010), *available at* www.scequality.org/public/files/docs/SurveyFinal.pdf.

[18]MELISSA S. GREEN, IDENTITY, ANCHORAGE LGBT DISCRIMINATION SURVEY: FINAL REPORT 2–3 (2012), *available at* http://alaskacommunity.org/wp-content/uploads/2012/03/akq_final_report.pdf.

[19]M.V. LEE BADGETT ET AL., BIAS IN THE WORKPLACE: CONSISTENT EVIDENCE OF SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION, Executive Summary at 1 (June 2007), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Lau-Ho-Bias-in-the-Workplace-Jun-2007.pdf.

[20]TRANSGENDER LAW CENTER, THE STATE OF TRANSGENDER CALIFORNIA 1 (2009), *available at* www.transgenderlawcenter.org/pubs/the-state-of-transgender-california. A 2003 survey of transgender individuals in California by the same researchers yielded similar results. SHANNON MINTER & CHRISTOPHER DALEY, TRANS REALITIES: A LEGAL NEEDS ASSESSMENT OF SAN FRANCISCO'S TRANSGENDER COMMUNITIES 14 (2003), *available at* www.nclrights.org/site/DocServer/transrealities0803.pdf?docID=1301.

in employment; 45 percent had experienced some form of workplace harassment on a weekly basis during the previous year.[21]

- In 2010, 52 percent of transgender respondents from Colorado reported that they had experienced discrimination in employment.[22]
- As of 2011, 78 percent of respondents to the largest survey of transgender people to date reported experiencing at least one form of harassment or mistreatment at work because of their gender identity; more specifically, 47 percent had been discriminated against in hiring, promotion, or job retention.[23]
- Of Massachusetts residents who responded to the 2011 national survey of transgender people, 76 percent experienced harassment, mistreatment, or discrimination in employment. More specifically, 20 percent had lost a job, 39 percent were not hired for positions they had applied for, and 17 percent were denied promotions.[24]
- In 2011, 56 percent of transgender respondents to a survey of LGBT people in Anchorage, Alaska, reported harassment by employers or coworkers.[25]

These findings are also supported by surveys of the heterosexual coworkers of LGB people who reported witnessing sexual orientation discrimination in the workplace. Across these studies, 12 to 30 percent of heterosexual respondents reported having witnessed antigay discrimination in employment.[26]

## B. Controlled Experiments

In controlled experiments, researchers change the environment to create scenarios that allow comparisons of the treatment of LGB people with the treatment of heterosexuals. For example, these experiments have included sending out matched resumes and job applicants to potential employers with one resume or applicant indicating they are LGB and the other not. Eight out of nine studies using controlled experiments testing employment or

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[21] Clifford Rosky et al., Employment Discrimination against LGBT Utahns 1 (Jan. 2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Rosky-Mallory-Smith-Badgett-Utah-Emp-Discrim-Jan-11.pdf.

[22] One Colorado Education Fund, A Conversation With Coloradans 6 (2010), *available at* www.one-colorado.org/wp-content/uploads/2010/10/SurveyResults_BigBook.pdf.

[23] Jaime M. Grant et al., Injustice at Every Turn: A Report of the National Transgender Discrimination Survey 51 (2011), *available at* www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

[24] Jody L. Herman, The Cost of Employment Discrimination against Transgender Residents of Massachusetts 1 (Apr. 2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-MA-TransEmpDiscrim-Apr-2011.pdf.

[25] Melissa S. Green, Identity, Anchorage LGBT Discrimination Survey: Final Report 3 (2012), *available at* http://alaskacommunity.org/wp-content/uploads/2012/03/akq_final_report.pdf.

[26] Documenting Discrimination at 9-25.

public accommodations settings have found evidence of sexual orientation discrimination.[27]

## III. COURTS, LEGISLATURES, AND ADMINISTRATIVE AGENCIES HAVE CONSISTENTLY FOUND A CONTINUING PATTERN OF DISCRIMINATION AGAINST LGBT PEOPLE

Evaluating the research summarized above, as well as other evidence and examples of discrimination, courts, legislatures, administrative agencies, and scholars have consistently found a continuing pattern of discrimination against LGBT people.

### A. Findings by Courts and Legal Scholars

A number of courts and legal scholars have acknowledged a history and pattern of discrimination against LGBT people. Every state and federal court that has substantively considered whether sexual orientation classifications should be presumed to be suspect for purposes of equal protection analysis—whatever they decided on that ultimate question—has recognized that LGBT people have faced a long history of discrimination.[28] As of late 2009, 19 state and federal courts had concluded, in 26 judicial opinions, that LGBT people have faced a history of discrimination in determining whether classifications based on sexual orientation should receive heightened scrutiny under equal protection clauses of federal and state constitutions.[29] Dozens of legal scholars[30] and post–2009 judicial opinions[31] have reached the same conclusion: Gay and lesbian people have suffered a "long and significant history of purposeful discrimination."[32]

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[27] M.V. LEE BADGETT ET AL., BIAS IN THE WORKPLACE: CONSISTENT EVIDENCE OF SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION, Executive Summary at 2 (June 2007), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Lau-Ho-Bias-in-the-Workplace-Jun-2007.pdf; Nick Drydakis, *Sexual Orientation Discrimination in the Labour Market*, 16 LAB. ECON. 364 (2009), *available at* http://dx.doi.org/10.1016/j.labeco.2008.12.003.

[28] DOCUMENTING DISCRIMINATION, Executive Summary at 2.

[29] *Id*. at 6-1 to 6-12.

[30] *Id*., Executive Summary at 2 and 6-13 to 6-25.

[31] *See*, *e.g.*, Massachusetts v. U.S. Dep't of Health & Human Servs., 682 F.3d 1, 11, 115 FEP 65 (1st Cir. 2012), *cert. denied*, 570 U.S. ___, 133 S. Ct. 2884, 2887 (2013) (holding that §3 of the Defense of Marriage Act (DOMA) violates the Fifth Amendment); Pedersen v. Office of Pers. Mgmt., 881 F. Supp. 2d 294, 314–18, 115 FEP 1228 (D. Conn. 2012), *cert. denied*, 570 U.S. ___, 133 S. Ct. 2888 (2013) (same); *In re* Balas, 449 B.R. 567, 573–79 (Bankr. C.D. Cal. 2011) (same); Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 981–91 (N.D. Cal. 2010), *aff'd sub nom*. Perry v. Brown, 671 F.3d 1052 (9th Cir. 2012), *vacated sub nom*. Hollingsworth v. Perry, 570 U.S. ___, 133 S. Ct. 2652, 118 FEP 1446 (2013) (holding that California's defense of marriage law violates the Fourteenth Amendment).

[32] Log Cabin Republicans v. United States, 2011 WL 2637191, at *1 (9th Cir. July 6, 2011) (order lifting stay of district court ruling that held the military's Don't Ask, Don't Tell (DADT) policy unconstitutional under the First and Fifth Amendments of the U.S. Constitution) (internal quotation marks omitted). *See also* Log Cabin Republicans v. United States, 716 F. Supp. 2d 884, 110 FEP 801 (C.D. Cal. 2010), *vacated as moot*, 658 F.3d 1162 (9th Cir. 2011) (Ninth Circuit

## B. Findings by Federal, State, and Local Governments

The federal government, as well as many state and local governments, have concluded that LGBT people have faced widespread discrimination in employment.

In 2011, the Executive Branch of the federal government acknowledged a history of discrimination against gay and lesbian people. In 2011, U.S. Attorney General Eric H. Holder, Jr. issued a statement that the president had concluded that classifications based on sexual orientation should receive heightened scrutiny for purposes of equal protection analysis, in part, because of "a documented history of discrimination" against LGB people.[33] In a letter to Congress accompanying the statement, Holder explained that the Executive Branch would take the position that sexual orientation classifications should receive heightened scrutiny in pending cases considering the constitutionality of the Defense of Marriage Act (DOMA) "[f]irst and most importantly, [because] there is, regrettably, a significant history of purposeful discrimination against gay and lesbian people, by governmental as well as private entities."[34] In accordance with this determination, the Department of Justice (DOJ) submitted a brief in July 2011 in a case then pending in U.S. District Court, *Golinski v. U.S. Office of Personnel Management*, explaining the Obama Administration's conclusion that DOMA unconstitutionally discriminates based on sexual orientation.[35] In its analysis, the DOJ pointed to a "long and significant history of purposeful discrimination" by federal, state, and local governments, and by private parties.[36]

In at least eight states, an Executive Order, statute, and/or an official document of a law-making body includes a specific finding of employment discrimination based on sexual orientation or gender identity.[37] In at least five other states, government commissions that have undertaken studies of employment discrimination have also issued findings of sexual orientation

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vacated the trial courts invalidation of DADT in view of the subsequently enacted Don't Ask, Don't Tell Repeal Act of 2010).

[33]Statement of the U.S. Attorney General on Litigation Involving the Defense of Marriage Act (Feb. 23, 2011), *available at* www.justice.gov/opa/pr/2011/February/11-ag-222.html.

[34]Letter From Eric Holder, U.S. Attorney General, to John A. Boehner, Speaker, U.S. House of Representatives, re: Defense of Marriage Act (Feb. 23, 2011), *available at* www.justice.gov/opa/pr/2011/February/11-ag-223.html.

[35]Defendants' Brief in Opposition to Motion to Dismiss at 6-24, Golinski v. U.S. Office of Pers. Mgmt., No. C 3:10-00257-JSW (N.D. Cal. July 1, 2011), *available at* www.clearinghouse.net/search.php.

[36]*Id*. at 6–13. The trial court ultimately determined that Section 3 of DOMA violated the Fifth Amendment and enjoined the federal government from interfering with the enrolment of plaintiff's same-sex spouse in the federal health benefits plan. Golinski v. U.S. Office of Pers. Mgmt., 824 F. Supp. 2d 968, 114 FEP 819 (N.D. Cal. 2012), *cert denied*, 570 U.S. ___, 133 S. Ct. 2887 (2013), *appeal dismissed*, 724 F.3d 1048 (9th Cir. 2013). As discussed in Chapter 37 (Employee Benefit Issues), Section III.C., in 2013, in *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675, 118 FEP 1417 (2013), the U.S. Supreme Court held that §3 of DOMA violated the due process and equal protection guarantees of the Fifth Amendment.

[37]Documenting Discrimination at 7-1 to 7-13. For a further discussion of state laws, see Chapter 20 (Survey of State Laws Regarding Gender Identity and Sexual Orientation Discrimination in the Workplace).

and gender identity discrimination in their reports.[38] For example, the legislative findings in New York's Sexual Orientation Non-Discrimination Act include the statement, "[M]any residents of this state have encountered prejudice on account of their sexual orientation, and that this prejudice has severely limited or actually prevented access to employment, housing, and other basic necessities of life, leading to deprivation and suffering."[39]

## C. Administrative Complaints and Other Documented Examples of Discrimination

### *1. Administrative Complaints*

Data from states that currently prohibit workplace discrimination on the basis of sexual orientation and/or gender identity demonstrate the continuing existence of discrimination against LGBT people and those perceived to be LGBT.[40] In 2008 and 2009, the Williams Institute conducted two studies of administrative complaints alleging sexual orientation and/or gender identity discrimination filed with state and local enforcement agencies. The 2008 study gathered a record of 6,914 complaints filed between 1999 and 2007 that alleged sexual orientation or gender identity discrimination.[41] The 2009 study focused on employment discrimination against public sector workers, and involved contacting the then-20 states and 203 municipalities with sexual orientation and gender identity nondiscrimination laws and ordinances. The responding states and municipalities provided a record of 560 complaints filed with state agencies from 1999 to 2007, and 128 complaints filed with local agencies from as far back as 1982, by state and local government employees.[42]

Two other studies by the Williams Institute demonstrate that when the number of complaints is adjusted for the population size of workers that have a particular minority trait, the rate of complaints filed with state administrative agencies alleging sexual orientation discrimination in employment is comparable to the rate of complaints filed alleging race or sex discrimination.[43] A third Williams Institute study demonstrates that complaints of

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[38] DOCUMENTING DISCRIMINATION, Executive Summary at 9.

[39] 2002 N.Y. Laws ch. 2, §1.

[40] In 1996, a study of data collected from state and local administrative agencies on sexual orientation employment discrimination complaints showed 809 complaints filed with state agencies in nine states that prohibited sexual orientation discrimination by statute or executive order. *See* Norma M. Riccucci and Charles W. Gossett, *Employment Discrimination in State and Local Government: The Lesbian and Gay Male Experience*, 26 AM. REV. PUB. ADMIN. 175 (1996), *available at* http://dx.doi.org/10.1177/027507409602600203.

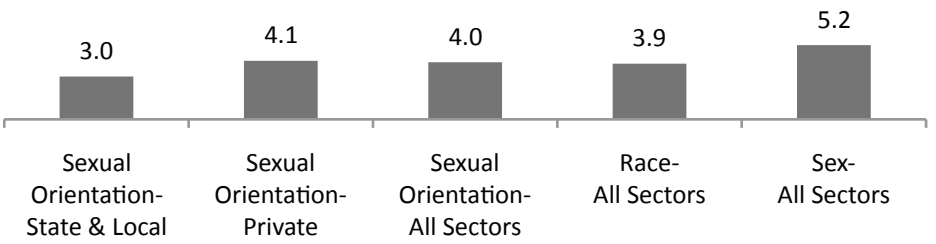
[41] CHRISTOPHER RAMOS ET AL., EVIDENCE OF EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY: COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES 1999–2007 (Nov. 2008), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Ramos-Emply-Discrim-1999-2007-Nov-08.pdf.

[42] DOCUMENTING DISCRIMINATION at 11-10 to 11-17.

[43] The earlier study conducted in 2001, using the same methodology, found that in six of 10 states surveyed, the incidents of sexual orientation filings fell between the incidence of sex and race discrimination filings. In two other states, the prevalence of sexual orientation

sexual orientation discrimination are filed at similar rates by public sector and private sector workers.[44] These results are summarized in Exhibit 40.2. Because of the scarcity of available tracked data, similar analyses of gender identity complaints were not possible.

**Exhibit 40.2. Antidiscrimination Administrative Complaints for Sexual Orientation, Race, and Sex, United States (per 10,000)**[a]




[a] Brad Sears & Christy Mallory, Evidence of Employment Discrimination on the Basis of Sexual Orientation in State and Local Government 1 (July 2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-DiscriminationComplaintsReport-July-2011.pdf.

### 2. *Other Documented Examples of Discrimination*

A 2009 Williams Institute report focused on discrimination in the public sector found more than 380 documented examples of workplace discrimination by state and local employers against LGBT people from 1980 through 2009.[45] These examples had been culled from court opinions, administrative complaints, complaints to community-based organizations, academic journals, newspapers and other media, and books. The examples came from 49 of the 50 states and every branch of state government: legislatures, judiciaries, and the executive branches. Many of the workers in the examples had been subject to severe verbal harassment. The reported incidents frequently also included physical violence. For example, a gay employee of the Connecticut State Maintenance Department was tied

filings exceeded that of both race and sex and in only two states did sexual orientation filings fall below race and sex filings. *See* William B. Rubenstein, *Do Gay Rights Matter?: An Empirical Assessment*, 75 S. Cal. L. Rev. 65, 65–68 (2001), *available at* http://escholarship.org/uc/item/5zw6d23j.

[44] Brad Sears & Christy Mallory, Evidence of Employment Discrimination on the Basis of Sexual Orientation in State and Local Government (July 2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-DiscriminationComplaintsReport-July-2011.pdf.

[45] Documenting Discrimination, Executive Summary at 12.

up by his hands and feet; a firefighter in California had urine put in her mouthwash; a transgender corrections officer in New Hampshire was slammed into a concrete wall; and a transgender librarian at a college in Oklahoma had a flyer circulated about her declaring that God wanted her to die.[46] Many employees reported that, when they complained about this kind of harassment and requested help, they were told that it was of their own making, and no action was taken.[47]

*3. Indications of Underreporting*

The record of discrimination in court cases, administrative complaints, and other documented examples should not be taken as a complete record of discrimination against LGBT people by state and local governments.[48] First, not all of the administrative agencies and organizations that enforce nondiscrimination laws responded to the researchers' requests.[49] Second, several academic studies have shown that state and local administrative agencies often lack the resources, knowledge, and willingness to consider sexual orientation and gender identity discrimination complaints.[50] Similarly, legal scholars have noted that courts and judges have often been unreceptive to LGBT plaintiffs and reluctant to write published opinions about them, reducing the number of court opinions and administrative complaints.[51] Third, many cases settle before an administrative complaint or court case is filed. Unless the parties want the settlement to be public, and the settlement is for a large amount, it is likely to go unreported in the media or academic journals.[52] Fourth, LGBT employees are often reluctant to pursue claims for fear of retaliation or of "outing" themselves further in their workplace. For example, in a study published in 2009 by the Transgender Law Center, only 15 percent of those who reported that they had experienced some form of discrimination had filed a complaint.[53] Fifth, numerous studies have documented that many LGBT people are not "out" in the workplace. Sixth, the extent of gender identity discrimination is likely understated by the number of administrative complaints gathered by the Williams Institute (and others) because some state agencies code gender identity complaints as disability, sex, or sexual orientation complaints. As a result, these agencies were not able to report the number of complaints filed on the basis of gender identity.[54]

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[46] *Id.*
[47] *Id.*
[48] *Id.* at 13–14.
[49] *Id.* at 14.
[50] DOCUMENTING DISCRIMINATION, Executive Summary at 14.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] States that code gender identity complaints as disability, sex, or sexual orientation complaints are California, Connecticut, Hawaii, Maryland, Minnesota, New Hampshire, New York, Oregon, and Washington. Dayna K. Shah, Sexual Orientation and Gender Identity Employment Discrimination: Overview of State Statutes and Complaint Data, GAO-10-135R (Oct. 1, 2009), *available at* www.gao.gov/assets/100/96410.pdf.

## IV. Discrimination Has a Negative Impact on LGBT People

As discussed in more detail below, research has documented not only the pervasiveness of sexual orientation and gender identity discrimination but also the negative impacts of discrimination on LGBT people. Because of discrimination, and fear of discrimination, many LGBT employees hide their identities, are paid less, and have fewer employment opportunities than non-LGBT employees have. Research has also documented that such discrimination, as the expression of stigma and prejudice, also exposes LGBT people to increased risk for poorer physical and mental health.

### A. Prevalence of Perceived Need to Conceal LGBT Identity in the Workplace

Numerous studies have documented that many LGBT people conceal their sexual orientation and/or gender identity in the workplace. Results from recent studies include the following:

- More than one third of LGB respondents to the 2008 GSS reported that they were not out to anyone at work, and only 25 percent were out to all of their coworkers.[55]
- Bisexual respondents to the GSS were much less likely to be out to all of their coworkers than gay and lesbian respondents (6 percent versus 38 percent, respectively).[56]
- A 2009 nonprobability survey conducted across the United States found that 51 percent of LGB employees did not reveal their LGBT identity to most of their coworkers.[57]
- A 2011 study found that 48 percent of LGBT white-collar employees were not open about their LGB identity at work.[58]
- A 2011 nonprobability survey of LGBT people in Anchorage, Alaska, found that nearly three quarters of survey respondents (73.1 percent) hid their sexual orientation or gender identity at work to avoid discrimination.[59]

These results from the GSS are summarized in Exhibit 40.3.

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[55]Gary J. Gates, Sexual Minorities in the 2008 General Social Survey: Coming Out and Demographic Characteristics 5 (Oct. 2010), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Sexual-Minorities-2008-GSS-Oct-2010.pdf.

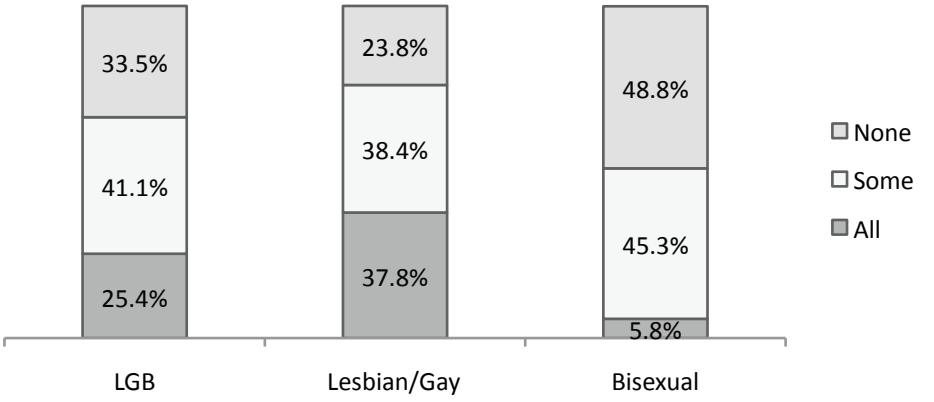
[56]*Id.*

[57]Human Rights Campaign, Degrees of Equality: A National Study Examining Workplace Climate for LGBT Employees 11 (2009), *available at* www.hrc.org/resources/entry/degrees-of-equality.

[58]Sylvia Ann Hewlett & Karen Sumberg, The Power of "Out" 1 (2011); Sylvia Ann Hewlett & Karen Sumberg, *For LGBT Workers, Being "Out" Brings Advantages*, Harv. Bus. Rev. (July–Aug. 2011), *available at* http://hbr.org/2011/07/for-lgbt-workers-being-out-brings-advantages/ar/1; Center for Work-Life Policy, "The Power of Out": New Study Shows Inclusive Workplace Environments for LGBT Employees Are Crucial for Career Progression and Bottom Line Success (June 21, 2011), *available at* www.worklifepolicy.org/documents/CWLP%20-%20LGBT%20-%20Final%206.21.11.pdf.

[59]Melissa S. Green, Identity, Anchorage LGBT Discrimination Survey: Final Report 3 (Mar. 2012), *available at* http://alaskacommunity.org/wp-content/uploads/2012/03/akq_final_report.pdf.

**Exhibit 40.3. "How Many Coworkers Know That You Are Gay, Lesbian, or Bisexual?" General Social Survey, 2008[a]**




[a] GARY J. GATES, SEXUAL MINORITIES IN THE 2008 GENERAL SOCIAL SURVEY: COMING OUT AND DEMOGRAPHIC CHARACTERISTICS 5 (Oct. 2010), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Sexual-Minorities-2008-GSS-Oct-2010.pdf.

Surveys have found that fear of discrimination is the reason many LGBT employees choose to hide their LGBT identity at work. Results from recent studies include the following:

- A 2005 national survey found that of lesbian and gay respondents who were not out at work, 37 percent reported that they concealed their sexual orientation because they feared risk to employment security or harassment in the workplace.[60]
- A national probability survey conducted in 2009 found that 28 percent of "closeted" LGBT employees who were not out in the workplace concealed their sexual identity because they felt that it may be an obstacle to career advancement and 17 percent believed they might be fired. Thirteen percent of closeted LGBT respondents and 40 percent of transgender respondents were not open about their sexual orientation or gender identity in the workplace because they feared for their personal safety.[61]
- More than 26 percent of LGB respondents and 37 percent of transgender respondents to a 2010 survey of LGBT people in Utah reported that they fear discrimination by their current employer.[62]

[60] LAMBDA LEGAL & DELOITTE FINANCIAL ADVISORY SERVICES, 2005 WORKPLACE FAIRNESS SURVEY 4 (Apr. 2006), *available at* http://data.lambdalegal.org/pdf/641.pdf.

[61] DEGREES OF EQUALITY at 15.

[62] CLIFFORD ROSKY ET AL., EMPLOYMENT DISCRIMINATION AGAINST LGBT UTAHNS 1 (Jan. 2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Rosky-Mallory-Smith-Badgett-Utah-Emp-Discrim-Jan-11.pdf.

The fear these respondents reported of being exposed to discrimination is in line with data showing that people who are out in the workplace are more likely to be discriminated against than people who conceal their sexual orientation in the workplace.[63]

Studies have found that even in the absence of actual discrimination, staying closeted at work for fear of discrimination can have negative effects on LGBT employees. Results from recent studies include the following:

- A 2007 study of LGB employees found that those who most feared that they would be discriminated against if they revealed their sexual orientation in the workplace had less positive job and career attitudes, received fewer promotions, and reported more physical stress-related symptoms than those who were less fearful of discrimination.[64]
- A 2011 survey of 2,800 LGBT white-collar employees showed that only one third of those employees who were not open about their LGBT identity at work were happy in their careers. Of those employees who were open about their LGBT identity, two thirds reported being content in the workplace.[65]
- The 2011 study of white-collar LGBT employees also found that compared with employees who were out at work, employees who were not out at work were more likely to feel isolated and uncomfortable "being themselves," were 40 percent less likely to trust their employer, and were less likely to achieve senior management status (28 percent who were not out had achieved senior management status, compared with 71 percent who were out).[66]
- Among the white-collar employees who felt isolated at work, closeted employees were 73 percent more likely to say they planned to leave their companies within three years.[67]
- Further, closeted white-collar respondents were more likely to feel stalled in their careers and unhappy with their rate of promotion. Those LGBT employees who were frustrated with their career advancement were three times more likely to say they planned to leave their company within the next year.[68]
- In addition, the white-collar employees who were not "out" were more likely to think that LGBT people are treated unfairly because of their LGBT identity than those who were "out" (20 percent of those not "out," compared with 5 percent of those who were "out").[69]

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[63] Brad Sears & Christy Mallory, Documented Evidence of Employment Discrimination & Its Effects on LGBT People 4 (July 2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf.

[64] Belle Rose Ragins et al., *Making the Invisible Visible: Fear and Disclosure of Sexual Orientation at Work*, 92 J. Applied Psych. 1103 (2007), *available at* http://dx.doi.org/10.1037/0021-9010.92.4.1103.

[65] Sylvia Ann Hewlett & Karen Sumberg, The Power of "Out" 1 (2011).

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

## B. Wage and Employment Disparities

Twelve studies conducted over the past decade show that gay male workers are paid less on average than their heterosexual male coworkers with the same productivity characteristics are paid, leading researchers to attribute the disparity to different treatment of workers by sexual orientation.[70] All of these studies show a significant pay gap of between 10 percent and 32 percent for gay men when compared to heterosexual men who have the same productive characteristics.[71]

Census data analyses show that men in same-sex couples earn less than men in opposite-sex marriages earn in 47 states and the District of Columbia.[72] Women in same-sex couples generally earn the same as or more than women in opposite-sex marriages earn, but less than either coupled gay men or men in opposite-sex marriages earn.[73]

Although no detailed wage and income analyses of the transgender population have been conducted to date, six nonprobability surveys of the transgender population conducted between 1999 and 2005 found that 6 to 60 percent of respondents reported being unemployed, and 22 to 64 percent of the employed population earned less than $25,000 per year.[74] Transgender respondents to a 2011 national survey were unemployed at twice the rate of the general population, and 15 percent reported a household income of under $10,000 per year.[75] The unemployment rate for transgender people of color was nearly four times the national unemployment rate.[76] In response to a 2010 survey, 25 percent of transgender respondents in Colorado reported a yearly income of less than $10,000.[77]

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[70] BRAD SEARS & CHRISTY MALLORY, DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 14 (July 2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf; *The Employment Non-Discrimination Act of 2011: Hearing on S.811 Before the Senate Comm. on Health, Education, Labor, and Pensions*, 112th Cong. (June 12, 2011) (written testimony of M.V. Lee Badgett, research director, The Williams Institute), *available at* http://williamsinstitute.law.ucla.edu/research/workplace/testimony-s811-061212.

[71] DOCUMENTED EVIDENCE at 14 & nn.75–76 (citing ADAM P. ROMERO ET AL., CENSUS SNAPSHOT: UNITED STATES 2 (Dec. 2007), *available a*t http://escholarship.org/uc/item/6nx232r4). The Williams Institute's website has a collection of "census snapshots" for various states and the United States overall at http://escholarship.org/uc/uclalaw_williams_census.

[72] *Id*.

[73] *Id*. [*Editor's Note*: The wage disparities discussed here are also discussed in Chapter 43 (Portraits of Gender in Today's Workplace), Section II.]

[74] M.V. LEE BADGETT ET AL., BIAS IN THE WORKPLACE: CONSISTENT EVIDENCE OF SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION, Executive Summary 2 (June 2007), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Lau-Ho-Bias-in-the-Workplace-Jun-2007.pdf.

[75] JAIME M. GRANT ET AL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 51 (2011), *available at* www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

[76] *Id*.

[77] ONE COLORADO EDUCATION FUND, A CONVERSATION WITH COLORADANS 6 (2010), *available at* www.one-colorado.org/wp-content/uploads/2010/10/SurveyResults_BigBook.pdf.

## C. Impact on Mental and Physical Health

Research shows that experiencing discrimination can affect an individual's mental and physical health.[78] The "minority stress model" suggests that prejudice, stigma, and discrimination create a social environment characterized by excess exposure to stress, which, in turn, results in health disparities for sexual minorities compared with heterosexuals.[79]

In considering experiences both inside and outside of the workplace, studies of LGB populations show that LGB people suffer psychological and physical harm from the prejudice, stigma, and discrimination that they experience. Research demonstrating the ill effects of a homophobic social environment has been recognized by public health authorities including the U.S. Department of Health and Human Services (HHS) in *Healthy People 2010* and in *Healthy People 2020*, which set goals and objectives designed to improve the health of people in the United States, through health promotion and disease prevention.[80] *Healthy People 2010* identified the gay and lesbian population, among groups targeted to reduce health disparities in the United States.[81] In explaining the reason for the inclusion of the gay and lesbian population as one of the groups requiring special public health attention, HHS noted, "The issues surrounding personal, family, and social acceptance of sexual orientation can place a significant burden on mental health and personal safety."[82] This conclusion was reiterated by the Institute of Medicine of the National Academies, an independent body of scientists that advises the federal government on health and health policy matters, in its 2011 report on *The Health of Lesbian, Gay, Bisexual, and Transgender People*.[83]

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[78]David R. Williams et al., *Racial/Ethnic Discrimination and Health: Findings from Community Studies*, 98 Am. J. Pub. Health S29 (2008), *available at* www.ncbi.nlm.nih.gov/pmc/articles/PMC2518588.

[79]Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 Psychol. Bull. 674 (2003), *available at* www.ncbi.nlm.nih.gov/pmc/articles/PMC2072932; Institute of Medicine, The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding 211–22 (2011), *available at* www.iom.edu/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx. [*Editor's Note*: As explained in Chapter 43 (Portraits of Gender in Today's Workplace), Section II., microaggressions and explicit workplace aggression have detrimental effects on the mental health, self-esteem, and career satisfaction of transgender individuals.]

[80]U.S. Department of Health and Human Services, Healthy People 2020 (Nov. 2010), *available at* www.healthypeople.gov/2020/TopicsObjectives2020/pdfs/HP2020_brochure_with_LHI_508.pdf.

[81]U.S. Department of Health and Human Services, Healthy People 2010: Understanding and Improving Health 16 (2d ed. 2000), *available at* www.healthypeople.gov/2010/document/pdf/uih/2010uih.pdf.

[82]*Id.* at 16.

[83]*See* Institute of Medicine, The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding 211–22 (2011), *available at* www.iom.edu/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx.

Research about mental and physical health outcomes of LGBT people support the minority stress model.[84] High levels of perceived discrimination or fear of discrimination among LGBT people have been linked to higher prevalence of psychiatric disorders, psychological distress,[85] depression,[86] loneliness, and low self-esteem.[87] Discrimination in the employment context specifically has been found to negatively affect the well-being of LGBT people. Results from studies focused on discrimination in the workplace include the following:

- LGB employees who had experienced discrimination had higher levels of psychological distress and health related-problems.[88] They also were less satisfied with their jobs and were more likely to contemplate quitting and to have higher rates of absenteeism.[89]
- A 2010 study indicated that, although generally there are no differences between LGBT workers and non-LGBT workers in job performance,[90] if LGBT employees are afraid of discrimination or preoccupied with hiding their LGBT identity, their cognitive functioning may be impaired.[91]
- A 2009 national survey found that many LGBT employees reported feeling depressed, distracted, and exhausted, and avoided people and work-related social events as a result of working in an environment that was not accepting of LGBT people. Some employees reported that the lack of acceptance in their workplace had caused them to look for other jobs or to stay home from work.[92]

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[84] *Id.*

[85] *See, e.g.*, Vickie M. Mays & Susan D. Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91 AM. J. PUB. HEALTH 1869 (2001), *available at* www.ncbi.nlm.nih.gov/pmc/articles/PMC1446893; David M. Heubner et al., *Do Hostility and Neuroticism Confound Associations Between Perceived Discrimination and Depressive Symptom?,* 24 J. SOC. & CLINICAL PSYCHOL. 723 (2005), *available at* http://dx.doi.org/10.1521/jscp.2005.24.5.723.

[86] *See, e.g.*, Robyn Zakalik & Meifen Wei, *Adult Attachment, Perceived Discrimination Based on Sexual Orientation, Depression in Gay Males: Examining the Mediation and Moderation Effects*, 53 J. COUNSELING PSYCHOL. 302 (2006), *available at* www.public.iastate.edu/~wei/manuscript/attachmentgay.pdf.

[87] *See*, *e.g.*, Jesus Ramirez-Valles et al., *Confronting Stigma: Community Involvement and Psychological Well-Being Among HIV-Positive Latino Gay Men,* 27 HISP. J. BEHAV. SCI. 101 (2005), *available at* http://dx.doi.org/10.1177/0739986304270232.

[88] Craig R. Waldo, *Working in a Majority Context: A Structural Model of Heterosexism as Minority Stress in the Workplace,* 46 J. COUNSELING PSYCHOL. 218 (1999), *available at* http://dx.doi.org/10.1037/0022-0167.46.2.218.

[89] *Id.*

[90] Eden B. King & José M. Cortina, *The Social and Economic Imperative of Lesbian, Gay, and Transgendered Supportive Organizational Policies*, 3 INDUSTRIAL & ORG. PSYCH. 69 (2010), *available at* http://dx.doi.org/10.1111/j.1754-9434.2009.01201.x.

[91] Juan M. Madera, *The Cognitive Effects of Hiding One's Homosexuality in the Workplace*, 3 INDUSTRIAL & ORG. PSYCH. 86 (2010), *available at* http://dx.doi.org/10.1111/j.1754-9434.2009.01204.x.

[92] HUMAN RIGHTS CAMPAIGN, DEGREES OF EQUALITY: A NATIONAL STUDY EXAMINING WORKPLACE CLIMATE FOR LGBT EMPLOYEES 15 (2009), *available at* www.hrc.org/resources/entry/degrees-of-equality.

- Conversely, a 2008 study found that supervisor, coworker, and organizational support for LGB employees had a positive impact on employees in terms of job satisfaction, life satisfaction, and outness at work.[93]

Finally, a 2011 American Psychiatric Association report found that "[a]dults with gender identity concerns have also often experienced stigmatization or victimization related to gender variant appearance or behavior, or on the basis of actual or presumed sexual orientation.... In fact, some authors have concluded that such stigmatization largely accounts for mental illness among individuals with [gender identity disorder]."[94]

## V. Conclusion

Despite the variations in methodology, context, and time period in the studies reviewed in this report, the evidence demonstrates a consistent pattern: sexual orientation and gender identity–based discrimination are common in many workplaces across the country and in both the public and private sectors. Further, an emerging body of research shows that such discrimination has negative effects on LGBT employees in terms of physical and emotional health, wages and opportunities, job satisfaction, and productivity.

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[93] Ann H. Huffman et al., *Supporting a Diverse Workforce: What Type of Support Is Most Meaningful for Lesbian and Gay Employees?*, 47 Hum. Res. Mgmt. 237 (2008), *available at* http://dx.doi.org/10.1002/hrm.20210.

[94] William Byne et al., *Report of the American Psychiatric Association Task Force on Treatment of Gender Identity Disorder*, 41 Archives Sexual Behav. 759, 778 (2012), *available at* http://dx.doi.org/10.1007/s10508-012-9975-x, *and reprinted in* 169 Am. J. Psychiatry 875 and data supp. at 18 (2012), *available at* http://ajp.psychiatryonline.org/data/Journals/AJP/24709/appi.ajp.2012.169.8.875.ds001.pdf.