

# Employment

## Legal Rights & Protections

### Federal Law Overview

To date, there is no federal law protecting LGBTQ people from employment discrimination or harassment. For decades, there have been political efforts to pass a federal Employment Non-Discrimination Act (ENDA), but these efforts have been, as yet, unsuccessful.<sup>1</sup> The only codified protections for LGBTQ people against workplace discrimination exist at the state and local level.<sup>2</sup>

There have been small steps in recent years to improve employment protections for LGBTQ individuals under existing federal law, primarily through litigation under Title VII of the Civil Rights Act of 1964. In 2014, then Attorney General Eric Holder announced that the Department of Justice would “take the position in litigation that the protection of Title VII . . . extends to claims of discrimination based on an individual’s gender identity, including transgender status.”<sup>3</sup> However, this position was reversed in October 2017 under Attorney General Jeff Sessions.<sup>4</sup>

As a result of these inconsistencies, “[a]n inconsistent and irreconcilable patchwork of state laws against LGBT workplace discrimination and federal court decisions interpreting existing federal law render LGBT employees insufficiently protected from workplace discrimination.”<sup>5</sup>

### Federal Law Resources

#### Case Law:

- ◆ [Macy v. Holder](#), EEOC Decision No. 0120120821, 2012 WL 1435995 (2012).
- ◆ [Schroer v. Billington](#), 577 F.Supp. 2d 293 (D.D.C. 2008).
- ◆ [Veretto v. U.S. Postal Service](#), EEOC Decision No. 0120110873, 2011 WL 1435995 (2011).

#### Filing a Complaint with the EEOC:

- ◆ [Filing a Charge of Discrimination with the EEOC or Local Agency](#)
- ◆ [Know Your Rights: Filing an Employment Discrimination Complaint with the EEOC](#)
- ◆ [Overview of Federal Sector EEO Complaint Process](#)

#### Title VII:

- ◆ [The Evolution of Title VII](#)

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<sup>1</sup> Ed O’Keefe, *ENDA, explained*, WASH. POST (Nov. 4, 2013), [https://www.washingtonpost.com/news/the-fix/wp/2013/11/04/what-is-the-employment-non-discrimination-act-enda/?utm\\_term=.267fd8aacb9d](https://www.washingtonpost.com/news/the-fix/wp/2013/11/04/what-is-the-employment-non-discrimination-act-enda/?utm_term=.267fd8aacb9d).

<sup>2</sup> See generally *State Maps of Laws & Policies*, Human Rights Campaign, <https://www.hrc.org/state-maps>.

<sup>3</sup> Press Release, Dept. of Justice, Attorney General Holder Directs Department to Include Gender Identity under Sex Discrimination Employment Claims (Dec. 28, 2014), <https://www.justice.gov/opa/pr/attorney-general-holder-directs-department-include-gender-identity-under-sex-discrimination>.

<sup>4</sup> Sari Horwitz and Spencer S. Hsu, *Sessions ends workplace protections for transgender people under civil rights act*, WASH. POST (Oct. 5, 2017), <https://wapo.st/2pRcRZc>.

<sup>5</sup> U.S. Commission on Civil Rights, *Working for Inclusion: Time for Congress to Enact Federal Legislation to Address Workplace Discrimination against Lesbian, Gay, Bisexual, and Transgender Americans* 5 (2017), [http://www.usccr.gov/pubs/LGBT\\_Employment\\_Discrimination2017.pdf](http://www.usccr.gov/pubs/LGBT_Employment_Discrimination2017.pdf).

- ◆ [EEOC Earns First-Ever Title VII Court Win in LGBT Discrimination Case](#)
- ◆ [Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII](#)
- ◆ [Frequently Asked Questions: What the EEOC's Decision in \*Macy v. Holder\* Means for You](#)
- ◆ [Macy v. Holder: EEOC Affirms Protections for Transgender Employees](#)

Additional Resources:

- ◆ [Employment Discrimination and Transgender People](#)
- ◆ [Federal Sector Cases Involving LGBT Individuals](#)
- ◆ [Know Your Rights: Federal Employment](#)

## District of Columbia Law

The District of Columbia's Human Rights Law is one of the most comprehensive in the nation, and prohibits discrimination on the basis of sexual orientation, gender identity, and gender expression in employment. Additional information on the DC Human Rights Law and filing a complaint with the DC Office of Human Rights can be found in Chapter II, Section B of this practice kit.

D.C. Code:

- ◆ [§§ 2-1402.11-1402.13](#). Prohibited Acts of Discrimination in Employment

D.C. Municipal Regulations:

- ◆ D.C. Mun. Regs. [Tit. 4, Ch. 5, § 500](#) (Purpose)
- ◆ D.C. Mun. Regs. [Tit. 4, Ch. 5, § 513](#) (Personal Appearance Guidelines)
- ◆ D.C. Mun. Regs. [Tit. 4, Ch. 5, § 519](#) (Sexual Orientation Guidelines)
- ◆ D.C. Mun. Regs. [Tit. 4, Ch. 5, § 599](#) (Definitions)

## Maryland Law

[Maryland – Sexual Orientation and Gender Identity Law and Documentation of Discrimination](#)

- ◆ This report outlines Maryland state and local legislation, executive orders, occupational licensing requirements, ordinances and policies involving employment discrimination based on sexual orientation and gender identity. It also includes case law, administrative complaints, and examples of employment discrimination by state and local governments.

## Additional Resources

[Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment](#)

- ◆ This report discusses the widespread and persistent pattern of unconstitutional discrimination by state governments based on sexual orientation and gender identity. It ultimately concludes that Congress should provide a private right of action for damages under ENDA to state government employees who have suffered discrimination.

[Model Transgender Employment Policy: Negotiating for Inclusive Workplaces](#)

- ◆ This guide provides a model transgender policy for employers, as well as sample work transition plan to help an employee's transition.

# Employment

## LGBTQ Youth & Issues in Employment

### Discrimination & Its Effects

#### [A Broken Bargain: Discrimination, Fewer Benefits and More Taxes for LGBT Workers](#)

- ◆ The second chapter of this report, entitled “Discrimination without Legal Protection,” provides a brief discussion of the effects hiring bias and on-the-job discrimination have on LGBTQ people, as well as the experiences of transgender employees who transition at work.

#### [A Broken Bargain for LGBT Workers of Color](#)

- ◆ The report examines how LGBT workers of color face unique challenges related to their race and ethnicity and their sexual orientation and/or gender identity in three areas: (1) educational barriers, (2) hiring bias and on-the-job discrimination, and (3) unequal pay and benefits.

#### [Evidence of Employment Discrimination Based on Sexual Orientation and Gender Identity: An Analysis of Complaints Filed with State Enforcement Agencies, 2008-2014](#)

- ◆ This report measures how frequently LGBT people file complaints using laws prohibiting discrimination on the basis of gender, compared to how frequently race non-discrimination laws are used by people of color, and sex non-discrimination laws are used by women.

#### [Left Behind: How LGBT Young People Are Excluded from Economic Prosperity](#)

- ◆ This report provides an overview of the barriers LGBT young people face in seeking good jobs, supported by quantitative and qualitative data, and outlines policy recommendations to ensure that the basic bargain of upward economic mobility is attainable for LGBT young people.

### Finding and Creating a Supportive Workplace

#### [Advocating for LGBTQ Equality in Your Workplace](#)

- ◆ This website provides information on how LGBT individuals can identify allies, build support, and deliver proposals in their workplace. It includes guidance on workplace discrimination laws, gender transition guidelines, and establishing an employee resource group.

#### [Coming Out at Work](#)

- ◆ This resource provides information for LGBTQ people to think about when they are considering coming out at work, including questions to ask, assessing a workplace atmosphere, and the benefits of being open at work.

#### [Corporate Equality Index](#)

- ◆ Human Rights Campaign Foundation’s 2018 Corporate Equality Index is the national benchmarking tool on corporate policies and practices pertinent to LGBTQ employees. It includes a list of 609 businesses designated as being a “Best Place to Work for LGBTQ Equality.”

### [How Can I Find an Employer's Non-Discrimination Policy?](#)

- ◆ This website provides information on how to identify if an employer provides protection to LGBTQ employees through a non-discrimination policy.

### [LGBTQ Recruitment](#)

- ◆ This resource provides information on LGBTQ professional and student associations, LGBTQ professional recruitment events, and LGBTQ-specific job sites.

## Transgender Employees

### [FAQ: Answers to Common Questions about Transgender Workplace Rights](#)

- ◆ This resource provides an overview of the Employment Non-Discrimination Act (ENDA), protections for transgender employees without ENDA, and how transgender people are protected by existing sex discrimination laws.

### [Tips for Working with Transgender Coworkers](#)

- ◆ This pamphlet, designed for people working with transgender coworkers, provides info on basic terminology and tips for ensuring a positive work environment.

### [Transgender Inclusion in the Workplace: Recommended Policies and Practices](#)

- ◆ This resource provides links on creating employment policies to support transgender employees, including creating policies to support transitioning employees.

## Resource Highlight

### [Transgender Youth Employment Toolkit: A Guide for Case Managers](#)

- ◆ Designed for employment case managers working with youth clients, this guide offers transgender-specific tips, activities, and resources for case managers to integrate into the work they already do with every young person. Topics discussed include case management tips, supporting a social transition, working with employers, helping transgender individuals find employment, and creating ongoing support for transgender employees.

### [Qualified and Transgender: A Report on Results of Resume Testing for Employment Discrimination Based on Gender Identity \(DC Office of Human Rights\)](#)

- ◆ Published by the DC Office of Human Rights, this report presents the findings from a government-run testing project to analyze how employers respond to resumes from applicants perceived as transgender compared with resumes of applicants perceived as cisgender.

## Organizations and Other Programs

Name	Location or Area of Operation	Type(s)	Description
<a href="#">Job Club at the DC Center for the LGBT Community</a>	DC	Employee Resource	Hosted at the DC Center for the LGBT Community, the Job Club is a weekly job support program to help job entrants and seekers, including the long-term unemployed, improve self-confidence, motivation, resilience and productivity for effective job searches and networking.
<a href="#">Out &amp; Equal Workplace Advocates</a>	Online	Employer/Employee Resource	Out & Equal Workplace Advocates is a non-profit dedicated to achieving LGBT workplace equality. They partner with Fortune 1000 companies and government agencies to provide executive leadership development, comprehensive training and consultation, and professional networking opportunities that build inclusive and welcoming work environments.