

# A BROKEN BARGAIN

*Discrimination, Fewer Benefits and More Taxes for LGBT Workers*

Full Report

June 2013



movement advancement project



Center for American Progress

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Partners

With a foreword by



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### **Movement Advancement Project**

The Movement Advancement Project (MAP) is an independent think tank that provides rigorous research, insight and analysis that help speed equality for LGBT people. MAP works collaboratively with LGBT organizations, advocates and funders, providing information, analysis and resources that help coordinate and strengthen their efforts for maximum impact. MAP also conducts policy research to inform the public and policymakers about the legal and policy needs of LGBT people and their families. For more information, visit [www.lgbtmap.org](http://www.lgbtmap.org).

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### **Human Rights Campaign**

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## This report was developed in partnership with:

### **Freedom to Work**

Freedom to Work is a national organization dedicated to the notion that all Americans deserve the freedom to build a successful career without fear of harassment or discrimination because of their sexual orientation or gender identity. For more information, visit [www.freedomtowork.org](http://www.freedomtowork.org).

### **National Partnership for Women & Families**

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### **National Center for Transgender Equality**

The National Center for Transgender Equality is a national social justice organization devoted to ending discrimination and violence against transgender people through education and advocacy on national issues of importance to transgender people. For more information, visit [www.transequality.org](http://www.transequality.org).

### **Out & Equal Workplace Advocates**

Out & Equal Workplace Advocates (Out & Equal) is the world's largest nonprofit organization specifically dedicated to creating safe and equitable workplaces for LGBT people. Out & Equal believes that people should be judged by the work they do, not by their sexual orientation or gender identity. For more information, visit [www.outandequal.org](http://www.outandequal.org).

### **Service Employees International Union**

Service Employees International Union (SEIU) is an organization of 2.1 million members primarily focused in three sectors: healthcare, property services, and public services. SEIU is committed to building a fair economy, providing workers a voice on the job, fighting for equality and ensuring that all working people can live with dignity. For more information, visit [www.seiu.org](http://www.seiu.org).

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## Note About This Full Report

A condensed version of this full report, entitled *A Broken Bargain: Discrimination, Fewer Benefits and More Taxes for LGBT Workers (Condensed)*, is available online at [www.lgbtmap.org/lgbt-workers](http://www.lgbtmap.org/lgbt-workers) or through any of the co-author or partner websites.

This report incorporates information that was current as of May 15, 2013. For legal updates, please see the Movement Advancement Project's Equality Maps at [www.lgbtmap.org/equality-maps](http://www.lgbtmap.org/equality-maps).

We suggest the following citation for this full report: Movement Advancement Project, Human Rights Campaign and Center for American Progress, *A Broken Bargain: Discrimination, Fewer Benefits and More Taxes for LGBT Workers (Full Report)*, May 2013.

## How Does the Supreme Court Challenge to the Federal Defense of Marriage Act Impact this Report?

This report frequently references the impact of the federal Defense of Marriage Act (DOMA) on LGBT workers. Under Section 3 of DOMA, the federal government must treat married same-sex couples as unmarried for the purposes of federal laws and programs. This is true for same-sex couples who are legally married in their state as well as those who are in a state-based domestic partnership or civil union.

A pending case before the U.S. Supreme Court, *United States v. Windsor*, argues that Section 3 of DOMA is unconstitutional. A decision on the case is expected in June 2013.

### So how do the analyses in this report change if the Supreme Court strikes down Section 3 of DOMA?

Even were the federal government required to recognize married same-sex couples, same-sex couples can only marry in 12 states and the District of Columbia. Another seven states offer comprehensive civil unions or domestic partnerships for same-sex couples, but most legal scholars believe it is unlikely that the federal government would recognize these same-sex couples as married. Regardless, a further 31 states, covering 55% of the U.S. population, offer no comprehensive legal recognition for same-sex couples. For the majority of LGBT workers, the analyses in this report would therefore remain fundamentally unchanged. When committed same-sex couples are denied marriage at the state level, they will also continue to be seen as unmarried by the federal government (regardless of DOMA).

For example, at time of publication, all same-sex couples (married and unmarried) are denied Social Security spousal benefits. Should the Supreme Court strike down Section 3 of DOMA, those same-sex couples who live in marriage equality states and who choose to marry will presumably be eligible for Social Security spousal benefits. However, the majority of same-sex couples, who live in states that lack the freedom to marry, will still be denied these benefits. In other words, *the analyses and inequities in this report will remain substantially unchanged for most same-sex couples*—though the benefit and tax inequities facing *married* same-sex couples would likely be largely resolved.

There is no doubt that striking down Section 3 of DOMA would go a long way toward resolving unequal treatment for married same-sex couples. But until same-sex couples can marry throughout the nation, the remaining inequities described in this report will continue to be a problem for the majority of LGBT workers.

Finally, should Section 3 of DOMA be struck down, it will not affect the lack of explicit employment non-discrimination protections for LGBT workers—and the often unchecked bias that makes it harder for LGBT workers to earn a living and provide for themselves and their families.



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## FOREWORD

If there's one thing small business owners know, it's that nothing creates success like hard work. Anyone who's willing to work hard should have the chance to earn a living, contribute to our nation's economy, and provide for themselves and their families.

Inequities facing lesbian, gay, bisexual and transgender (LGBT) workers in the U.S. workplace not only hurt millions of hardworking Americans, but they also take a toll on small business owners, our primary job creators.

*A Broken Bargain: Discrimination, Fewer Benefits and Higher Taxes for LGBT Workers* provides a first-of-its kind look at the ways inequitable laws impose across-the-board hardships that undermine both the economic security of millions of workers and the ability of businesses to recruit, employ and retain the best and brightest.

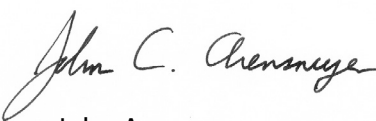
In 2013, it defies logic that federal and state laws still do not equally protect all American workers from job discrimination. How can workers achieve their potential and meaningfully contribute to our economy if they must live in perpetual anxiety and fear that they could be unfairly fired for reasons that have nothing to do with their on-the-job performance? How can small businesses compete for and retain talent when many of the best and brightest workers in their state are leaving for the few states that do protect LGBT workers? It's no wonder that, as detailed on the next page, a national scientific opinion poll from Small Business Majority found 67% of small businesses support federal laws protecting gay and transgender people from discrimination in employment.

Unfortunately, businesses can't fix the broken system on their own. Indeed, there are many problems that are beyond the power of businesses to solve. Business owners choosing to extend family health insurance to gay and lesbian workers must explain why these employees have to pay federal taxes on their insurance when everyone else receives it tax-free. A 65% majority of small businesses in Small Business Majority's poll support ending this unequal taxation. Furthermore, a 54% majority of small businesses agree that federal medical and family leave law should be changed to provide equal leave for gay and lesbian employees who need to care for a sick or injured spouse or partner.

Businesses can also bear the burden and possible costs of being forced to treat LGBT workers unequally. As you'll read in this report, many business owners struggle with the administrative complexities created by federal laws that force them to create two different classes of employees and treat those employees differently. More than two-thirds of small businesses (68%) believe federal law hurts businesses by requiring them to treat their employees differently and to administer two systems of benefits and payroll. When business owners are mandated to enforce systems that disadvantage some employees, trust, morale and productivity suffer.

America's small businesses want talented workers who can help them grow and succeed. They want workers who can help them attract new customers and reach new markets. They're doing what they can to create workplace environments that encourage higher levels of productivity and innovation. *A Broken Bargain* provides a roadmap for reducing the unequal treatment of LGBT workers and allowing them to play their role in the success of small and large businesses alike, and in the growth of the U.S. economy.

At Small Business Majority, our focus is on advancing policies and solutions that promote small business growth, create jobs and drive a strong economy. Ensuring all American workers receive the same protections, and thus helping small businesses find and keep talented employees who can contribute fully to a successful economy, isn't just the right thing to do—it's good business sense.



John Arensmeyer  
Founder & CEO  
Small Business Majority

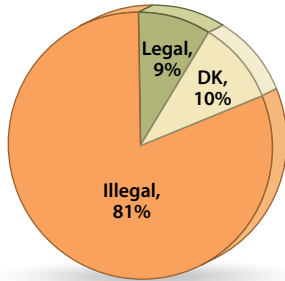


# Polling Shows Strong Small Business Support for LGBT Workers

In April 2013, Small Business Majority commissioned a nationwide survey of 508 small business owners. The respondents (whose personal political affiliation was disproportionately Republican and Republican-leaning Independent) expressed wide-ranging support for laws and policies that would ensure workplace fairness for LGBT workers. Select survey results are shown below.

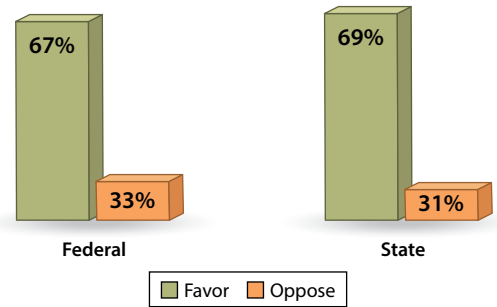
## Misunderstanding of Federal Law Is Common

More than eight out of 10 small business owners mistakenly believe that it is illegal under federal law to fire or refuse to hire someone simply because they are gay or lesbian.



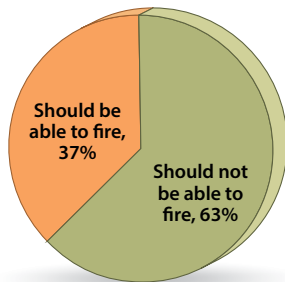
## Small Business Owners Support Non-Discrimination Laws Protecting LGBT Workers

More than two-thirds of small business owners support federal and state laws that would protect LGBT workers from employment discrimination.



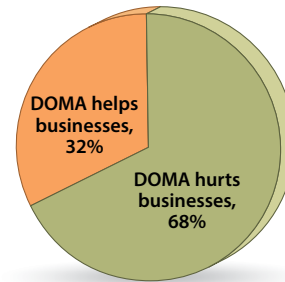
## Religious Beliefs Are Not Seen as an Acceptable Reason to Fire LGBT Workers

More than six in 10 believe that an employer should not be able to “fire or refuse to hire someone who is gay or transgender if working with a gay or transgender employee conflicts with the employer’s religious beliefs.”



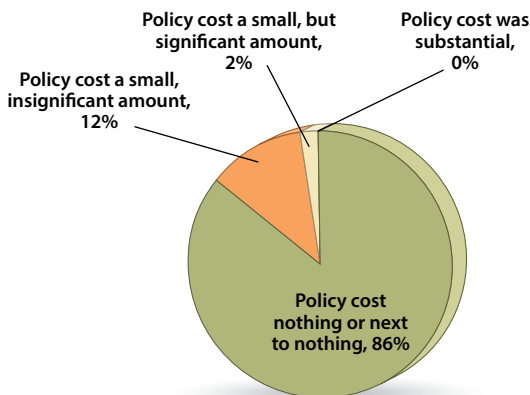
## DOMA's Administrative Burdens Hurt Businesses

Federal law (DOMA) requires employers to treat married same-sex couples as unmarried for benefits and payroll purposes. Businesses were asked whether the law “hurts businesses by requiring them to treat their employees differently and to administer two systems of benefits and payroll”—or “helps businesses by allowing them to offer benefits to heterosexual couples but avoid offering benefits to same-sex couples.” Small business owners overwhelmingly believe that this federal law hurts businesses.



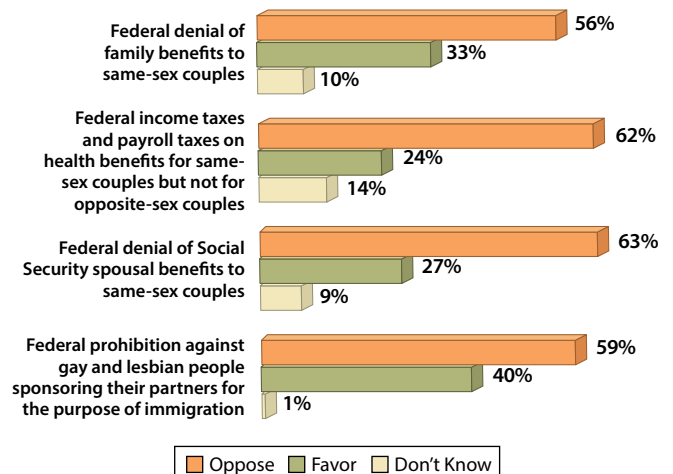
## Nondiscrimination Policies Cost Nothing or Next-to Nothing

Four out of 10 small businesses already have policies protecting LGBT people from discrimination—and 86% of those small business owners say that the policy cost them nothing or next to nothing to adopt.



## Small Business Oppose Unfair Federal Treatment of LGBT Workers

Small business owners also strongly oppose a range of other inequitable treatment of LGBT workers under current federal law.



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## EXECUTIVE SUMMARY

### The Broken Bargain for LGBT Workers

The basic American bargain is that people who work hard and meet their responsibilities should be able to get ahead. This basic bargain is not just an idea—it is embedded in laws that promote equal access to jobs and that protect workers from unfair practices.

For workers who are lesbian, gay, bisexual and transgender (LGBT), this bargain is broken. Instead of having a fair chance to get ahead, LGBT workers and their families often are held back by bias, fewer workplace benefits, and higher taxes.

Employers who value diversity and who understand that it gives them a competitive advantage can take some steps to ease the burden of unfair treatment of LGBT workers and their families, but they can't fix the broken bargain on their own. The reason: unequal treatment of LGBT workers under the law.

First, no federal law provides explicit nondiscrimination protections for LGBT workers, and fewer than half of states have laws that protect workers based on sexual orientation and gender identity/expression. Second, LGBT workers may do the same job as their coworkers, yet be denied equal access to worker and family benefits—as well as family tax relief.

The combination of job discrimination, fewer benefits and higher taxes leaves many LGBT workers in a vulnerable position that threatens their ability to provide for themselves and their families. If fairness and equality are part of America's basic workplace bargain, this bargain is clearly broken for LGBT workers.

### A Portrait of the LGBT Workforce

The U.S. workforce includes an estimated 5.4 million LGBT workers:

- **LGBT workers are geographically dispersed.** Same-sex couples live in 93% of all U.S. counties. As many as 4.3 million LGBT people live in states with no state laws providing employment protections based on sexual orientation or gender identity/expression.
- **LGBT workers are racially and ethnically diverse.** One in three LGBT respondents (33%) in a 2012 Gallup poll identified as people of color, compared to 27% of non-LGBT individuals. The LGBT

workforce, like the overall U.S. workforce, also includes a significant number of immigrants.

- **LGBT workers are raising children in significant numbers.** New analyses show that 37% of LGBT adults have had a child, while a recent MAP analysis of three different data sources suggests that between 2.0 and 2.8 million American children are being raised by LGBT parents. This makes family benefits important to LGBT and non-LGBT workers alike.
- **LGBT workers have varying levels of education.** Recent polls show that Americans with lower education levels are more likely to identify as LGBT than college graduates and those who have post-graduate degrees. In contrast, census data show a higher probability that individuals in same-sex couples have at least a bachelor's degree. Similarly, the 2011 National Transgender Discrimination Survey found that transgender respondents had much higher levels of educational attainment than the population as a whole.
- **LGBT workers experience unemployment at an equal or higher rate than other workers.** A 2009 state-level survey in California found that 14% of lesbian, gay and bisexual adults were unemployed, compared to 10% of heterosexual adults. Among transgender workers in the U.S., unemployment rates are twice the rate of the population as a whole, with rates for transgender people of color reaching as high as four times the national unemployment rate.
- **LGBT workers in the U.S. are at higher risk of poverty than other workers.** Among the hardest-hit by the broken bargain for LGBT workers are those who are parents, together with their children. Married or partnered LGBT individuals raising children are twice as likely to have household incomes near the poverty line compared to married or partnered non-LGBT parents. In addition, transgender people are nearly four times more likely to have a household income under \$10,000 per year than the population as a whole (15% vs. 4%).

### The Broken Bargain for LGBT Workers

Despite the fact that LGBT workers face high rates of discrimination, federal lawmakers and most states have not enacted laws aimed expressly at prohibiting discrimination against LGBT workers.

Additionally, when it comes to worker and family benefits, LGBT workers face a “1-2-3 punch” that hurts their families:

- First, couples have to be married, and workers must have a legal parent-child relationship with their children, in order to access most family benefits and tax relief.
- Second, most states prevent same-sex couples from marrying and/or have no mechanisms for some LGBT parents to create legal ties to the children they are raising—making it impossible for many LGBT families to qualify for family benefits.
- Third, even when LGBT workers can legally marry a same-sex partner, the Defense of Marriage Act (DOMA) prevents the federal government from recognizing their marriages. (A legal challenge to DOMA’s discriminatory treatment of married couples is currently before the United States Supreme Court. However, even if the Supreme Court requires the federal government to recognize married same-sex couples, the federal government still will not be required to recognize the majority of same-sex couples who are denied marriage).

If fairness and equality are part of America’s basic workplace bargain, this bargain is clearly broken for LGBT workers.

## Fixing the Broken Bargain for LGBT Workers

This report organizes the inequities LGBT workers face into two overarching problems:

1. Job discrimination without legal protection makes it **harder for LGBT workers to find and keep a good job**; and
2. LGBT workers **receive fewer benefits and pay more taxes, which puts LGBT workers and their families at risk**.

Many of the access or equity gaps that affect LGBT workers also disproportionately affect low-income workers broadly, workers with unmarried heterosexual partners, workers of color, and workers who live with and support family members who are not a spouse or legal child, such as an uncle providing care for a nephew.

Fixing the broken bargain will require government and employers to address multiple barriers to equal and fair treatment for LGBT and other workers, as outlined below.

## Discrimination Without Legal Protection Makes It Harder to Find and Keep a Good Job

**Barrier #1: Bias and Discrimination in Recruitment and Hiring.** LGBT workers can put their job prospects at risk if they disclose that they are LGBT while looking for work.

**Barrier #2: On-the-Job Inequality and Unfairness.** An LGBT employee may be in a workplace that is blatantly hostile, one that condones anti-gay jokes and slurs, and/or one where employers look the other way and allow a discriminatory climate to flourish.

**Barrier #3: Wage Gaps and Penalties.** In addition to job and workplace discrimination, LGBT employees face wage disparities that make it harder for them to provide for themselves and their families.

**Barrier #4: A Lack of Legal Protections.** Only 21 states and the District of Columbia have laws prohibiting discrimination in employment based on sexual orientation. Transgender workers facing workplace discrimination may seek federal legal recourse by filing a complaint with the Equal Employment Opportunity Commission (EEOC), but only 16 states and the District of Columbia explicitly prohibit discrimination based on gender identity/expression.

## Fewer Benefits and More Taxes Put LGBT Workers and Their Families at Risk

**Barrier #5: Unequal Access to Health Insurance Benefits.** Under federal and most state laws, most employers can extend family health benefits to married opposite-sex couples yet deny same-sex couples the same coverage. When employers electively offer family coverage to LGBT workers, most of them have to pay thousands of dollars in extra taxes on the value of the family coverage, although heterosexual workers get the same benefits tax-free. In addition, exclusions in health insurance often deny transgender workers access to both basic healthcare and transition-related care.

**Barrier #6: Denial of Family and Medical Leave.** Because the federal government does not legally recognize the marriages of same-sex couples under the Defense of Marriage Act (DOMA), LGBT employees do not have equal access to federally mandated unpaid leave to provide care for same-sex spouses or partners. Only about one-fifth of states provide equal access to unpaid leave for same-sex couples under state leave laws. In addition, employers may deny transgender workers leave for transition-related care.

**Barrier #7: Denial of Spousal Retirement Benefits.**

The same-sex spouses and partners of LGBT workers are systematically denied Social Security benefits designed to protect workers' families during their retirement years. This may cost a retired same-sex couple up to \$14,484 per year and a surviving same-sex spouse or partner up to \$28,968 per year. An LGBT employee also may be unable to opt for continuing pension benefits for a same-sex spouse or partner under an employer-provided pension plan.

**Barrier #8: Unequal Family Protections When a Worker Dies or Is Disabled.** When an LGBT worker dies or becomes disabled, the worker's same-sex spouse—and in some cases, his or her children—will be denied Social Security disability and survivor benefits. A surviving family (spouse and two children) of a worker earning \$40,000 could lose as much as \$29,520 in annual benefits.

**Barrier #9: A Higher Tax Burden for LGBT Families.**

State marriage and parenting laws, combined with the federal government's lack of recognition of same-sex couples, mean that LGBT workers pay more taxes because they cannot file using the advantageous "married filing jointly" status. Consider an LGBT family with one working parent who has a taxable income of \$60,000 a year and a stay-at-home parent who has no income. The inability to file a federal tax return as a married couple costs the LGBT family \$2,902 in additional taxes. When working LGBT parents cannot form legal ties to their children, they also generally cannot claim important child-related deductions and credits such as the child tax credit, the child and dependent care expense credit, and multiple education-related deductions and credits potentially totaling thousands of dollars per year.

**Barrier #10: Inability to Sponsor Families for Immigration.** An LGBT worker is unable to sponsor a foreign-national spouse or partner or a partner's children for the purposes of immigration. This means American LGBT workers may need to live abroad to avoid separation from their families, while highly skilled foreign national LGBT workers may decline to come to the United States if it means they must leave their families behind.

## Fixing the Broken Bargain Is Good for Business and America's Prosperity

America's most successful businesses are opposed to the current inequities for LGBT employees and are

taking independent steps to try and fix the broken bargain. Nearly nine out of 10 Fortune 500 companies (88%) provide nondiscrimination protections for their gay and lesbian employees. Additionally, in a 2013 brief submitted to the U.S. Supreme Court, 278 businesses and employers (including Amazon.com, Citigroup, Intel, Marriott, Nike, Pfizer, Twitter, Viacom and the Walt Disney Company) argued that unequal treatment of LGBT workers and their families under federal law harms businesses by:

- Creating complex and difficult compliance burdens by requiring businesses to treat married LGBT employees as single for federal taxes, payroll taxes, and certain workplace benefits—but as married for all other purposes in states that recognize same-sex couples.
- Requiring employers to implement and enforce discriminatory treatment of employees in their own companies, even when doing so goes against core corporate values and basic business sense.
- Creating an environment that makes it harder for LGBT workers to perform at their best.
- Negatively impacting the employer's ability to compete for and hire top talent.

As the U.S. companies stated in their Supreme Court brief, "If external forces—such as discrimination on the basis of sexual orientation in the laws of the states where we operate—block us from recruiting, hiring, and retaining the very best employees, we will be unable to achieve the success that each of us is capable of achieving with a workforce of the best and brightest employees."

## Recommendations

The report offers detailed recommendations for action by the federal, state and local governments, as well as employers. The following is a summary of these recommendations:

### Reducing Barriers to Finding and Keeping Good Jobs.

- **Pass nondiscrimination laws and policies.** Federal, state and local governments should pass nondiscrimination laws/ordinances that include explicit protections for LGBT workers on the basis of sexual orientation and gender identity/expression. Employers can also adopt nondiscrimination policies for their workplaces.

- **Increase wage discrimination protections.** The federal government should expand existing legal protections against wage discrimination to include protections for sexual orientation and gender identity/expression.
- **Ensure effective and swift discrimination claims processing.** For example, the federal government should address the backlog of discrimination cases before the EEOC, while private employers and unions should institute clear and effective grievance systems.
- **Foster diverse and inclusive workplaces.** Government and private employers should put in place policies and procedures that foster welcoming and inclusive workplaces and encourage diversity.
- **Ensure transgender workers can update the gender marker on their identity documents.** A physician's letter, not proof of surgery, should be used as a standard for changing gender on identity documents.
- **Increase data collection on LGBT workers.** Federal, state, and local governments should increase data collection and research on LGBT workers, including demographics, income, benefits, experiences of discrimination, and more.
- **Provide equal access to spousal retirement benefits.** The federal government should broaden Social Security's definition of spouse to allow a same-sex partner to access spousal and survivor benefits. Policymakers also should change federal law to ensure same-sex partners/spouses can access pension survivor benefits and are equally taxed on inherited retirement plans.
- **Provide equitable economic protections when a worker dies or is disabled.** A same-sex partner/spouse and his or her children should be able to access Social Security survivor and disability benefits in the same manner as the spouse and children of a non-LGBT worker.
- **Revise the IRS tax code to provide equitable treatment for LGBT workers.** The Internal Revenue Service (IRS) should create a designation of "permanent partner," who would be treated as a spouse for the purposes of the tax code. The IRS also should allow not just legal parents but also those who act as parents to claim a "qualifying child" on their tax filing.
- **Provide pathways to immigration and citizenship for binational LGBT families.** Congress should pass legislation such as the Uniting American Families Act (UAFSA), which would add the category "permanent partner" to the list of family members entitled to sponsor a foreign national for U.S. immigration.

### Providing Equal Access to Individual and Family Benefits.

- **Recognize the families of LGBT workers.** States should allow same-sex couples to marry and ensure that parentage laws allow LGBT parents to be legally recognized as parents. The federal government should recognize married same-sex couples to allow equal access to worker benefits, Social Security, immigration, federal family tax relief and more.
- **Advance equal access to individual and family health insurance benefits.** The federal and state governments should amend health insurance laws to ensure coverage parity and nondiscrimination protections for transgender health plan enrollees. State and federal lawmakers also should ensure that LGBT families have health insurance on equal terms with other families, including eliminating unfair taxation of these benefits.
- **Provide equal access to individual and family medical leave.** Federal and state medical leave laws should allow transgender workers to take needed individual medical leave—and allow workers to take leave to care for a same-sex partner or spouse.

To the extent that all levels of government (and more employers) adopt policies that ensure fair and equal treatment for LGBT workers, America will make great strides in its ongoing effort to build a fair and inclusive society where everyone who works hard has a chance to succeed, get ahead, and provide for themselves and their families.

## INTRODUCTION

The U.S. workforce reflects the diversity of American society. It includes workers who are young, middle-aged and old. Workers of many races and ethnic and faith backgrounds. American-born workers and immigrants. Veterans and people with disabilities. Single and married workers. Men and women. Individuals who are working primarily to support only themselves, and others who are also supporting immediate and extended families. The U.S. workforce includes workers who are heterosexual, or lesbian, gay, bisexual or transgender.

The nation's workplaces are as diverse as its workforce. Workers in America may be employed by nonprofit organizations, or by local, state and federal governments. They may work for businesses ranging in size from mom-and-pop stores to Fortune 500 global companies. They may work on farms or in factories, hotels, retail stores or banks. No matter where they work, workers play a vital role in the success of their employers and the U.S. and global economies.

The basic American bargain is that those who work hard and meet their responsibilities should be able to get ahead. It is an agreement that workers will be judged and rewarded based on their contributions and capabilities—no matter who they are, what they look like or where they are from. This basic bargain is not just an idea—it is embedded in laws that promote equal access to jobs and that protect workers from unfair practices.

But these laws do not protect everyone.

American workers who are lesbian, gay, bisexual and transgender (LGBT) continue to face inequality, unfairness, harassment and discrimination in the workplace, and they often have nowhere to turn for help. No federal law provides explicit legal protections for LGBT workers, and fewer than half of states have laws that protect workers based on sexual orientation and gender identity/expression.<sup>a</sup>

But most Americans, including many of our elected leaders, are not aware of the lack of protections for LGBT workers. In fact, an overwhelming majority of Americans (87%) mistakenly believe that it is already illegal under federal law to fire someone simply for being LGBT; 78% think that it is illegal under state law, including 75% of people in states without any state-level protections for LGBT workers.<sup>1</sup>

Additionally, even when an LGBT worker does the same job as a non-LGBT coworker, a series of federal and state laws deny the LGBT worker equal access to worker and family benefits—as well as family tax relief. The result? LGBT workers are sent a message that their families do not matter, and that it's OK for their spouses and children to be denied health insurance extended to the families of workers with opposite-sex spouses. They are sent the message that it's OK for LGBT workers to face a higher tax burden and to be denied earned benefits. And they are sent the message that it's OK for LGBT workers to get less compensation for doing the same job—meaning they have fewer dollars to save for a family home, or even just to put food on the table.

If fairness and equality are part of America's basic workplace bargain, this bargain is clearly broken for LGBT workers. This broken bargain, in turn, can create an untenable situation for employers. Even when a company's leaders believe that fair and equal treatment is fundamental to their values and business success, the law often forces employers to treat LGBT workers differently. This is why America's leading employers are joining together and forming coalitions to advocate for change.

<sup>a</sup> Although explicit federal legal protections based on "gender identity" do not exist, the law is evolving to better protect transgender workers, who may now be covered under Title VII of the Civil Rights Act's protections based on sex. We discuss this in more detail on pages 36-40 of the report.

*Our principles* are not platitudes. Our mission statements are not simply plaques in the lobby. Statements of principle are our agenda for success: born of experience, tested in laboratory, factory, and office, attuned to competition. Our principles reflect, in the truest sense, our business judgment. By force of law, DOMA (which forces employers to treat married same-sex couples differently) rescinds that judgment and directs that we renounce these principles or, worse yet, betray them.

Supreme Court amicus brief, 278 employers and organizations representing employers, *United States v. Windsor*, February 2013.





# WHERE AMERICANS WORK

## PRIVATE SECTOR

THE PRIVATE SECTOR IS THE **LARGEST** OF THE TWO SECTORS, CONTAINING

**7** MILLION BUSINESSES  
**113** MILLION WORKERS

SOURCE: BUREAU OF LABOR STATISTICS, "TABLE S. NUMBER OF PRIVATE SECTOR ESTABLISHMENTS BY AGE, MARKET AND TYPE," [HTTP://WWW.BLS.GOV/BDOVS\\_AGE\\_TMS\\_00.HTML](http://www.bls.gov/bdovs_age_tms_00.html)



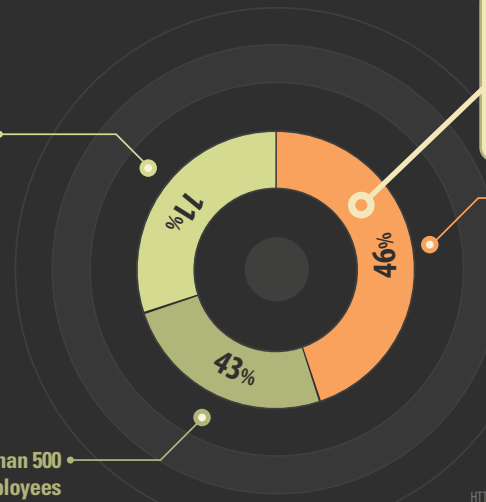
SOURCE: BUREAU OF LABOR STATISTICS, "TABLE B-1A. EMPLOYEES ON NONFARM PAYROLLS BY INDUSTRY SECTOR AND SELECTED INDUSTRY DETAIL, SEASONALLY ADJUSTED, CURRENT EMPLOYMENT STATISTICS, MARCH 2013," [HTTP://WWW.BLS.GOV/NEWS.RELEASE/EMPST17.HTM](http://www.bls.gov/news.release/empst17.htm)

Less Than 10 Employees

Less Than 500 Employees

NEARLY HALF OF ALL PRIVATE SECTOR WORKERS—AND MORE THAN ONE-THIRD OF ALL WORKERS—WORK FOR BIG BUSINESS

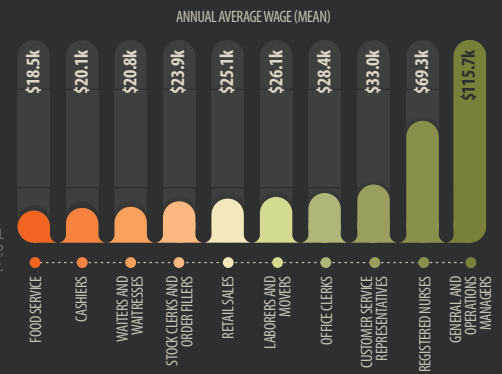
More Than 500 Employees



SOURCE: BUREAU OF LABOR STATISTICS, "TABLE F. DISTRIBUTION OF PRIVATE SECTOR EMPLOYMENT BY FIRM SIZE CLASS: 1993/Q1 THROUGH 2012/Q1, NOT SEASONALLY ADJUSTED," [HTTP://WWW.BLS.GOV/WEB/CEWDB/TABLE\\_F.TXT](http://www.bls.gov/web/cewdb/table_f.txt)

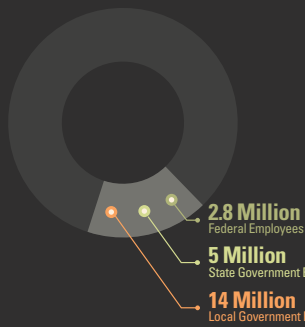
## THE 10 LARGEST PRIVATE SECTOR OCCUPATIONS

SOURCE: BUREAU OF LABOR STATISTICS, "MAY 2011 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES BY OWNERSHIP, CROSS-INDUSTRY, PRIVATE OWNERSHIP ONLY," MARCH 29, 2012, [HTTP://WWW.BLS.GOV/OES/CURRENT/000001.HTM](http://www.bls.gov/oes/current/000001.htm)

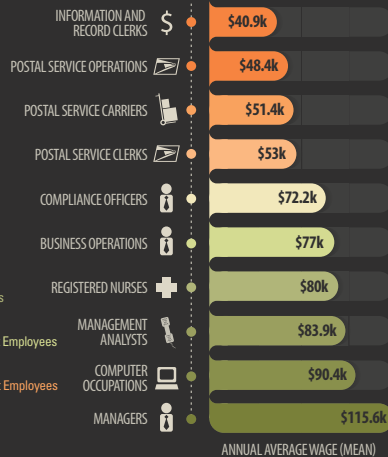


## PUBLIC SECTOR

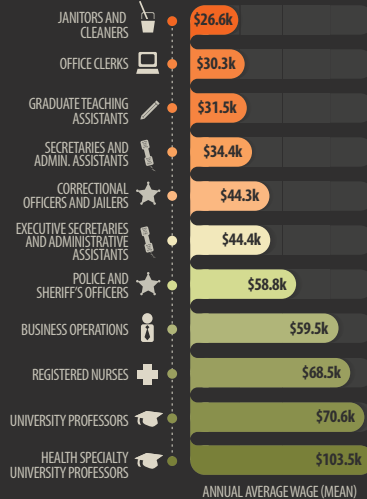
**16.2%** OF THE WORKFORCE WORKS IN THE PUBLIC SECTOR



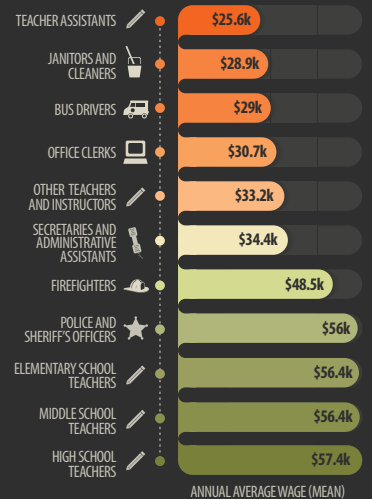
### THE 10 LARGEST FEDERAL GOVERNMENT PUBLIC SECTOR OCCUPATIONS



### THE 10 LARGEST STATE GOVERNMENT PUBLIC SECTOR OCCUPATIONS



### THE 10 LARGEST LOCAL GOVERNMENT PUBLIC SECTOR OCCUPATIONS



SOURCE: BUREAU OF LABOR STATISTICS, "TABLE B-1A. EMPLOYEES ON NONFARM PAYROLLS BY INDUSTRY SECTOR AND SELECTED INDUSTRY DETAIL, SEASONALLY ADJUSTED," CURRENT EMPLOYMENT STATISTICS, MARCH 2013, [HTTP://WWW.BLS.GOV/NEWS.RELEASE/EMPST17.HTM](http://www.bls.gov/news.release/empst17.htm)

SOURCE: BUREAU OF LABOR STATISTICS, "MAY 2011 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES BY OWNERSHIP, FEDERAL GOVERNMENT, INCLUDING US POSTAL SERVICE," MARCH 29, 2012, [HTTP://WWW.BLS.GOV/OES/CURRENT/999101.HTM](http://www.bls.gov/oes/current/999101.htm)

SOURCE: BUREAU OF LABOR STATISTICS, "MAY 2011 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES BY OWNERSHIP, STATE GOVERNMENT, INCLUDING SCHOOLS AND HOSPITALS," MARCH 29, 2012, [HTTP://WWW.BLS.GOV/OES/CURRENT/999201.HTM](http://www.bls.gov/oes/current/999201.htm)

SOURCE: BUREAU OF LABOR STATISTICS, "MAY 2011 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES BY OWNERSHIP, LOCAL GOVERNMENT, INCLUDING SCHOOLS AND HOSPITALS," MARCH 29, 2012, [HTTP://WWW.BLS.GOV/OES/CURRENT/999301.HTM](http://www.bls.gov/oes/current/999301.htm)

This report examines the myriad injustices facing LGBT workers in the American workforce—and highlights how these injustices negatively impact both workers and employers. It outlines how LGBT employees who work just as hard as their non-LGBT counterparts face multiple barriers to fair and equal treatment. The report divides these barriers into two categories: barriers that make it harder for LGBT workers to find and keep good jobs; and barriers that prevent LGBT workers from accessing the same job-related benefits as their non-LGBT coworkers, putting LGBT workers and their families at risk. The report also offers specific recommendations for government and employers to reduce and eliminate inequities for LGBT workers and their families—recommendations that would benefit the entire American workforce.

## About the American Workforce

The U.S. civilian workforce includes nearly 155 million workers.<sup>2</sup> More than eight in 10 of these workers (84%) work in the private sector, with the remaining 16% working for local, state and federal governments (see the infographic on page 2). The U.S. has the fourth largest labor force in the world, trailing only China (795 million), India (498 million) and the European Union (229 million).<sup>3</sup>

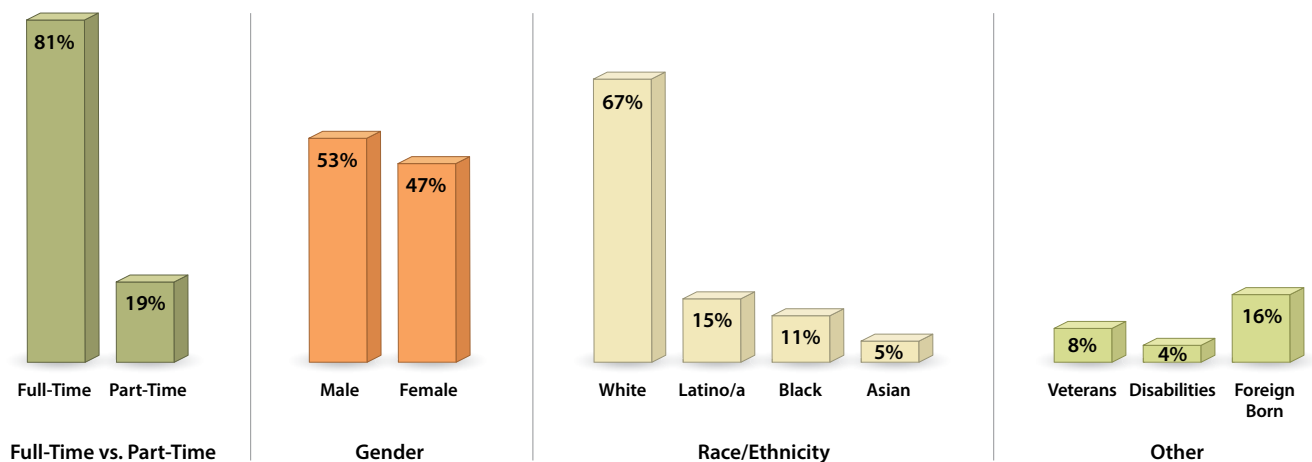
Near three out of four people (71%) living in the United States between the “prime working ages” of 20 and 64 are working.<sup>4</sup> As shown in *Figure 1*, the American workforce breaks down as follows:

- The majority (81%) of workers are full-time; 19% are part-time.
- 53% of workers are male, and 47% are female.
- 67% of workers identify as white, 15% as Latino/a, 11% as black, and 5% as Asian.
- 8% of workers are veterans, and 4% have disabilities.
- Foreign-born workers are 16% of the total civilian U.S. workforce.

As in other countries, the United States workforce is changing all the time. The following are some of the important trends that are expected to influence the size and composition of the U.S. workforce in the years ahead:

- **Overall growth.** Even in the midst of today’s high unemployment and slow economic recovery, the U.S. workforce continues to grow. Labor force analysts expect the United States to gain almost 11 million civilian jobs by 2020.<sup>5</sup>
- **Most growth in healthcare, professional services and construction.** By 2020, analysts project that the U.S. will gain more than 5.6 million healthcare jobs, 3.8 million jobs in professional and business services, and 1.8 million new construction jobs.<sup>6</sup>
- **More education required for the fastest-growing entry-level jobs.** Occupations requiring more than a high school diploma are expected to grow the fastest during this decade. Jobs requiring an

Figure 1: U.S. Workforce Characteristics



Sources: Bureau of Labor Statistics. “Table 8. Employed and unemployed full- and part-time workers by age, sex, race, and Hispanic or Latino ethnicity, Current Population Survey, 2012.” February 5, 2013. <http://www.bls.gov/cps/cpsaat08.htm>; “Table A-6. Employment status of the civilian population by sex, age, and disability status, not seasonally adjusted, January 2013.” February 1, 2013, <http://www.bls.gov/news.release/empsit.t06.htm>; “Table A-5. Employment status of the civilian population 18 years and over by veteran status, period of service, and sex, not seasonally adjusted, January 2013.” February 1, 2013. <http://www.bls.gov/news.release/empsit.t05.htm>; “The Editor’s Desk: Racial and ethnic characteristics of the U.S. labor force, 2011,” September 5, 2012. [http://www.bls.gov/opub/ted/2012/ted\\_20120905.htm](http://www.bls.gov/opub/ted/2012/ted_20120905.htm); “Labor Force Characteristics of Foreign-Born Workers Summary, 2011.” May 2012. <http://www.bls.gov/news.release/forbrn.nr0.htm>

associate's degree will grow by 18% and those requiring a bachelor's degree will grow by 16%. Jobs requiring a master's degree will grow by 22%, and those requiring a doctorate or professional degree will grow by 20%. Even so, more than two-thirds of all job openings will be in occupations that typically do not require a postsecondary education.<sup>7</sup>

- **“Graying” and the retirement of Baby Boomers.** Between now and 2020, the Baby Boom generation (those born between 1946 and 1965) will move entirely into the 55+ age group; the Boomers' share of the workforce will rise from 20% to 25%.<sup>8</sup> While the growth of the U.S. workforce will lead to new jobs, 62% of job openings this decade will

come from vacancies due to retirements and other permanent departures from the labor market.<sup>9</sup>

- **“Gen Y” and the future of the workforce.** Each day 10,000 Baby Boomers turn 65 and consider retirement.<sup>10</sup> Much of the future talent pool to replace the Boomers will come from the “Millennial” or “Gen Y” generation born between 1981 and 2000. By 2016, Gen Y will represent a larger percentage of the U.S. workforce than Gen X (those born between 1966 and 1980) or Baby Boomers.<sup>11</sup> Studies show that Gen Y is more highly educated, more socially connected, and more mobile than previous generations.<sup>12</sup> Millennials also are more comfortable than their predecessors with diversity in the workplace and society. For example, they strongly

## Key Terms

- **Lesbian, Gay, Bisexual and Transgender (LGBT).** The terms lesbian, gay and bisexual describe a person's sexual orientation and collectively include women and men who are predominantly or sometimes attracted to individuals of the same sex. The term transgender is independent of sexual orientation and describes those whose gender identity (the sense of gender that every person feels inside) and/or gender expression (their behavior, clothing, haircut, voice and body characteristics) is different from the sex that was assigned to them at birth. At some point in their lives, many transgender people decide they must live their lives as the gender they have always known themselves to be, and often transition to living as that gender.
- **LGBT Workers and LGBT Employees.** This report uses the term “LGBT workers” to include all current and potential working-age lesbian, gay, bisexual or transgender members of the American workforce. The more specific term “employees” is used when referencing workers in the context of an employee-employer relationship, such as when discussing employer-sponsored health benefits or employer-provided leave.
- **Same-Sex Partner(s) and Spouse(s).** Since most same-sex couples cannot legally marry, this report often uses the term “same-sex partner(s)” to refer to same-sex couples in committed relationships, including marriages, domestic partnerships, civil unions or similar relationships that are not recognized under the law. When applicable, the report uses the term “same-sex spouse(s)” to identify those individuals in same-sex couples who are legally married at the state level (even when these couples are not recognized as married by the federal government).
- **LGBT Families.** This report uses the term “LGBT families” interchangeably to refer to same-sex couples who may or may not be raising children, or families in which a single LGBT adult is raising children. We use this term for simplicity. Our more restrictive use of the term “LGBT families” is not meant in any way to diminish bisexual or transgender people with an opposite-sex partner or spouse, nor those who live in family structures that include other family members, close friends and loved ones who provide support.
- **Legal Parents and Non-Legally Recognized Parents.** We use the terms “legal parent” or “legally recognized parent” to refer to a person who is recognized as a parent under state (and sometimes federal) law, and who is generally related in some manner by blood, adoption or other legal tie to a child. There are many instances in which someone acts as a parent to a child but is not recognized as a legal parent under state (and sometimes federal) law. Throughout the report, we distinguish between the terms “legally recognized parents” and “non-legally recognized parents.” Also used in this report is the term “legal stranger” to refer to a parent who is not legally recognized.
- **Child(ren).** Because this report includes a focus on family-related benefits that may apply to children being raised by LGBT workers as well as children of LGBT workers who are now young adults, we use the terms “child” and “children” to refer to children, youth and young adults currently or formerly raised by LGBT parents.

Note: Throughout this report, we use the third-person pronouns “he” and “she” interchangeably to refer to individual LGBT and non-LGBT workers.

support marriage for same-sex couples—with more than 63% of Gen Y members supporting marriage equality, compared to just 36% of older respondents.<sup>13</sup>

- **An increasingly diverse talent pool.** Gen Y is America’s most racially and ethnically diverse generation. People of color make up 39% of this group, compared to just 30% of older Americans.<sup>14</sup> As growing numbers of Millennials enter their working years, U.S. workplaces will become increasingly diverse. During this decade alone, more than 7.7 million Latino/a workers of all ages will enter the workforce, increasing their share of the total U.S. civilian workforce from 15% in 2010 to 19% in 2020.<sup>15</sup> Analysts predict virtually no increase for black workers (hovering around 12%) and a very small increase for Asian workers (5% in 2010 vs. 6% in 2020).<sup>16</sup>

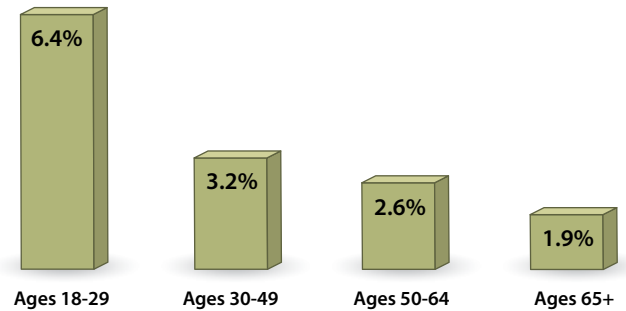
## LGBT Workers in America

There is less available information about LGBT workers than most other types of workers. The federal Bureau of Labor Statistics at the U.S. Department of Labor collects information about labor market activity, but it does not collect data about the sexual orientation or gender identity of workers. Therefore, most of the demographic information about LGBT workers comes from U.S. Census data about same-sex couples, Gallup polling, state-level data, and population-specific surveys of LGBT individuals. For transgender workers in particular, this report relies on the 2011 National Transgender Discrimination Survey, which is the first comprehensive nationwide survey of transgender people in America.<sup>17</sup>

An analysis of these data sources shows that the U.S. workforce includes an estimated 5.4 million LGBT workers.<sup>b,18</sup> As the Millennial generation increasingly enters the workforce, employers can expect to see greater numbers of openly LGBT workers. According to a 2012 Gallup survey, 6.4% of adults between the ages of 18 and 29 self-identify as LGBT; this is three times the percentage of adults age 65+ who do so (1.9%) (see *Figure 2*).

<sup>b</sup> Recent studies conclude that approximately 3.8% of the adult population in the U.S. identifies as LGBT. Applying this figure to the number of Americans who are of “working age” (between 20 and 64), we estimate there are nearly 7 million LGBT people of working age in the U.S. If we assume that these LGBT people are as likely to be “in the labor force” as Americans on the whole (77%), then we estimate there are approximately 5.4 million “working-age” LGBT people who are in the labor force. This means that they are either currently working or are looking for work, and this estimate does not include people who are in school, people staying home to care for children, or so-called “discouraged workers” who have been unable to find work and are no longer looking for work.

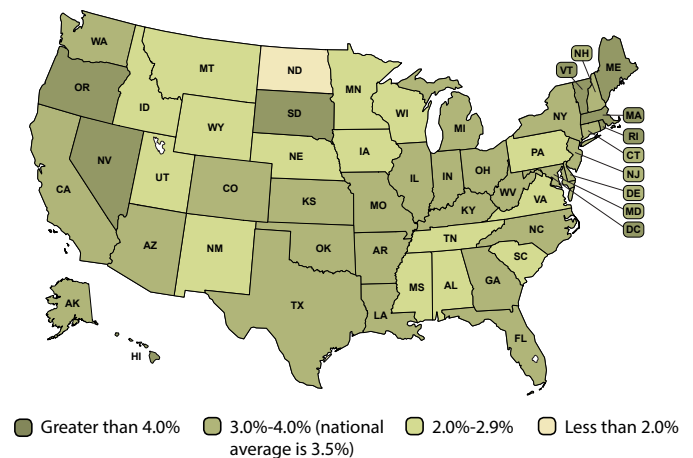
**Figure 2: Percent of Adults Who Self-Identify as LGBT**  
By Age



Gates, Gary J. and Frank Newport. “Special Report: 3.4% of U.S. Adults Identify as LGBT.” *Gallup Politics*. October 18, 2012. <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx>

**Figure 3: LGBT Population By State**

Percent of Population Identifying as LGBT



Source: Gates, Gary J. and Frank Newport. “LGBT Percentage Highest in D.C., Lowest in North Dakota.” *Gallup Politics*. February 15, 2013. <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>

## Where LGBT Workers Live

Despite the common assumption that LGBT people predominantly live in major metropolitan areas or in states with policies favorable to LGBT people, same-sex couples are surprisingly geographically dispersed, living in 93% of all U.S. counties.<sup>19</sup> As many as 4.3 million LGBT people live in states with no state laws providing employment protections based on sexual orientation or gender identity/expression.<sup>20</sup> *Figure 3* shows the geographic distribution of LGBT people.

## Racial and Ethnic Diversity of LGBT Workers

Data from a 2012 Gallup poll add to the portrait of a diverse LGBT workforce, suggesting that LGBT people are more racially and ethnically diverse than the U.S. population as a whole. One in three of the poll's LGBT respondents (33%) identified themselves as people of color, compared to 27% of non-LGBT individuals (see *Figure 4*). Additionally, people of color were more likely to identify as LGBT than white respondents (see *Figure 4*). The LGBT workforce, like the overall U.S. workforce, also includes a significant number of immigrants. There are an estimated 904,000 LGBT adult immigrants in the U.S.;<sup>21</sup> an estimated 32,300 binational same-sex couples (couples where one member is not an American citizen); and 11,700 same-sex couples where both members are not American citizens.<sup>22</sup>

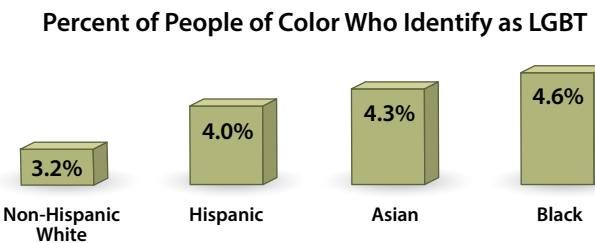
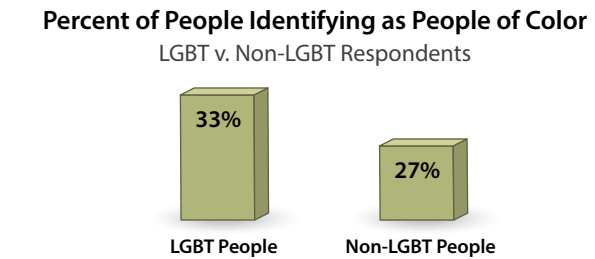
## LGBT Workers With Children

Precise numbers indicating how many children are being raised by LGBT workers are difficult to obtain. However, new analyses show that 37% of LGBT adults have had a child,<sup>23</sup> and 2011 data from the Census Bureau's American Community Survey (ACS) show that 19% of same-sex couples are currently raising children (but the ACS does not offer data on how many single LGBT parents are currently raising children).<sup>24</sup> Finally, a recent MAP analysis of three different data sources suggests that between 2.0 and 2.8 million American children are being raised by LGBT parents.<sup>25</sup> Presumably, a majority of these parents are working parents, making family benefits important to LGBT and non-LGBT workers alike.

Similar to the data on the racial and ethnic diversity of LGBT individuals, data from the 2010 Census show that same-sex couples raising children are slightly more likely to be couples of color than married opposite-sex couples raising children (39% versus 36%).<sup>26</sup> Additionally, same-sex couples of color are more likely to be raising children than white same-sex couples (see *Figure 5*).

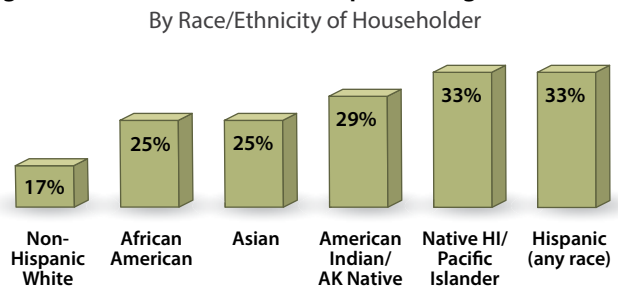
Transgender Americans raising children are also racially and ethnically diverse. In the largest survey of transgender Americans to date, nearly half of Native American respondents identified as parents (45%), compared to 40% of Latino/a and white respondents and 36% of black respondents (see *Figure 6*).

**Figure 4: LGBT People Are Racially/Ethnically Diverse**



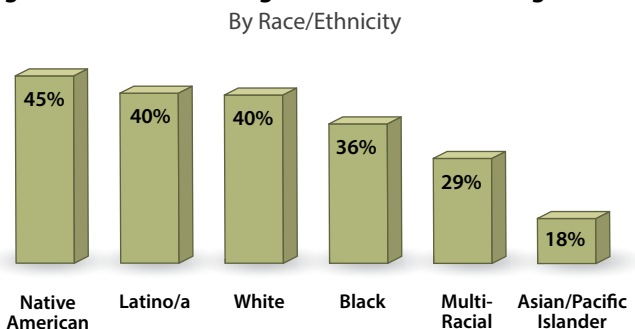
Source: Gates, Gary J. and Frank Newport. "Special Report: 3.4% of U.S. Adults Identify as LGBT." *Gallup Politics*. October 18, 2012. <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx>

**Figure 5: Percent of Same-Sex Couples Raising "Own" Children**



Source: Gates, Gary J. "Same-sex Couples in Census 2010: Race and Ethnicity." *The Williams Institute*. April 2012. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-CouplesRaceEthnicity-April-2012.pdf>

**Figure 6: Percent of Transgender Americans Raising Children**



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

## Education Levels of LGBT Workers

The data on educational attainment of LGBT adults and workers paint an unclear picture. For example, recent polls show that Americans with lower education levels (high school education or some college) are more likely to identify as LGBT than college graduates and those who have post-graduate degrees.<sup>27</sup> In contrast, census data show a higher probability that individuals in same-sex couples have at least a bachelor's degree, compared to their counterparts in opposite-sex couples (see *Figure 7*). Similarly, the National Transgender Discrimination Survey found that transgender respondents had much higher levels of educational attainment than the population as a whole, with 87% reporting that they had at least some college and 47% reporting that they had obtained a college or graduate degree, compared to 55% and 27%, respectively, for the general population (see *Figure 8*).

## Unemployment Rates of LGBT Workers

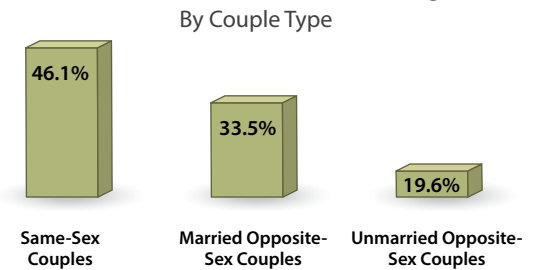
There is very little data about unemployment among LGBT workers. For lesbian, gay and bisexual (LGB) adults, what little we know comes from a 2009 state-level survey in California, which found that 14% of LGB adults were unemployed, compared to 10% of heterosexual adults.<sup>28</sup> Although data show that individuals in same-sex couples participate in the American labor force at higher rates than individuals in opposite-sex couples (82% v. 69%), employment rates for those within the workforce are virtually the same (93% v. 94%).<sup>29</sup>

The National Transgender Discrimination Survey found that although transgender workers are more highly educated than the general population, their unemployment rates were twice the rate of the population as a whole, with rates for transgender people of color reaching as high as four times the national unemployment rate (see *Figure 9*). Nearly half (44%) of transgender people who are currently working said that they were underemployed, which could mean that they have only been able to find part-time or temporary work, or that they are overqualified for the job that they have.<sup>30</sup>

## Higher Poverty Rates for LGBT Americans

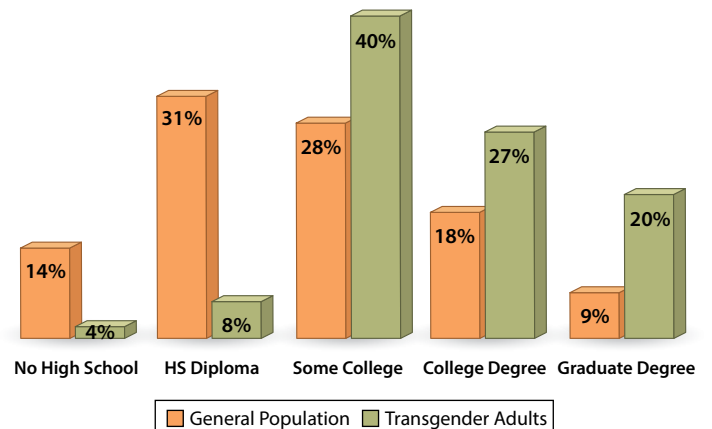
Despite stereotypes to the contrary, research shows that LGBT people are at higher risk of poverty than non-LGBT people.<sup>31</sup> Transgender people, for example, are nearly four times more likely to have a household income under \$10,000 per year than the population as a whole

**Figure 7: Percent of Individuals in Couples Who Have At Least a Bachelor's Degree**



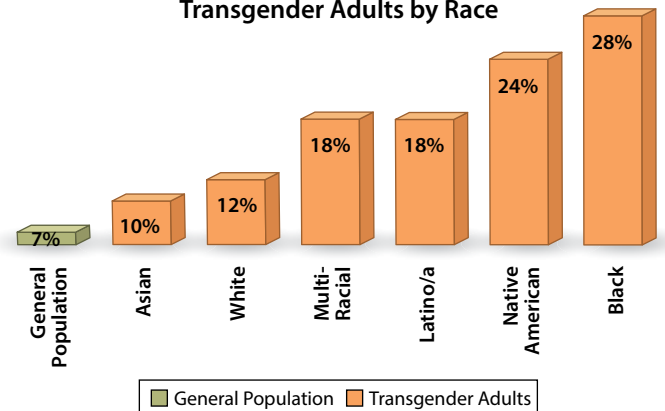
Source: Gates, Gary J. "Same-sex and Different-sex Couples in the American Community Survey: 2005-2011." *The Williams Institute*. February 2013. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/ACS-2013.pdf>

**Figure 8: Education Levels of Transgender People and General Population**



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

**Figure 9: Unemployment Rates for Transgender Adults by Race**



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

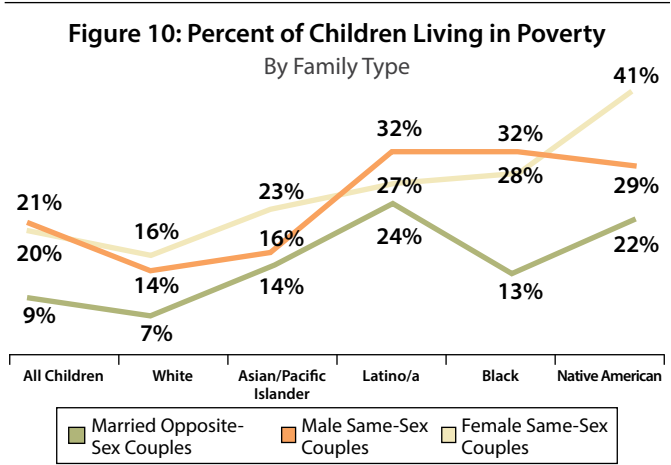
(15% vs. 4%).<sup>32</sup> In addition, studies find that lesbians and bisexual women—and women in same-sex couples—are more likely to live in poverty than are heterosexual women and women in married opposite-sex households.<sup>33</sup> For example, 24% of lesbians and bisexual women are living in poverty, compared to 19% of heterosexual women.<sup>34</sup> Among LGBT people of color, the poverty data mirror broader societal trends; for example, African Americans in same-sex couples have significantly higher poverty rates than both white people in same-sex couples and African Americans in married opposite-sex couples.<sup>35</sup>

These higher poverty rates among LGBT workers should come as no surprise given the challenges explored in this report, including job discrimination, unequal access to worker and family benefits, and higher tax burdens. Among the hardest-hit by these challenges are LGBT workers who are parents, together with their children. Single LGBT adults raising children are three times more likely to have incomes near the poverty line compared to single non-LGBT individuals raising children.<sup>36</sup> Married or partnered LGBT individuals raising children are twice as likely to have household incomes near the poverty line compared to married or partnered non-LGBT parents. Children of same-sex couples are twice as likely to live in poverty when compared to children raised by married non-LGBT couples (21% vs. 9%, see *Figure 10*).<sup>37</sup> Reflecting trends in the broader population, same-sex couples of color raising children are more likely to be poor than white same-sex couples raising children.

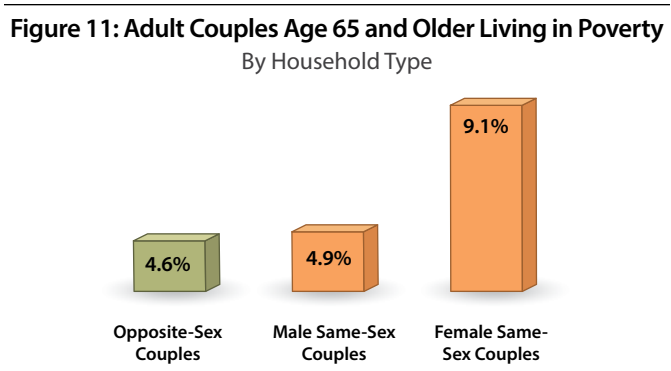
The inequities facing LGBT workers and their families add up over their lifetimes and can result in considerable financial challenges during their later years. Unequal access to retirement benefits, combined with a lifetime of job discrimination, can make retirement a struggle for LGBT workers. While no good data exist on the poverty rates of transgender older adults, analysis by UCLA's Williams Institute shows that older same-sex couples face higher poverty rates than older opposite-sex couples.<sup>38</sup> Older lesbian couples are particularly disadvantaged. Because of the combined effects of their sexual orientation and the "gender wage gap" described in this report in on pages 33-36, these couples are twice as likely to be poor as older heterosexual couples (see *Figure 11*).

### Legal Protections for America's Workforce

Changes in the U.S. economy since the industrialization boom of the late 19th and early 20th centuries have led to shifts in the U.S. workforce, as well as new laws governing the treatment of workers. As the growth of the economy



Source: Albelda, Randy, M.V. Lee Badgett, Alyssa Schneebaum, and Gary J. Gates. "Poverty in the Lesbian, Gay, and Bisexual Community." *The Williams Institute*. March 2009. <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/poverty-in-the-lesbian-gay-and-bisexual-community/>



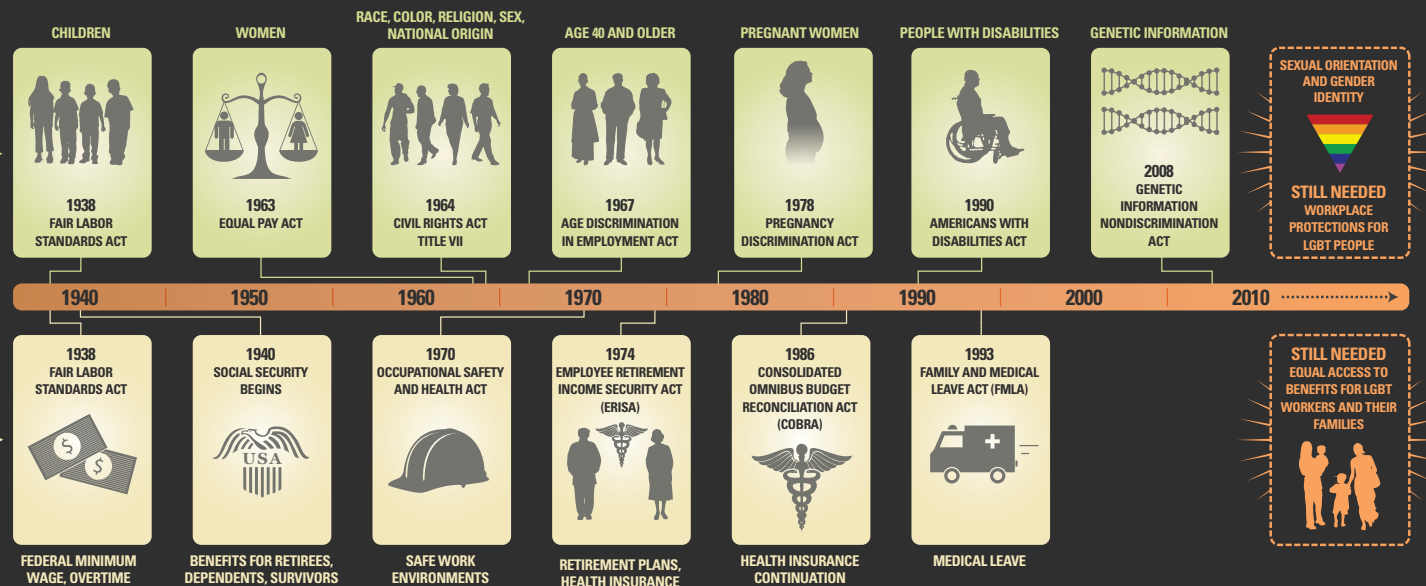
Source: Albelda, Randy, M.V. Lee Badgett, Alyssa Schneebaum, and Gary J. Gates. "Poverty in the Lesbian, Gay, and Bisexual Community." *The Williams Institute*. March 2009. <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/poverty-in-the-lesbian-gay-and-bisexual-community/>

drew increasing numbers of people of color and women into the workforce, and as manufacturing and service industries created new types of jobs and new workplace arrangements, policymakers passed a series of legal protections for workers—as well as laws regulating and encouraging benefits for workers' families. These laws and policy changes were usually the culmination of hard-fought battles for fair and equal treatment of workers, and were spurred by the labor movement, the women's movement, and the civil rights movement.

At first, these laws were aimed at ensuring that employers paid workers at or above national minimum-wage levels, and at protecting children from exploitation and danger. Over time, laws expanded to include other wage protections (for example, equal pay for women) and to address hazardous working conditions. The focus of many of the national laws passed since the 1960s has

# A TIMELINE OF IMPORTANT FEDERAL WORKPLACE PROTECTIONS

## CLASSES OF PROTECTED WORKERS



## WORKER RIGHTS & BENEFITS

been to protect workers from discrimination based on race, color, national origin, religion and sex. More recent laws provide protections based on pregnancy, disability, age, and genetic information. The federal government also has enacted newer laws to regulate and provide protections for important employer-provided benefits like retirement benefits, health benefits and family and medical leave from work.

Today, more than 180 federal laws and thousands of state laws aim to support American workers in accessing good jobs in safe workplaces, having equal opportunities to succeed and advance at work, and receiving fair wages and benefits.<sup>39</sup> The major federal laws are described below and are summarized in the diagram, “A Timeline of Major Federal Workplace Protections,” above.

### Laws Protecting Classes of Workers

- The **Fair Labor Standards Act of 1938** restricts the number of hours that children under age 16 can work and prohibits the employment of children under age 18 in certain dangerous occupations.
- The **Equal Pay Act (EPA) of 1963** makes it unlawful for employers to pay different wages to men and women if they perform the same work in the same workplace.
- **Title VII of the Civil Rights Act of 1964** outlines a number of unlawful employment practices,

including refusing/failing to hire, firing someone without cause, or otherwise discriminating against or harassing a worker on the basis of race, color, religion, national origin or sex. The law also says it is illegal for employers to retaliate against a person who complains about discriminatory practices.

- The **Age Discrimination in Employment Act of 1967 (ADEA)** protects workers age 40 and older from discrimination based on age.
- The **Pregnancy Discrimination Act of 1978** amended Title VII of the Civil Rights Act to protect women from discrimination because of pregnancy, childbirth, or a medical condition resulting from pregnancy or childbirth.
- The **Americans with Disabilities Act of 1990** makes it unlawful for employers in the private sector, local governments and state governments to discriminate against someone with a disability. It also requires that employers make reasonable accommodations for qualified individuals who have a disability.
- The **Genetic Information Nondiscrimination Act of 2008 (GINA)** makes it unlawful for employers to discriminate against an employee or an applicant for employment because of genetic information.



## Laws Protecting Worker Rights and Benefits

- The **Fair Labor Standards Act of 1938 (FLSA)**, as amended, requires employers to pay at least the federal minimum wage (currently at \$7.25)<sup>40</sup> to “non-exempt” employees (a category that covers employees who are not in executive, administrative, professional or sales positions). The minimum wage covers regular hourly work; for overtime work, employers must pay one-and-a-half times the minimum wage. Nineteen states and the District of Columbia have laws that establish a higher minimum wage than the federal standard.<sup>41</sup>
- The **Social Security Act**, effective 1940, established a system through which workers, retirees, and their spouses and children could receive a monthly cash payment upon the worker’s retirement, disability, or death. The system functions much like an insurance system, where workers make contributions during their working years and then receive benefits later in life. The programs created by the Social Security Act are among the most utilized government programs, and together comprise an almost universal system of retirement, disability, and life insurance for most Americans.
- The **Occupational Safety and Health Act of 1970 (OSH)** requires employers to provide a safe and healthy work environment that is free from recognized, serious hazards. The law also encourages states to develop and operate their own job safety and health programs; 25 states have done so.<sup>42</sup> In partnership with state-approved programs, the Occupational Safety and Health Administration (OSHA) sets and enforces standards. OSHA also conducts inspections when an employee notifies the agency that there is a serious risk or that an employer is not complying with the law.
- The **Employee Retirement Income Security Act of 1974 (ERISA)** protects employee benefit plan participants and their beneficiaries by establishing minimum standards for retirement/pension plans and health benefits. Since the regulation of insurance has long been the responsibility of states, all states also have laws that affect employee benefit plans. The interplay between ERISA and state laws is complex and often depends on whether an employer is “self-insured” and therefore covered only by ERISA, or “fully insured” through the state. (See pages 65-66 for a full discussion of how ERISA impacts LGBT workers.)
- The **Consolidated Omnibus Reconciliation Act (COBRA)** (passed 1986) provides eligible former employees, retirees, and spouses, former spouses and dependent children of employees with the right to continue health coverage at group rates when an employee loses coverage for any reason other than gross misconduct or when an employee’s work hours are reduced so that he is no longer eligible for employer-paid coverage. The law generally covers health plans sponsored by private-sector employers with 20 or more employees, as well as state and local governments. (See pages 69-70 for a full discussion of how COBRA impacts LGBT workers.)
- The **Family and Medical Leave Act of 1993 (FMLA)** requires covered employers to allow eligible employees to take up to 12 weeks of unpaid, job-protected leave upon the birth or adoption of a child, or because of the serious illness of the employee or a spouse, child or parent. Several states have adopted more expansive family leave laws that cover more employers, expand the criteria of who is eligible for leave, and/or increase the period of leave. A few states have expanded leave requirements to include paid leave. Most importantly for LGBT employees, some states have expanded their state leave laws to be inclusive of same-sex spouses and partners. (See pages 75-78 for a full discussion of leave laws and how they affect LGBT workers.)

## The Broken Bargain for LGBT Workers

None of the federal laws described above explicitly protects LGBT workers. Despite the fact that LGBT workers face high rates of discrimination, federal lawmakers have enacted no laws aimed expressly at prohibiting employers from discriminating against LGBT workers, nor have most states. When it comes to laws protecting worker and family benefits, many only cover benefits for the individual worker, a worker’s legally recognized spouse, and a worker’s legally recognized children or dependents. This poses a problem for LGBT workers who, as we describe later, often cannot legally marry nor form legal ties to their children.

The result is that the laws protecting workers in the United States usually fail to protect LGBT employees. For many LGBT workers, going to work still means facing harassment, discrimination and unjust firing without the protection of the law. It also may mean

getting smaller paychecks and receiving fewer benefits than others doing the same work. Last but not least, LGBT workers and their families often face a heavier tax burden than their non-LGBT coworkers, meaning they have fewer funds to save for their children's education or their own retirement.

So, if fairness and equality are part of America's basic workplace bargain, this bargain is clearly broken for LGBT workers. As shown in the infographic on the next page, this report organizes the barriers LGBT workers face into two overarching problems:

1. Job discrimination without legal protection makes it **harder for LGBT workers to find and keep a good job**; and
2. LGBT workers **receive fewer benefits and pay more taxes, which puts LGBT workers and their families at risk**.

Fixing the broken bargain will mean addressing multiple barriers to equal and fair treatment for LGBT workers, as outlined below.

### Discrimination Without Legal Protection Makes It Harder to Find and Keep a Good Job

**Barrier #1: Bias and Discrimination in Recruitment and Hiring.** LGBT workers often fear that they are putting their job prospects at risk if they disclose that they are LGBT while looking for work. This fear is not unfounded. Studies show that men who have LGBT-related work or volunteer experience on their résumés are less likely to be invited to job interviews than men with otherwise identical résumés. In interviews, LGBT workers may encounter inappropriate questions that force them to choose between "coming out" or hiding who they are, or they may be unable to ask straightforward but important questions about, for example, the availability of domestic partner benefits as part of their total compensation package. For transgender applicants, the entire job search and hiring process is a minefield, particularly if a legal name or gender marker does not match the outward appearance of the applicant. These challenges can be exacerbated by concerns that non-disclosure during the application process could later prove fatal to a newly secured job if a worker's transgender status is discovered.

**Barrier #2: On-the-Job Inequality and Unfairness.** Once an LGBT employee is hired, he or she may face many forms of harassment and discrimination. An

LGBT employee may be in a workplace that is blatantly hostile, one that condones anti-gay jokes and slurs, and/or one where employers look the other way and allow a discriminatory climate to flourish. Whether the result of outright discrimination or negligence and lack of attention, a discriminatory workplace environment causes real harm to LGBT workers. A star performer can be denied a promotion by her boss even if she is the best person for the job, just because she is a lesbian. And an employer can suddenly decide to fire an LGBT employee for something as ordinary as displaying a family picture. When these types of events happen, no federal law provides explicit protections for the LGBT worker, even though protections exist for other workers based on race, religion, ethnicity and other protected categories.

**Barrier #3: Wage Gaps and Penalties.** In addition to job and workplace discrimination, LGBT employees face wage disparities that make it harder for them to provide for themselves and their families. Gay and bisexual men face a "wage penalty" and are paid, on average, less than other male workers, even when they have the same level of education, are in the same occupation, and live in the same region of the country. Lesbian and bisexual women do not face a wage penalty compared with heterosexual women, but like all women, they are still subject to a "gender wage gap," which means that they are generally paid less than men. These inequities can have a multiplier effect on same-sex couples as both gay partners experience wage penalties or both lesbian partners experience wage gaps.<sup>43</sup> Transgender employees also report chronically low wages, with 15% of transgender adults making \$10,000 per year or less.<sup>44</sup>

**Barrier #4: A Lack of Legal Protections.** When lesbian, gay and bisexual workers face discrimination and unfair firing, they often have little or no legal recourse. Only 21 states and the District of Columbia have expanded their laws to prohibit discrimination in employment based on sexual orientation. Transgender workers may seek federal legal recourse by filing a complaint with the Equal Employment Opportunity Commission (EEOC) for "sex" discrimination under Title VII of the Civil Rights Act, but only 16 states also explicitly prohibit discrimination based on gender identity/expression.<sup>45</sup>

<sup>c</sup> See pages 36-40 for a broader explanation of how the transgender workers are protected by the Civil Rights Act.

# THE BROKEN BARGAIN

## FOR LGBT WORKERS



### HARDER TO FIND & KEEP A GOOD JOB

Legal discrimination makes it harder to find a good job, succeed, and provide for self and family.



### WORK JUST AS HARD

Once working, LGBT workers do the same job but...



### GET FEWER BENEFITS

...are often unfairly denied individual and family benefits...



### PAY MORE TAXES

...and pay more income tax on the same salary.

#### LGBT WORKERS CAN BE LEGALLY REFUSED JOBS OR UNFAIRLY FIRED BY DISCRIMINATORY EMPLOYERS

	HETEROSEXUAL	LGBT	
<b>JOB DISCRIMINATION</b>	Protected from hiring bias?	✓	X
	Protected from on-the-job discrimination?	✓	X
	Protected from wage discrimination?	✓	X

(Protections are sporadic and inadequate)

#### LGBT WORKERS AND THEIR FAMILIES LEFT VULNERABLE

	HETEROSEXUAL	LGBT	
<b>UNEQUAL BENEFITS</b>	<b>EQUAL ACCESS TO:</b>		
	Health benefits?	✓	X
	Medical leave?	✓	X
	Retirement benefits?	✓	X
Death and disability benefits?	✓	X	

#### LGBT WORKERS CAN BE DENIED FAMILY TAX RELIEF

	HETEROSEXUAL	LGBT	
<b>UNEQUAL TAXES</b>	Tax relief for family health benefits?	✓	X
	Full access to family and child-related tax credits and relief?	✓	X

## Fewer Benefits and More Taxes Put LGBT Workers and Their Families at Risk

**Barrier #5: Unequal Access to Health Insurance Benefits.** Under federal and most state laws, most employers can extend family health benefits to married opposite-sex couples yet deny same-sex couples the same coverage. When employers do the right thing and electively offer domestic partner and family coverage to LGBT workers, those workers and employers pay extra taxes on the value of the family coverage, although married opposite-sex workers get the same benefits tax-free. In addition, exclusions in health insurance often deny transgender workers access to both basic healthcare and transition-related care.<sup>d,46</sup>

**Barrier #6: Denial of Family and Medical Leave.** Because the federal government does not legally recognize the marriages of same-sex couples under the Defense of Marriage Act (DOMA), LGBT employees do not have equal access to federally mandated unpaid leave to provide care for same-sex spouses or partners.<sup>e</sup> Only about one-fifth of states provide equal access to unpaid leave for same-sex couples under state leave laws.<sup>47</sup> In addition, employers may deny transgender workers leave for transition-related care, incorrectly stating that such care does not constitute a “serious medical condition.” As a result, LGBT employees may face a difficult choice: Put their jobs at risk to care for themselves or their families, pay for expensive in-home family care, or make do without leave and put in jeopardy their own health or that of a partner or spouse.

**Barrier #7: Denial of Spousal Retirement Benefits.** No retirement plan is more important for retired American workers than Social Security, yet the same-sex spouses and partners of LGBT workers are systematically denied Social Security benefits designed to protect workers’ families during their retirement years. Adding to the challenges for LGBT workers and their families, an LGBT employee also may be unable to opt for continuing pension benefits for a same-sex spouse or partner under an employer-provided pension plan, even when the couple is married under state law. What’s more, if a same-sex partner or spouse does receive benefits under a pension or other employer-provided retirement plan, she may pay higher taxes than an opposite-sex spouse.

**Barrier #8: Unequal Family Protections When a Worker Dies or is Disabled.** When an LGBT worker dies or becomes disabled, the worker’s same-sex spouse—

and in some cases, his or her children—will be denied Social Security disability and survivor benefits. Social Security’s Old-Age, Survivors and Disability Insurance (OASDI) program is designed to protect the worker’s surviving spouse and unmarried children under age 18, yet state marriage and parenting laws, combined with a lack of federal recognition of same-sex couples, often exclude LGBT families from qualifying for these benefits.

**Barrier #9: A Higher Tax Burden for LGBT Workers and Their Families.** Not only do LGBT workers bring home a smaller paycheck to pay for benefits for their families, they also face a yearly encounter with inequality when they file their tax returns. State marriage and parenting laws, combined with the federal government’s lack of recognition of same-sex couples, mean that LGBT workers pay more taxes because they cannot file using the advantageous “married filing jointly” status. LGBT workers also cannot access important family-related deductions, exemptions, and tax credits. As a result, they may be forced to misrepresent and “carve up” their families to gain child-related tax relief or be unable to claim their children at all.

**Barrier #10: Inability to Sponsor Families for Immigration.** An LGBT worker is unable to sponsor a foreign-national spouse or partner, or a partner’s children, for the purposes of immigration. This means American LGBT workers may need to live abroad to avoid separation from their families, while highly-skilled foreign-national LGBT workers may decline to come to the United States if accepting an American job means they must leave their families behind.

## Fixing the Broken Bargain Is Good for Business and America’s Prosperity

The lack of legal protections for LGBT workers, combined with the unequal treatment they receive in areas from wages and hiring to family benefits, is not just a problem for LGBT workers; it also harms their coworkers, their employers and America’s economy. Organizations that create diverse and inclusive workplaces are better positioned to attract and retain top talent. They benefit from decreased costs

<sup>d</sup> According to the National Center for Transgender Equality, “Transitioning is the period during which a person begins to live as their new gender. Transitioning may include changing one’s name, taking hormones, having surgery, or changing legal documents (e.g., driver’s license, Social Security record, birth certificate) to reflect their new gender.”

<sup>e</sup> Although FMLA has recently clarified the definition of children to be broadly interpreted, the definition of “spouse” remains narrowly interpreted to include only federally recognized opposite-sex spouses.

associated with absenteeism and turnover (or “churn”). They also have higher levels of employee satisfaction, which can boost productivity and innovation and result in higher profits. Unfortunately, even employers who value diversity—and believe it gives them a competitive advantage—are still forced by law to act against their self-interest and values and be complicit in treating LGBT workers unfairly.

More and more businesses are beginning to speak out about the importance of fixing the broken bargain for LGBT workers. The Business Coalition for Workplace Fairness includes more than 150 large and small U.S. businesses that advocate for workplace fairness for LGBT employees. Coalition members are Fortune 500 firms from Bank of America and Bristol-Myers Squibb to Chevron, Coca-Cola Company, Nike, US Airways and Yahoo!<sup>48</sup>

What’s more, employers are becoming increasingly proactive in addressing the absence of legal protections for LGBT workers; 88% of Fortune 500 companies provide nondiscrimination protections for their gay and lesbian employees.<sup>49</sup> Similarly, solid majorities of small businesses surveyed by Small Business Majority and the Center for American Progress in 2011 also said they take steps to prohibit discrimination based on gender identity (62%) and sexual orientation (69%). When asked why they began taking steps to prevent such discrimination, 82% of small business owners agreed with the statement, “It’s the right thing to do.”<sup>50</sup>

The bottom line: America’s leading small and large businesses know that the broken bargain for LGBT workers hurts employers and American prosperity. To the extent that all levels of government (and more employers) adopt policies that ensure fair and equal treatment for LGBT workers, businesses will be better positioned to succeed and grow and contribute to the success of local, regional and national economies.

Fixing the broken bargain for LGBT workers helps employers meet four business imperatives:

**Ending Undue Burdens Created by the Legal Requirement to Treat LGBT Employees Differently.** In a February 2013 brief submitted to the U.S. Supreme Court, 278 businesses and employers (including Amazon.com, Apple, Citigroup, Facebook, Google, Intel, Marriott, Microsoft, Nike, Pfizer, Starbucks, Twitter, Viacom and the Walt Disney Company) took a strong stand for ending the unequal treatment of LGBT workers and their families

under federal law.<sup>51</sup> The brief argued in support of overturning the Defense of Marriage Act (DOMA), which restricts the definition of marriage to the union of one man and one woman and therefore results in same-sex couples being denied many benefits enjoyed by opposite-sex couples. (For more on DOMA, see page 53.)

The businesses stated that DOMA is not only unfair but that it also creates complex and difficult compliance burdens for companies—burdens that often carry with them high administrative and financial costs, as well as negatively impacting employee morale. For example, DOMA requires businesses operating in more than one state to treat LGBT employees with same-sex spouses in two different ways: 1) as single when it comes to federal and payroll taxes, as well as workplace benefits that are tied to the employee’s marital status; but also 2) as married for all other purposes within states that recognize marriages of same-sex couples. This creates complications and duplications by requiring employers to be able to track the same employee as both married and single. As the brief explains:

*DOMA’s regime obliges an employer to maintain systems capable of tracking married employees by spousal gender—even when the employer has no current employee with a same-sex spouse. Confusion abounds, and even sophisticated employers struggle.*

To address these and other problems created by DOMA, companies often are forced to reprogram benefits and payroll systems and forms, reconcile different tax and benefit treatments, reconfigure benefit and coverage levels, hire expert attorneys, and train human resources (HR), benefits, and payroll personnel.

*HR Departments* would tell you it is a disaster trying to deal with DOMA when you are a large employer, because you have these employees who are legally married, but now you’ve got to put them in a different box for W-2s, for ERISA, for retirement benefits, and it’s really vexing.

Sabin Willett, Partner at Bingham McCutchen, as quoted in Hurley, Lawrence and Aruna Viswanatha. “Corporations urge Supreme Court to embrace gay marriage.” *Reuters*. February 27, 2013.



Administrative complexities and contradictions aren't the only ways that inequitable laws hurt businesses. One of the more pernicious effects of current laws is that employers must implement and enforce discriminatory treatment of employees in their own companies. For example, HR and benefits staffers must explain to married LGBT employees why they and their families will not receive the same benefits as a non-LGBT colleague who does the exact same job. Similarly, payroll departments must explain why the high price of a same-sex spouse's health insurance premiums is being added to an employee's taxable income—and why that employee's take-home pay is being lowered as a result.

According to the brief, enforcing a two-tier employment system where married workers are treated and compensated differently can have a negative effect on employee morale and individual/team productivity, cause tension between employees and their managers, and generally distract people from pursuing the business goals of the company.

**Attracting and retaining top talent.** The U.S. unemployment rate remains high, but data show that companies are planning new hires to meet anticipated growth. The problem, however, is that finding qualified workers can be a challenge. According to a recent survey, 47% of CEOs were very confident about their companies' growth over the next three years, yet 54% were concerned about whether they will have the talent they need.<sup>52</sup> In 2012, 31% of surveyed CEOs said that talent constraints hampered innovation.<sup>53</sup>

The talent shortage isn't only a problem for large businesses. Small businesses and nonprofit organizations face their own recruitment challenges, which include stiff competition with large employers for skilled employees in local and regional job markets. According to the National Federation of Independent Business, 71% of small business owners report that it is hard to find qualified candidates for open positions.<sup>54</sup> Nearly half (49%) of small business owners said that their chief competition is located within 10 miles of their headquarters, which means they have to differentiate themselves to attract high-caliber talent.<sup>55</sup>

Successful companies of all sizes know that imposing arbitrary limits on the hiring pool makes no business sense, and it adds to the costs of attracting talent. Competing for top workers means

*Our organizations* are engaged in national and international competition—for talent, customers, and business. That competition demands teamwork, and teamwork thrives when the organization minimizes distracting differences, and focuses on a common mission. DOMA's core mandate—that we single out some of our married colleagues and treat them as a lesser class—upsets this imperative.

Supreme Court amicus brief, 278 employers and organizations representing employers, *United States v. Windsor*, February 2013.



Every single company on Fortune magazine's list of the "100 Best Companies to Work For" includes sexual orientation in its nondiscrimination policy. More than half of these companies include gender identity.

—Center for American Progress, 2012

making hiring decisions based on skills and abilities, rather than unrelated characteristics such as sexual orientation or gender identity and expression. In addition, the premium on talented labor in today's economy means that employers also cannot afford to lose qualified workers they already have. Treating LGBT workers unfairly will result in a talent drain as these workers look elsewhere for jobs. What's more, it is not just LGBT workers who will become disenchanted and leave. Employers will also lose workers who are not LGBT but who are uncomfortable watching their coworkers being treated unfairly.

It is estimated that more than 2 million people voluntarily leave their jobs each year because of workplace unfairness.<sup>56</sup> Among their reasons for leaving: negative or disparaging comments, unfair employment policies, or invisibility on the job. Given that it can cost up to twice an employee's salary to replace that employee when they leave, employers that tolerate workplace unfairness are putting their profits and long-term success at risk. Cumulatively, turnover related to unfair treatment of workers costs businesses in the U.S. as much as \$64 billion each year.<sup>57</sup>

**Boosting productivity and results.** According to a recent study, LGBT employees are exactly the kind of workers that today's employers should want:<sup>58</sup>

- 71% describe themselves as “ambitious.”
- 88% say they are “committed” and “willing to go the extra mile” for their employers.
- 48% have graduate degrees.

Employers that create a welcoming environment for LGBT workers are taking an important step to improve productivity, competitiveness and results. Not only can LGBT workers bring unique qualifications and commitment to their work, but the inclusive environment that these employers create also has its own benefits. The reason: When workers feel satisfied, respected and valued, they do their best work and contribute to an organization's bottom line. Similarly, when an employee sees that an employer is committed to diversity and workplace fairness, he or she will be more likely to stay with that company and more likely to recommend that company to others as a good place to work.

A Conference Board survey showed that highly engaged employees outperform more disengaged colleagues by as much as 28%.<sup>59</sup> Business-level outcomes that can be significantly linked to employee engagement include decreased absenteeism, decreased turnover, and increased productivity. In contrast, disengaged employees are considerably more likely than engaged employees to indicate that they feel stress for a significant portion of the work day, have a greater number of days that keep them from doing their usual activities, and have health problems that preclude them from doing what others in their age group do.

More than three decades of research have confirmed a link between employees' increased job satisfaction and consequent decreases in absenteeism and churn. In addition, research shows that employee satisfaction is a driver for customer satisfaction and customer loyalty. For more than two decades, researchers have found that employee satisfaction results in a stronger customer orientation. For example, healthcare settings with higher levels of employee satisfaction provide better experiences for patients, and these patients are more likely to recommend the healthcare organization to others. And, in a country where half of healthcare consumers rely on recommendations from friends and family to select their providers, word-of-mouth referrals are key.

**Spurring innovation and reaching new markets.** In a 2011 *Forbes* study, 85% of leaders of large companies said that diversity is crucial because of the many perspectives and ideas needed to drive innovation.<sup>60</sup> To improve products and services, smart businesses are creating cultures that foster entrepreneurship and risk-taking. An inclusive work environment can be a key differentiator for organizations that want to grow and expand their products and services. Creating such an environment requires a culture that encourages freedom of thought, cross-pollination of ideas, and ingenuity.

In addition, when a company's workforce mirrors the diversity of its customers, it is easier for the company to understand the needs of those customers, particularly in fields where relationships and networking are key to business development. Inclusive law firms can do a better job serving their clients. Advertising agencies can more easily tailor messages to their audiences. Consulting companies can engage more effectively with their clients. Regardless of industry or product niche, LGBT team members can bring unique perspectives to the table, helping to tailor a company's products and services to a diverse, global marketplace.

There are an estimated 9 million LGBT people living in the U.S., and the buying power of LGBT adults in the country is estimated to top \$790 billion per year.<sup>61</sup> In addition, countless other consumers strongly support LGBT equality. Developing products and brands that appeal to these audiences is becoming increasingly important to business bottom lines. A 2011 survey found that 87% of LGBT people said they were likely to consider a brand that had equal workplace benefits for all employees, as were 75% of non-LGBT employees.<sup>62</sup> Harris Interactive found that seven in 10 (71%) LGBT adults said that they would be very or somewhat likely to stick with a company or brand that was supportive of the LGBT community even if a competitor was less expensive or more convenient.<sup>63</sup> Finally, 23% of LGBT consumers report that they have switched products or service providers because they believed that a company had engaged in actions harmful to the gay and lesbian community.<sup>64</sup>

Across all business sectors, consumers are also more attuned than ever to the corporate character of businesses and organizations. As a result, corporate social responsibility is a growing concern for many companies. A commitment to diversity in the workplace is one way that companies can publicly show their

social responsibility. More than half (58%) of business executives note that corporate social responsibility concerns drive their organizations' commitment to diversity and inclusion.<sup>65</sup>

## What's Next

Bias and unjust laws hurt LGBT workers and their families, but these inequities also harm non-LGBT co-workers and negatively impact the entire workplace environment. In the sections that follow, this report details how the barriers identified above make it difficult for LGBT employees to find good jobs and advance in their careers. It also shows how these barriers reduce access to workplace benefits like health insurance, medical leave, and retirement benefits—and leave LGBT workers and their families vulnerable. Finally, the report provides a number of recommendations to remove existing barriers so that LGBT workers can find and keep good jobs, receive equal benefits, and be fairly taxed.

*When a person is fired* from a job because of their sexual orientation, it's not just the job that they are losing. They lose their income, their ability to feed their family, their health care coverage, a sense of self-worth and the dignity of having a job. When a gay father or lesbian mother lose their job because of their sexual orientation, what is taken from them is also taken from their children—the security of a home and an ability to provide for those basic needs.

—S. Milligan, Testimony  
from Jackson, Michigan.

Michigan Department of Civil Rights.  
"Report on LGBT Inclusion Under  
Michigan Law." January 28, 2013.





## THE BROKEN BARGAIN: DISCRIMINATION WITHOUT LEGAL PROTECTION

### Overview: For LGBT Workers, It Is Harder to Find and Keep A Good Job

Part of the bargain that America and its employers make with workers is that if a person is qualified, works hard and does her part to contribute to her employer's success, then she should be able to find and keep a good job. Ask working-age adults in the United States what it means to have a "good job," and it's likely you will hear more than a few answers that sound like these:

*"A good job means making enough money to support myself and my family."*

*"A good job means working in a safe and supportive workplace."*

*"A good job means knowing I will be judged based on my ability to do my job and contribute to my employer's success."*

*"A good job means having opportunities to develop new skills and take on new responsibilities so I can advance in my career and hopefully earn more money over time."*

Adequate income. Safety. Fair treatment. Opportunities to advance and succeed. These are some of the fundamental factors that define a good job in America today—goals so important that government has enacted laws to try and ensure that good jobs are within every worker's reach. The United States has minimum-wage requirements, worker safety laws, and legal protections for groups of workers that have historically been targets of workplace discrimination, including women, workers of color and workers with disabilities. The overall impact of these laws has been positive for protected workers. For example, research shows that federal laws prohibiting race and sex discrimination helped boost earnings and labor force participation for both black and white women.<sup>66</sup>

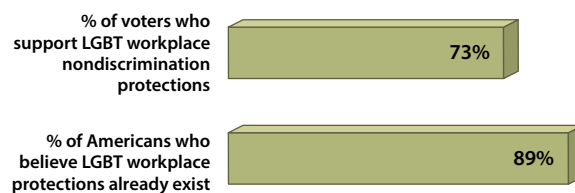
However, although laws were passed to protect other groups of workers from discrimination and unfair treatment, federal and most state nondiscrimination laws do not include explicit protections for LGBT workers.

*[Our businesses]* thrive in large part thanks to the hard work and creativity of our employees. If external forces—such as discrimination on the basis of sexual orientation in the laws of the states where we operate—block us from recruiting, hiring, and retaining the very best employees, we will be unable to achieve the success that each of us is capable of achieving with a workforce of the best and brightest employees.

Supreme Court amicus brief, 100 leading U.S. companies, *Hollingsworth v. Perry*, February 2013.



Figure 12: Support for LGBT Workplace Protections



Sources: Krehely, Jeff. "Polls Show Huge Public Support for Gay and Transgender Workplace Protections." *Center for American Progress*. June 2, 2011. <http://www.americanprogress.org/issues/lgbt/news/2011/06/02/9716/polls-show-huge-public-support-for-gay-and-transgender-workplace-protections/>

The bargain of a good job is broken for LGBT workers in America today. As illustrated in the infographic on the next page, continued and often unchecked discrimination against LGBT workers makes it harder for them to find and keep good jobs, receive fair wages and secure equal opportunities to succeed. In most of the country, it is perfectly legal for an employer to fire or refuse to hire a worker simply because that worker is gay or lesbian—and some employers do so.<sup>f</sup> In addition, even when LGBT workers do find jobs, they may face hostile work environments that make it more difficult for them to succeed. Or, they may face wage penalties and gaps that result in lower pay for the same hard work.

<sup>f</sup> Transgender workers have some legal protections based on Title VII's prohibitions against discrimination based on "sex." See full discussion on pages 36-40.

# LEGAL DISCRIMINATION

MAKES IT HARDER TO FIND AND KEEP A GOOD JOB



## THE SOLUTION



### LEGAL PROTECTIONS FOR LGBT WORKERS

Pass federal, state and local employment protections for LGBT workers

### INCLUSIVE EMPLOYER POLICIES

Employers can institute nondiscrimination policies and foster an inclusive culture

## THE IMPACT

MAKING IT HARDER FOR LGBT WORKERS TO:

### RECEIVE EQUAL PAY

BARRIER: Wage gaps and penalties

### SUCCEED

BARRIER: On-the-job inequality and unfairness

### FIND GOOD JOBS

BARRIER: Bias in recruitment and hiring

## THE PROBLEM

### ANTI-LGBT EMPLOYERS CAN AND DO LEGALLY DISCRIMINATE

LGBT employees lack explicit workplace protections under federal and most state law



## What Is a “Good Job”?

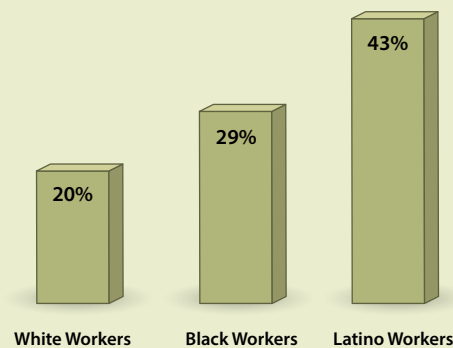
The nonprofit, nonpartisan organization Wider Opportunities for Women developed the **Basic Economic Security Tables (BEST) Index** to assess the basic needs and assets that workers require for economic security. The BEST Index is based on the true annual costs for workers to not just survive and meet basic monthly expenses, but to be on solid economic footing when it comes to paying for childcare, healthcare, and minimal savings.<sup>71</sup> Essentially, the BEST Index identifies income levels for “good jobs”—jobs that allow workers to provide for themselves and their families and to be financially prepared for emergencies and the future.

BEST estimates that an hourly wage of \$14.21 would allow a single worker to cover monthly expenses assuming she has employer-provided benefits, including health insurance. Currently, the federal minimum wage is \$7.25 per hour<sup>72</sup>—barely half the wage for a “good job.” For a worker with two young children, the hourly wage for a good job increases to \$27.35—nearly four times the federal minimum wage. For the millions of workers whose employers do not offer benefits (a group consisting primarily of low-wage and hourly workers), the hourly wage for a good job would be even higher.

The fact that many Americans lack access to good jobs is evident in statistics showing that more than four in 10 adults and children (45% of Americans) live in households that lack economic security, even when headed by full-time workers.<sup>73</sup> For these Americans, wages simply do not cover their basic needs. As shown in the figure above, the lack of economic security is particularly prevalent among workers of color.

A good job doesn’t just allow workers to meet their basic needs, though. A good job pays wages that reflect the value of work done; and it offers benefits that ensure the health and safety of workers, including health insurance, disability and life insurance, and the opportunity to take time off when a worker is ill or needs to care for a family member. A good job also is one where a worker can feel secure that she will have a job tomorrow without the daily uncertainty of being laid off or fired without cause.

**Percent of Full-Time Workers Lacking Economic Security**  
(% of workers in two full-time worker households)



Source: Wider Opportunities for Women. “Living Below the Line: Economic Security and America’s Families.” 2011. <http://www.wowonline.org/documents/wowusbestlivingbelowtheline2011.pdf>

The exclusion of LGBT Americans from workplace fairness laws is striking given that it is in deep conflict with American values. A recent poll from the Center for American Progress shows that nearly three-fourths of American voters support workplace protections for LGBT workers. Workplace fairness is such a strong American value that most Americans (89%) incorrectly believe that LGBT workers are already protected (see *Figure 12* on page 18), even though Congress first denied LGBT workers these nationwide protections in 1974 and continues to do so to this day.<sup>67</sup> Similarly, a 2013 survey of small business owners by Small Business Majority found that 81% mistakenly believe it is already illegal under federal law to fire workers because they are gay or lesbian.<sup>68</sup>

Anti-LGBT workplace bias not only harms LGBT workers, it can also negatively affect supportive coworkers who are uncomfortable with workplace discrimination, ultimately reducing workplace productivity.<sup>9,69</sup> The importance of workplace protections is not lost on employers, who increasingly are speaking out in favor of laws to fix the broken bargain for LGBT workers. In the 2013 survey of small business owners, two-thirds (67%) said they support federal legislation that would prohibit employment discrimination against gay and transgender workers.<sup>70</sup>

<sup>9</sup> Some opponents of workplace protections for LGBT workers claim that hiring LGBT people will decrease workforce productivity because LGBT coworkers may make non-LGBT coworkers uncomfortable. In fact, 93% of heterosexual adults indicated in one survey that they would have a positive or neutral reaction if a coworker told them that he or she is gay or lesbian.

The section that follows begins by exploring four barriers to equal and fair treatment for LGBT workers: bias in recruitment and hiring; on-the-job inequality and unfairness; wage gaps and penalties; and inadequate protection under federal and state law. Finally, it offers policy recommendations for strengthening workplace protections at the federal, state and local levels—as well as recommendations for partnering with employers to develop strong policies and practices to foster diverse and inclusive workplaces, regardless of the law.






### Barrier: Bias in Recruitment and Hiring

For many workers in the United States—particularly people of color, women, and people with disabilities—bias in recruitment and hiring is nothing new. Workplace nondiscrimination laws have helped eliminate blatantly inequitable job postings (like “help wanted: able-bodied male” or “whites only”), yet studies show that hidden and often-unrecognized bias still exists.<sup>74</sup>

Although most human resource departments and hiring managers strive to be fair, personal factors still come into play when employers make hiring decisions.

Job screeners must rely on what little information they can obtain about applicants from cover letters, résumés, job applications, Web searches, and other sleuthing. With this sparse information, they make inferences about each candidate’s qualifications in order to determine whether to place the candidate’s application in the “under consideration” pile or the “no thanks” bin. Interviewers, who may have little face-to-face time with each applicant, often cannot do much more than ask a few experience-related questions and develop a “gut check” first impression that may have little to do with a person’s actual ability to do the job. When inferences and impressions fill gaps in knowledge, research shows that stereotypes, stigma and prejudice can emerge.

Although research has predominantly focused on race-based and gender-based hiring bias, employers also have been shown to make decisions based on characteristics such as age, disability, status as a parent, and obesity (See *Table 1*). And while more research is needed, studies have found that hiring bias based on perceived sexual orientation or gender identity/expression is as prevalent as hiring bias based on other characteristics.

Table 1: Studies Show Hiring Bias Is Pervasive	
Characteristic	Findings
<b>Age</b> 	Younger job applicants are more likely than older applicants to be called for an interview. Older workers are seen as less versatile than younger workers and experience more challenges than younger workers when seeking employment in occupations that are rapidly changing. <sup>75</sup>
<b>Disability</b> 	People with disabilities are rated as less capable than workers without disabilities. Even when their interview performance is seen as favorable, they are hired less often. <sup>76</sup>
<b>Sex Stereotypes</b> 	At least 26 studies conducted across the last four decades confirm that gender bias exists in hiring, with male applicants generally judged more positively than female applicants. <sup>77</sup> Both male and female job applicants with masculine traits are rated more highly when applying for stereotypically “male” jobs; likewise, female applicants with “feminine” traits benefit when applying for stereotypically “female” jobs.  Applicants of both sexes who are parents were rated less committed and dependable than nonparents, yet only women parents were rated lower on a measure of “hire-ability.” <sup>78</sup>
<b>Obesity</b> 	Hiring managers with negative stereotypes about obese people were less likely to invite an obese applicant for an interview than an applicant with a body mass index (BMI) in the “normal weight” zone. <sup>79</sup>
<b>Race</b> 	Although there have been some gains in the labor force participation of workers of color, black workers have a much higher unemployment rate (13.8%) than white workers (7.2%). <sup>80</sup> Research shows that racial discrimination in recruitment and hiring decisions continues to play a key role in creating this disparity.  Despite similar work experience and qualifications, applicants of color are less likely to be invited for interviews than white candidates. During job interviews, white candidates are interviewed longer and interrupted less than candidates of color. Candidates of color also are nearly twice as likely to have their work experience checked.

## Hiring Bias Against LGBT Workers

In 1998, researchers first documented that hiring bias exists for lesbian and gay candidates, and that this bias can have an even greater impact when candidates are also people of color and/or women.<sup>81</sup> Although few studies have looked at the intersection of race and gender together with sexual orientation, studies continue to find hiring bias based on sexual orientation. For example, studies have found that:

- Nationwide, between 8% and 17% of lesbian, gay and bisexual people report being unfairly fired or denied employment, and between 13% and 47% of transgender workers report being denied employment.<sup>82</sup>
- Hiring bias also shows up in surveys at the state and local level. For example, 60% of applicants for jobs in a large metropolitan mall in Texas who wore a “Gay and Proud” hat were invited to complete job applications, compared to 71% of applicants wearing a “Texas and Proud” hat.<sup>83</sup> Once interviewed, only 12% of “Gay” applicants received job offers versus 19% of “Texas” applicants. In another example, a recent survey of LGBT people in Anchorage, Alaska, found that 21% of respondents said they had been turned down for a job because they were LGBT.<sup>84</sup>
- In other studies, male résumé reviewers viewed gay males as the least employable candidates (among heterosexual male and female candidates and gay and lesbian candidates) regardless of whether they were applying for a job that was typically male-dominated (a sales manager) or more typically female-dominated (a registered nurse).<sup>85</sup>
- On otherwise identical résumés, applicants who listed volunteer experience as the treasurer of a “progressive organization” had a 40% higher chance of being invited to interview compared to applicants who listed volunteer experience for a “gay organization.” In particular, men with LGBT-related experience on their résumés applying to jobs in the Midwest and South were less likely to be invited for an interview than men without LGBT experience.<sup>86</sup>
- Although few experimental studies exist about hiring based on gender identity, a recent study on transgender-related hiring bias in New York City’s high-end retail sector found that employers offered jobs to non-transgender candidates almost twice as

frequently as they did to transgender candidates.<sup>87</sup> In addition to hiring bias based on gender identity and expression, transgender workers on average have twice the unemployment rate of non-transgender workers<sup>88</sup> and may also face hiring bias because of long-term unemployment.<sup>89</sup>

As the studies above show, LGBT job applicants have good reason to be concerned about whether or not to identify themselves as LGBT during a job search, and must carefully weigh their options in real time. Should they submit a résumé with previous LGBT-related work and volunteer experience, knowing that it can demonstrate community commitment and fill otherwise inexplicable gaps in employment? Or should they omit this information, knowing that it could trigger bias or uncomfortable questions about prior work experiences, or simply be used to disqualify them?

Interviews also create unique challenges for LGBT candidates. For example, in the small talk that happens as part of most interviews, an LGBT applicant may worry that talking openly about his family would put his chances for a successful offer at risk. But deciding not to share this information up front can pose its own risks. For example, a lesbian applicant who does not disclose that she is a lesbian may be unable to ask about important benefits like whether the company offers domestic partner health coverage for her same-sex partner. Similarly, a transgender applicant may be unable to ask whether he will be fully covered under the company healthcare plan. Transgender and gender-nonconforming applicants may face additional concerns about how to dress and what pronouns to use during an interview. These are just some of the concerns facing LGBT workers as they set out to find jobs.

Like other job seekers, some LGBT job applicants are also women, people of color, people with disabilities, and older adults. When applicants have more than one trait that can trigger hiring bias, it can create a “multiplier effect” that makes it even harder to seek and obtain good jobs.

## Jenny Strauss's Story: No More Pastel, Sweaty Palms or Confessions



Back when I got my first job after college in 1989, it was still a conservative world—even in San Francisco. I was scared to tell anyone I was a lesbian, and since I didn't have a girlfriend, it didn't seem natural to make it a topic of conversation. I had few marketable skills and very little interview experience, so finding a job was hard work. I remember dressing up in a pastel seersucker skirt with beige stockings and pumps and pink button earrings, and finally breathing a sigh of relief when a nonprofit organization hired me.

My boss, an evangelical woman, openly disapproved of "aberrant" lifestyles. She wasn't unkind, and although I learned a lot from her, I definitely felt that I couldn't be open. About a year into the job I met a woman, and shortly afterward decided that I couldn't hide anymore. Because I had kept this essential part of me a secret (for fear of being treated differently, or worse, mistrusted), no one had a clue, and so I had to formally come out to my boss and coworkers. Palms sweating and heart racing, I went to each of them and said, "I have something to tell you. I'm a lesbian." It was awful! I felt like I was giving them

permission to judge me. I felt self-conscious, watched and nervous to the point of feeling sick to my stomach. In fact, my boss, who was shocked, told me she didn't agree with my "lifestyle choices." This is a woman with whom I had built a good relationship, and yet, now there was this strange rift between us. After that, I swore I would be open from the start, and only work where I would be accepted for who I am.

I left that job to work at Levi Strauss & Company (no relation although wouldn't that be nice?)—one of the few companies at the time known to be gay-friendly. I borrowed a typewriter and an instruction book and spent every night teaching myself to type. I learned the software programs of the day, and went to the temp agency that placed at Levi's. I didn't care what I did there, as long as I got in, which is how I landed in Accounts Payable processing sundries and raw materials invoices, by hand, for hours every day. When the company offered to move me into marketing, a much better match for my skills, I jumped at the chance. Altogether, I spent seven years at Levi's. While there, I met my partner, Em, and we've been together 16 years and legally married since 2008.

In the mid-1990s I left Levi's to work for a boutique advertising agency, but was laid off during the dot-com bust when I was pregnant with our first child. Em was also laid off during this period. Thank goodness I was on her benefits when COBRA kicked in or we would have been in terrible shape. In the end, I took an entry-level job and a huge pay cut just to make ends meet and be close to home and my child.

Em and I now have two children. We have good jobs, and a good life. I work for an LGBT-friendly Silicon Valley company, SunPower, which has a nondiscrimination policy covering both sexual orientation and gender identity/expression. A few transgender employees have transitioned at work, and the company recently added sex reassignment surgery to our health benefits package. SunPower also offers domestic partner benefits, but we don't use them (the federal government would force us to pay extra taxes if we did). Instead, we use our own coverage and keep the kids on whichever policy makes the most sense.

I feel very grateful that times have changed enough that many companies, not just one, recognize families like ours and I look forward to the day when no matter where someone lives in the country, they feel safe coming out at work.

—Jenny Strauss, CA

## CIA Beefs Up LGBT Recruiting



After routinely denying security clearances to LGBT people for decades, the Central Intelligence Agency has come a long way. Today, more than 200 employees are members of the agency's LGBT resource group, serving openly within the agency, both domestically and overseas. And the CIA is actively recruiting more LGBT agents.

At a first-of-its-kind event in December 2012, the CIA joined with the Miami-Dade Gay and Lesbian Chamber of Commerce to reach out to LGBT job applicants. Michael Barber, the agency's LGBT community outreach and liaison program manager, explained, "Part of the reason we're doing outreach is ... that we want the best and the brightest regardless of their sexual orientation." Susan Gordon, the CIA's director of support, also spoke at the event, saying that "sexual orientation and gender identity have absolutely no relation to one's ability to do the job."

The CIA's new recruitment strategy is part of a renewed commitment to diversity on the part of the federal government, the nation's largest employer. Although the federal government still does not offer equal benefits to employees with same-sex partners, an August 2011 executive order signed by President Obama mandated a coordinated, government-wide initiative to promote diversity and inclusion in the federal workforce. In response, the U.S. Office of Personnel Management created a plan based on a broad definition of diversity. The following is from the plan's introduction:

*In order to cultivate high-performing organizations for the 21st century, the Federal government must tap into the rich resources of our global community and ensure fairness and justice in the workplace. To accomplish this, we define diversity broadly, including, but not limited to, the legally protected categories. Diversity encompasses all that makes us unique, including the diversity of thought and perspective that accompanies our identity. Only then can we realize the full performance potential and harness the innovation that diversity offers. This is more than a legal or moral imperative, it is a business imperative for public service.*

Sources: Allen, Greg. "Mission Diversify: CIA Begins LGBT Recruiting." *National Public Radio*. December 2, 2012. <http://www.npr.org/2012/12/02/166238287/mission-diversify-cia-begins-lgbt-recruiting> (accessed March 3, 2013); White House, Executive Order 13583, "Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce." August 18, 2011. <http://www.whitehouse.gov/the-press-office/2011/08/18/executive-order-establishing-coordinated-government-wide-initiative-prom> (accessed March 3, 2013); U.S. Office of Personnel Management, Office of Diversity and Inclusion. "Government-Wide Diversity and Inclusion Strategic Plan, 2011." <http://archive.opm.gov/diversityandinclusion/reports/GovernmentwideDIStrategicPlan.pdf> (accessed March 3, 2013).

## Barrier: On-The-Job Inequality and Unfairness

### Unwelcoming and Hostile Work Environments

Once most job seekers have found a good job and received an offer, they look forward to being welcomed into the workplace, forging strong working relationships with colleagues, receiving fair compensation, and having opportunities to demonstrate their skills and abilities. When workers are greeted by a safe and welcoming work environment, they are more efficient, more productive, more engaged, and more loyal to their employers.<sup>h</sup> Yet, when LGBT workers walk through the doors at work, they often get a very different kind of greeting, instead facing uncomfortable workplaces where anti-gay slurs, jokes and verbal harassment are commonplace (see *Figure 13* on the next page). They may also be denied promotions or even risk being fired simply for being LGBT. Studies have found that:

- 58% of LGBT employees have heard jokes or derogatory comments about LGBT people at work.<sup>90</sup> The workers who heard such comments also reported being more depressed, distracted, and exhausted than their colleagues.
- In an analysis of more than 50 studies conducted since 1992, between 7% and 41% of lesbian, gay and bisexual workers report being verbally or physically harassed or having their workspace vandalized.<sup>91</sup>
- Transgender workers face the most harassment:
  - The National Transgender Discrimination Study found that 78% of transgender and gender-nonconforming employees experience some form of harassment, mistreatment or discrimination on the job.<sup>92</sup>

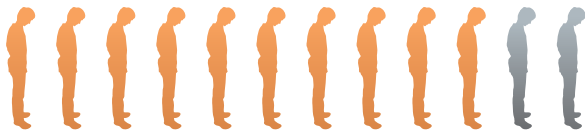
<sup>h</sup> We talk about this in greater detail on page 16.

**Figure 13: Workplace Harassment for LGBT Workers**

6 out of 10 LGBT employees have heard anti-LGBT jokes or slurs at work.



8 out of 10 transgender employees report harassment or mistreatment at work.



Sources: Human Rights Campaign Foundation. "Degrees of Equality: A National Study Examining Workplace Climate for LGBT Employees." 2009. [http://www.hrc.org/files/assets/resources/DegreesOfEquality\\_2009.pdf](http://www.hrc.org/files/assets/resources/DegreesOfEquality_2009.pdf); Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

### Harassment vs. Discrimination: What's the Difference?

**Harassment** occurs when an employee is intimidated, insulted, humiliated, or otherwise treated badly in the workplace. Some examples of harassment include displaying offensive posters or slogans, sending insulting or threatening emails, teasing someone about his or her appearance or clothing, making derogatory comments or gestures, excluding someone from workplace activities, and asking intrusive questions about someone's personal life.

**Discrimination** occurs when an employee is treated less favorably than others because of a real or perceived characteristic or trait that is unrelated to job performance. For instance, discrimination may occur when an LGBT job seeker, although more qualified than other candidates, is not hired. Or, once hired, an LGBT employee may be paid less than a similarly qualified non-LGBT employee, be demoted or denied promotions, or be unjustly fired for reasons unrelated to job performance. Discrimination can be conscious and intentional, or it may be unintentional.

- A review of 12 different studies on transgender populations found that an average of 40% of respondents said they faced job discrimination.<sup>93</sup>
- Several recent state-level surveys have found similar results. For example, a 2010 survey found that 30% of lesbian, gay and bisexual people and 45% of transgender people in Utah said they had experienced workplace harassment on a weekly basis during the past year.<sup>94</sup> In New York State, 27% of gay and lesbian workers said they had been verbally harassed in the workplace within the last five years, while 7% had been physically harassed.<sup>95</sup>

When workers are harassed or discriminated against on the job, they are less productive and, in the worst circumstances, may actually fear for their safety. Without workplace protections that give them legal recourse, LGBT employees in hostile work environments face a difficult decision: either leave a job that is a good match for their skills and experience, or return to work each day and experience emotional trauma or even the risk of physical harm.

### "Out" or Not? Either Way, LGBT Workers Can Lose

Given the hostility and discrimination LGBT workers face, many may choose not to be open about being lesbian, gay, bisexual or transgender. As noted earlier, however, not being open can have its own negative consequences.

Most heterosexual people mistakenly assume that staying "closeted" is easy and only requires that LGBT people refrain from inappropriately discussing their sex life at work. But in most workplaces, coworkers regularly talk about and share stories of their families and their lives outside of work. For an LGBT worker in an anti-LGBT work environment, it may be difficult even to engage in basic small talk with coworkers ("What did you do this weekend?", "What are your vacation plans?", "Are you bringing anyone to the holiday party?"). Say the worker spent Saturday afternoon at a family barbeque with a same-sex partner, or wants to bring that same-sex partner to the holiday party. If so, even these innocent questions create a real dilemma: Provide an evasive "non-answer," or answer truthfully and risk being stigmatized or facing discrimination. Virtually all LGBT workers (89%) in a 2009 survey said that workplace conversations about their social lives come up at least once a week.<sup>96</sup>



Many LGBT workers feel they do not even have a choice about whether to be open or not. By coming out at work, they may risk losing their jobs and their livelihoods. This can cause them to avoid socializing with coworkers so they do not have to answer these innocent but awkward personal questions. This behavior, in turn, can cause coworkers and managers to view LGBT workers as distant or inaccessible when they are simply trying to protect themselves and their jobs.

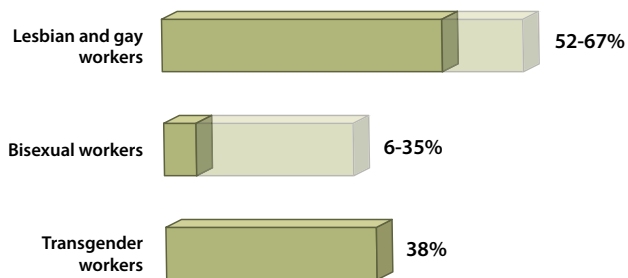
As can be seen in *Figure 14*, although studies vary in their findings, only half (52%) to two-thirds (67%) of lesbian and gay employees are open about their sexual orientation at work, and only 6% to 35% of bisexual workers are open about their sexual orientation (see sidebar, “Bisexual Workers Face Unique Challenges at Work”). While there is limited data about the percentage of transgender people who are out at work, the National Transgender Discrimination Study found that just 38% of transgender workers tell some people at work about their gender identity.

The stress of having to hide at work takes a deep emotional toll. During the workweek, adults spend about half of their waking hours at work.<sup>97</sup> Most workers feel free to be themselves among their coworkers. However, LGBT workers often spend a significant portion of their lives in a world where they cannot be themselves.

A recent study by the Center for Talent Innovation examined the impact of staying closeted in the workplace.<sup>98</sup> LGBT employees who were not out at work were 40% less likely to trust their employers, and 75% more likely to feel isolated from their coworkers than those employees who were out at work. Closeted employees also were 73% more likely to say they planned to leave their jobs in the next three years, compared to LGBT employees who were out at work. Other research shows that disclosing one’s sexual orientation can increase self-esteem and decrease depression.<sup>99</sup> But these mental health benefits only happen when individuals are able to come out in a supportive environment.<sup>100</sup>

The fact that large numbers of LGBT workers still feel the need to hide who they are (even though this can negatively affect their relationships and job satisfaction) underscores that significant numbers of U.S. workplaces still do not provide welcoming climates. LGBT employees have reason to be cautious: Those who choose to be open about their sexual orientation or gender identity report higher rates

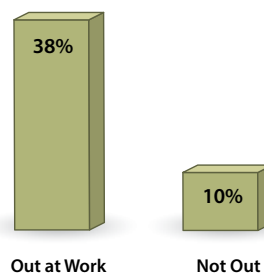
**Figure 14: Percent of LGBT Workers Who Are Open at Work**



Sources: Hewlett, Sylvia Ann, and Karen Sumberg. *The Power of “Out”*. Center for Work-Life Policy, 2011; Out & Equal Workplace Advocates. “2011 Out & Equal Workplace Survey.” October 2011. <http://outandequal.org/documents/2011%20Out%20Equal%20Workplace%20Survey%20Release%20-%20FINAL%20-%202010-25-11.pdf>; Sears, Brad, and Christy Mallory. “Documented Evidence of Employment Discrimination & Its Effects on LGBT People.” *The Williams Institute*. July 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>; Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

**Figure 15: Rates of Discrimination and Harassment**

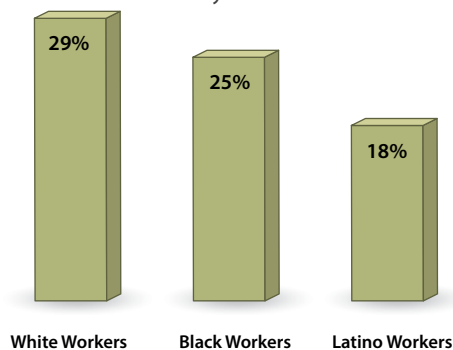
By Status



Source: Sears, Brad, and Christy Mallory. “Documented Evidence of Employment Discrimination & Its Effects on LGBT People.” *The Williams Institute*. July 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>

**Figure 16: Percent of LGBT Workers Who Are Out to Everyone at Work**

By Race



Source: Human Rights Campaign Foundation. “Degrees of Equality: A National Study Examining Workplace Climate for LGBT Employees.” 2009. [http://www.hrc.org/files/assets/resources/DegreesOfEquality\\_2009.pdf](http://www.hrc.org/files/assets/resources/DegreesOfEquality_2009.pdf)

## John Herr's Story: When His Partner Dies, His Boss Publicly "Outs" Him to 1,500+ Employees



I was born in 1965, graduated college in 1989, and then worked in banking for the next decade. I was young and single with no serious relationships, so it didn't seem to matter whether or not I was "out" at work. In 2001, I moved to Albany, New York, took a job with a large insurance company, and then met and moved in with my partner, Dan. I stayed closeted at work—partly because anti-gay sentiment was still pretty commonplace, but also because the insurance industry is fairly conservative. Over time, it got harder. Although I started taking small steps toward coming out (I joined the new LGBT employee resource group, for example), I remained cautiously anonymous.

That came to an abrupt end six years later, when over Memorial Day weekend, Dan died in a sudden accident. Still in shock, I called my boss Monday morning. "Sit down," I said. "I've got a lot to tell you. I'm gay and until yesterday I had a partner. He just died." Even though company policy only allowed one day off, my boss kindly gave me the entire week. Also well-intentioned, but without my knowledge, she posted the death notice and funeral service information on the

company intranet where all 1,500 employees and hundreds of affiliated agents could now see that my partner had died. I learned of this when, much to my surprise, 20 of my coworkers trekked 40 miles to be by my side at Dan's memorial service. Whether or not the time was right, I was now out.

When I returned to work, there were emails and cards expressing sympathy; it seemed like everything was going to be fine. But after a week had passed, I began noticing that for every nice and sympathetic colleague, there was one who no longer talked to me. Some avoided me because I was gay, but others felt betrayed because I hadn't told them earlier.

Fast forward to 2013, and I'm now living in New Jersey. I'm working for a different, more LGBT-inclusive insurance company, and I've been out from the start. I'm Field Champion for our LGBT employee resource group, and I have a new, committed partner. Should we decide to marry in New York or get a civil union in New Jersey, I'll be able to add him to my health insurance just like any of my other coworkers (although I'll still have to pay extra taxes on those benefits until DOMA is repealed).

As a result of these experiences, I've now vowed never to be in the closet again. It just isn't worth it to me.

—John Herr, New Jersey

of discrimination and harassment than those who remain closeted. In a recent study, nearly four in 10 employees (38%) who were "out at work" reported harassment and discrimination in the past five years, compared to 10% of employees who were "not out." (see *Figure 15* on the previous page).

LGBT employees of color may face "double discrimination" if they come out at work. Not surprisingly then, a recent study found that black and Latino/a LGBT workers were less likely to be out than other LGBT workers (see *Figure 16* on the previous page). Only 18%

of Latino/a LGBT workers were out to everyone at work, compared to 25% of black LGBT workers and 29% of white LGBT workers. This illustrates the critical need for workplace protections based on sexual orientation and gender identity/expression alongside existing race-based protections.

## Karen's Story: Surrounded by Slurs, Silenced in Virginia



"That's so gay!" "What a fag!" It seems like I hear my coworkers make comments like these at least once a week. I'm not "out" at work, so I don't think that the comments are directed at me, but I'm always shocked when I hear them. Are they saying these things because of me? Do they not like me? I have a few other gay coworkers—a little secret society of friends—and we talk about how upsetting it is to work with people who make these comments.

Living in rural Virginia, which has no protections for gay or transgender workers, I feel silenced. I have a friend who was fired for talking about his boyfriend at work. I couldn't believe it—until I looked online and found out it was totally legal to do that here.

When we work as a team to care for a patient, it is particularly hard to handle the offensive comments. A coworker of mine was paired with someone who made these comments every day, and he had to hear them his whole 12-hour shift.

I'm comfortable standing up for myself and my friends, but worry what would happen if I told them to stop. If I said I was gay, would they think before saying something offensive? Or would they decide they didn't want to work with me anymore? Would I be fired? My employer is religiously affiliated, so it is hard to know what they would do.

I don't want to lose my job. In fact, I can't afford to lose this job, which pays the bills and has the flexible hours I need to go to school. It is just too risky to talk to someone at work.

—Karen, Virginia

## The Unique Challenges Facing Bisexual Workers

Research shows that bisexual people (who comprise more than half of the total number of LGBT people in the U.S.<sup>101</sup>) are six times more likely than gay men and lesbians to hide their identities.<sup>102</sup> Data from the 2008 General Social Survey finds that one-quarter (25%) of bisexual people say they have never told anyone they are bisexual, compared to just 4% of gay men and lesbians.<sup>103</sup> Additionally, nearly half of bisexual people said that they were not out to any of their coworkers (49%), compared to just 24% of lesbian and gay people.<sup>104</sup>

Pervasive stereotypes and myths surrounding bisexuality contribute to unwelcoming workplace climates. For example, when people come out as bisexual, it is often assumed that they are "confused" about or hiding their "real" sexual orientation. If a bisexual person brings an opposite-sex date to a workplace holiday party, colleagues will likely assume that the person is heterosexual. Yet, if that same person later dates someone of the same sex, it can create confusion and may cause coworkers or supervisors to perceive that person as untrustworthy, or even promiscuous. This can happen even though a heterosexual worker would be viewed as simply dating different people at different times.

Since most bisexual workers do not feel free to be out at work, it's not surprising that studies also find that bisexual workers have lower job satisfaction than heterosexual or lesbian and gay employees.<sup>105</sup>

Although some employers have made strides in fostering inclusive workplaces, most diversity initiatives still ignore the unique stigma that bisexual people face at work and the invisibility they often experience. Even LGBT employee resource groups often fail to create spaces that are welcoming to bisexual employees or to address an inhospitable climate created by anti-bisexual stereotypes. And, while human resource training materials may identify the broad challenges and harassment facing LGBT workers, they often have little specific focus on bisexual employees, leaving gaps in diversity training and support.<sup>106</sup>

<sup>1</sup> The Williams Institute finds that 1.8% of the adult population identifies as bisexual compared to 1.7% who identify as gay or lesbian and 0.3% who identify as transgender.

## Challenges for Transgender Employees Who Transition at Work

“Transitioning” refers to the process during which a person stops living according to the sex assigned to them at birth and starts living as the gender they have always known themselves to be. Transgender workers who live their lives according to the gender they feel and know themselves to be—both at work and outside of work—are happier, healthier, and more successful. In self-reports, three out of four transgender workers said that they felt more comfortable and their performance at work improved when they were able to live “24/7” in accordance with their gender

identity.<sup>107</sup> The study also found that employees who were open about their identity (or “out”) as a transgender person were more satisfied with their jobs, happier, and more committed to their employers. Additionally, out transgender employees reported far less workplace anxiety.

Yet in the National Transgender Discrimination Survey, one in three (32%) transgender workers said that they have been forced to dress, act, and present in a way at work that fits their birth sex rather than their preferred gender.<sup>108</sup> Likewise, about one in five (22%) reported being denied access to a restroom that was appropriate for their gender.<sup>109</sup>

### Camryn Anderson’s Story: Comprehensive Plan + Senior Management Support = Engaged Employee



“When I left New York for Pennsylvania, Harrisburg topped my list of potential places to live. The city boasts a thriving and vibrant LGBT community, and since 1992, has prohibited discrimination based on sexual orientation and gender identity in the workplace. I soon found a great job at a psychiatric hospital, and started work as a behavioral health specialist.

I didn’t tell anyone that I identified as transgender or that I intended to transition to become a woman. I didn’t want to rush the process—either at work, or in making the many changes in my day-to-day life. Even though Harrisburg has a nondiscrimination ordinance, I had heard stories from other transgender friends about losing their jobs. One, a senior manager at an advertising firm, was fired after coming “out” as transgender (this friend now works as a sales clerk at a clothing store).

I also wondered: Would my physical appearance be a distraction at work? What if everyone stared at me? Would it get in the way of my ability to do the job I loved?

After four years on the job, it seemed like the right time to complete my transition. I met with the senior management at work and told them that I would soon be living as a woman. We worked together to develop a comprehensive plan. Education was the cornerstone. We added an information sheet and FAQ about transgender people to our online employee handbook and resource page. Another staff member, a well-respected and transgender physician, presented an information session drawing more than 100 people—the most to attend such an event at our hospital.

The hospital leadership also took time to identify potential points of conflict and discussed ways to address them. For example, if a patient asked about me, the staff was advised to answer frankly and honestly sharing that my name was Camryn and I am a transgender woman. The leadership made it clear they would stand by me if patients or colleagues took issue with me.

Since coming out at work, I have felt incredibly supported. The hospital has become an even more open place. This openness means that employees are not only more comfortable being themselves, but also we are more equipped to care for the diversity of clients that our hospital serves.

—Camryn Anderson, Pennsylvania

### Aidan's Story: A Company's Upsetting Response to a Transgender Colleague



One day at work, the gossip around the office was that one of our coworkers was transgender. I'd actually known this for quite a while. She was a great colleague—good at her job, easy to work with, a fun person to be around. I didn't understand why everyone was making such a big deal about it.

My coworker came into my office later that day and officially came out as transgender. I told her that I already knew; it wasn't an issue. To be honest, I saw her decision to live life the way she needed to as a sign of fortitude, and I deeply respected her for it.

A few days later, one of the company's attorneys came to my office and asked me how I felt about my coworker. He asked leading questions such as, "Does she make you uncomfortable?" and "Does working with her make you feel ill at ease or otherwise make it harder for you to do your job?" His approach shocked and disappointed me. The underlying message was clear: If enough people were put off by my transgender coworker, she'd be let go.

I couldn't believe our company was handling the situation this way. I explained to the attorney that LGBT people are human beings, that I didn't see any reason to treat them differently at work or anywhere else, and that the company's focus on my coworker—rather than the gossiping and intolerant members of our staff—upset me greatly.

In the end, my coworker wasn't let go. Given the company's response, however, I couldn't feel as comfortable at work as I'd been before the incident. I can't imagine that she could, either.

— Aidan, New York

### How Workplace Facilities Can Meet Diverse Needs

For most organizations with transgender employees, facilities and restrooms are simply not a problem. In fact, 79% of respondents in the National Transgender Discrimination Survey report that employers were able to accommodate their needs.

In most workplaces, transgender employees simply use the restroom that matches their lived gender. Other workplaces may designate existing single-occupancy restrooms for all-gender employee use.

Yet others still take advantage of cost-effective improvements that can benefit any worker seeking greater privacy (such as nursing mothers or the one out of every 10 employees who has "shy bladder syndrome.") For example, employers can ensure adequate privacy dividers between urinals, install flaps to cover gaps in stall doors and walls, or extend stall doors and walls. Other employers are already adding bike lockers and shower facilities for cycling commuters, creating private sitting areas for nursing moms, or otherwise updating their restrooms.

*That she was fired* did not just impact her and her family. It impacted me and the people who worked there who cared about her. It impacted the work environment and our image of the company.

Anonymous written testimony. Michigan Department of Civil Rights. "Report on LGBT Inclusion Under Michigan Law." January 28, 2013.



When transgender workers decide to transition, an employer's response can mean the difference between an accepting and inspiring workplace and one that dehumanizes transgender workers and demoralizes their colleagues. In the best case, the transgender employee will work with human resources to create a timeline and plan covering items such as when an employee's name change will become effective in email, business cards or security badges; how the employer and employee will communicate with coworkers; and a mutual plan for use of sex-segregated facilities like bathrooms. (See sidebar on previous page, "How Workplace Facilities Can Meet Diverse Needs.")

The Human Rights Campaign's "Workplace Gender Transition Guidelines" (<http://www.hrc.org/resources/entry/workplace-gender-transition-guidelines>) gives employers and human resource departments specific guidance about navigating these questions to appropriately support transgender employees in their transition at work.

### Missed Promotions and Being Unfairly Fired

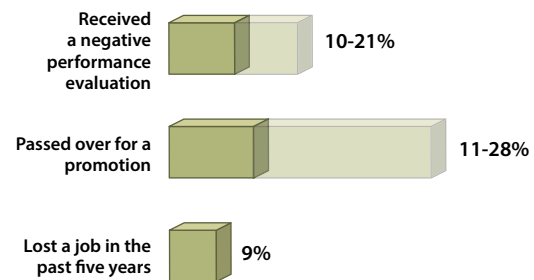
In addition to on-the-job harassment, LGBT workers face unequal treatment and discrimination that affect performance evaluations and promotions—and may result in unfair firing. As shown in *Figure 17*, between 10% and 21% of lesbian, gay and bisexual workers report that bias against their sexual orientation contributed to a negative performance evaluation, while 11% to 28% say such bias is why they were passed over for a promotion. Another survey found that nearly one in 10

"out" workers (9%) reported losing a job in the past five years because of their sexual orientation.

Transgender and gender-nonconforming Americans report even higher levels of workplace discrimination, with the National Transgender Discrimination Survey finding that 26% of these workers had lost a job because of their transgender status (see *Figure 18*). These numbers were even higher for black, Latino/a, Native American, and multiracial transgender respondents.

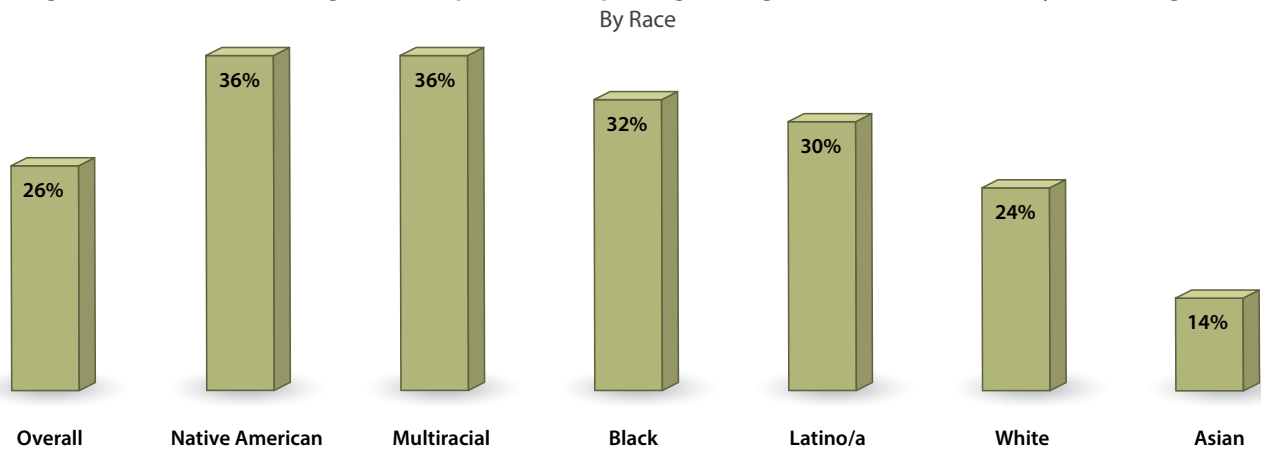
Regional surveys find similar results. Of LGBT people living in Anchorage, Alaska, for example, 17% said they had been denied a promotion, and 14% said they had been fired because of their sexual orientation or gender identity.<sup>110</sup>

**Figure 17: Percent of LGB Workers Who Report Challenges Advancing at Work Because of Sexual Orientation**



Sources: Badgett, M.V. Lee, Holning Lau, Brad Sears, and Deborah Ho. "Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination." *The Williams Institute*. June 2007. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Lau-Ho-Bias-in-the-Workplace-Jun-2007.pdf>; Sears, Brad, and Christy Mallory. "Documented Evidence of Employment Discrimination & Its Effects on LGBT People." *The Williams Institute*. July 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>

**Figure 18: Percent of Transgender Respondents Reporting Having Lost a Job Because They Are Transgender**



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

## Kristy Salazar's Story: Lesbian Mom of Three Boys Forced to Leave Hostile Workplace for Unemployment Line



When I came out, I was ready to live an authentic life as a proud lesbian Latina mother of three boys. What I wasn't prepared for was the 1-2-3 combination of a brutal child custody battle fighting for my rights as a mother, being disowned by my family, and being harassed and then terminated for no reason from my new job.

In early 2011, I took a corporate "temp-to-perm" contract job working as a contract manager for a large healthcare company in San Diego. The job was supposed to be temporary for the first 90 days, and then become full-time permanent employment with benefits after that. Everything was going fine and my performance evaluation was perfect, until a single conversation one day changed everything.

Linda, a coworker, was making small talk while we ate lunch together and said, "Oh, you have a wedding ring, what does your husband do?" Determined to be open, I told her, "I don't have a husband, I have a girlfriend, and we've been together for six years and are raising three kids." I continued to chat with my coworker but I couldn't help but notice the surprise and then the look of disgust from one of the supervisors who overheard the conversation.

Immediately everything changed. The dirty looks and whispering began when I walked in the door every morning. I stopped being invited to team get-togethers outside of work. I was suddenly singled out for wearing the same clothing to work as other women wore with no problems.

I desperately needed this job and the benefits that would come with permanent work, so I tried to let it slide, but some days, the anxiety would get the best of me and I'd end up physically ill and crying for hours at home. I finally worked up the courage to talk to my supervisor, who basically denied that it was happening, so then I went to HR. They said that they would address it, but that just didn't happen.

Three, four, five months rolled by and every time I asked about becoming a permanent employee, I was told, "We'll get back to you." It was taking a toll on my health, so finally I went to management and asked, "Am I going to move up to permanent? I need to know."

Long story short, the answer was "No." They were just waiting to let me know so it didn't look as bad. When the six-month contract came to an end, they raised non-existent performance issues and even questioned my health, and then said that we were done. Since I technically worked for a temporary agency, the law didn't protect me from discrimination by the company directly and there was nothing I could do. I'm now unemployed, recovering from the abusive work environment, and once again trying to find a job with benefits so that I can provide for my boys.

—Kristy Salazar, CA

*I'm writing to tell you my dad's story.* About 6 years ago when I was in high school, he lost his job as a police officer when the police chief saw him at a local gay bar. My dad had no means of fighting for his job. He could not find another job and was living on unemployment benefits for as long as the state would allow.

Anonymous written testimony. Michigan Department of Civil Rights. "Report on LGBT Inclusion Under Michigan Law." January 28, 2013.



## Barrier: Wage Gaps and Penalties

In the United States, wages account for 70% of total compensation for private-sector employees and 65% of total compensation for state and local government employees.<sup>111</sup> U.S. workers rely on their paychecks to cover the costs of transportation, housing expenses, food and clothing, retirement savings and more.

Over time, policymakers have enacted various laws aiming to abolish unfair disparities in pay. The intent of these laws is to ensure that all workers are treated equally when it comes to what they are paid, and that wages are based solely on worker skills, qualifications and performance on the job. Laws that are currently on the books attempt to address persistent wage gaps related to gender and race or ethnicity. An example is the Equal Pay Act, which prohibits sex-based discrimination among employees who work in “equivalent jobs.”<sup>112</sup> To date, however, no federal laws have been passed to address documented pay disparities based on sexual orientation and gender identity/expression.

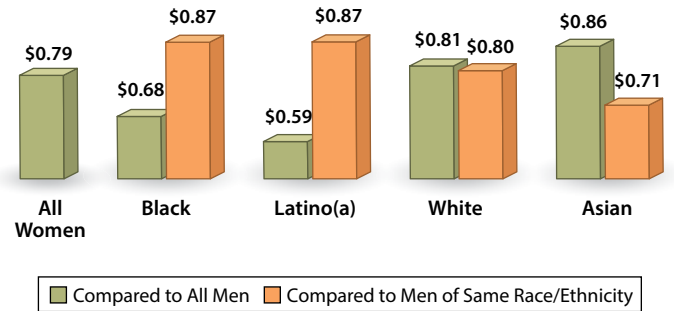
### Understanding Wage Gaps and Penalties

For as long as researchers have been collecting wage data on the U.S. workforce, women have made less money than men, even when they have comparable education and experience. In 1963, a woman made just \$0.59 for every \$1.00 earned by a man. By 2012, women’s wages had risen to \$0.79 for every \$1.00 earned by men; this difference (\$0.21) is called the “gender wage gap” (see *Figures 19 and 20*).

The gender wage gap is different for women of different racial and ethnic backgrounds. As shown in Figures 19 and 20, Latina and black women earn almost as much as Latino and black men, respectively, but have a large wage gap compared to men overall. Conversely, white and Asian women earn less than white and Asian men, but have a smaller wage gap compared to men overall. In addition to the gender wage gap, there is also a race and ethnicity wage gap for all workers of color. As shown in Figure 20, with the exception of Asian workers, men of color earn less than white men, and women of color earn less than white women.

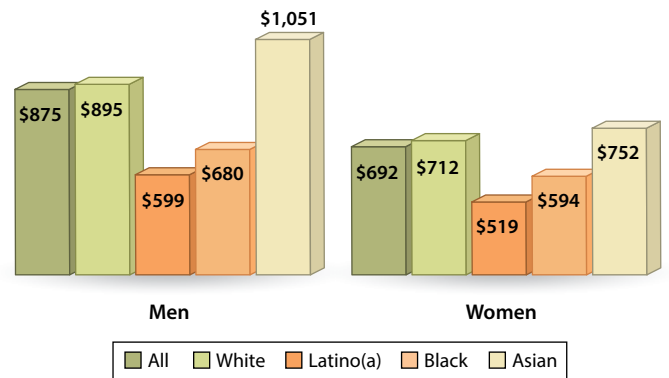
A recent report by the Center for American Progress estimated that the “career wage gap” for women over a 40-year career could result in \$434,000 in lost income relative to similarly situated men.<sup>113</sup> Women with a college degree or higher lose \$713,000, compared to \$270,000 in lost earnings

**Figure 19: Women’s Earnings Compared to Men’s**  
By Race/Ethnicity



Source: Bureau of Labor Statistics. “Table 2. Median usual weekly earnings of full-time wage and salary workers by selected characteristics, quarterly averages, not seasonally adjusted, Fourth Quarter 2012.” January 18, 2013. <http://www.bls.gov/news.release/wkyeng.t02.htm> (accessed March 4, 2013).

**Figure 20: Median Weekly Earnings**  
By Race/Ethnicity



Source: Bureau of Labor Statistics. “Table 2. Median usual weekly earnings of full-time wage and salary workers by selected characteristics, quarterly averages, not seasonally adjusted, Fourth Quarter 2012.” January 18, 2013. <http://www.bls.gov/news.release/wkyeng.t02.htm>

by women with less than a high school degree. Given that retirement savings in the U.S. come primarily from earnings during one’s working years, it is estimated that two-thirds of the difference in retirement income for men and women is a direct effect of gender wage gaps and occupational segregation (i.e., women are not hired as frequently for higher-paying jobs in male-dominated fields).<sup>114</sup>

These gaps persist despite the numerous laws that have been enacted to address them. Economists find that 41% of the gender wage gap between men and women remains “unexplainable” after accounting for variables such as industry and occupation, work experience, union status, race and education.<sup>115</sup> Although more research is needed, this “unexplainable” part of the gender wage gap is believed to be primarily the result of gender bias and discrimination.



## Wages for LGBT Workers

For LGBT workers, it can be difficult to separate the impact of gender, gender identity/expression and sexual orientation on workplace wages. For example, if a lesbian woman is earning less than a man in a similar job, it's often hard to say whether this is because of her gender or her sexual orientation, or perhaps a combination of the two.

However, studies consistently find that sexual orientation and gender identity/expression do play a role in workplace wages. For example, gay and bisexual men experience a "wage penalty" relative to heterosexual men.<sup>116</sup> Lesbian and bisexual women actually fare better than heterosexual women, but still experience the gender-based wage gap relative to all men.<sup>117</sup> (See *Figures 21* and *22*).

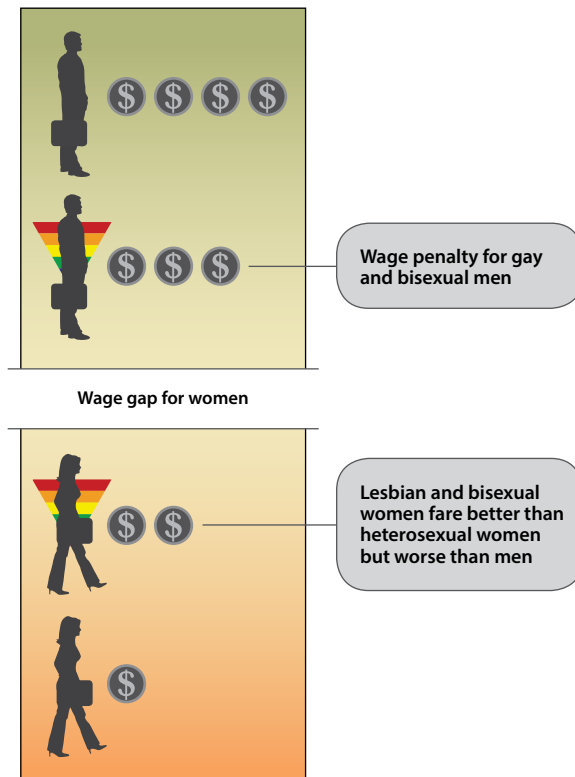
The impact of these wage disparities on the incomes of LGBT workers shows up in various surveys. Polls, for example, show that individuals who self-identify as LGBT are more likely to report incomes of less than \$24,000 per year and less likely to report incomes of more than \$90,000 per year, when compared to their non-LGBT peers.<sup>118</sup> This is consistent with research that shows that LGBT people are at higher risk of poverty than non-LGBT people.<sup>119</sup> In addition, despite higher rates of employment among LGBT workers, children raised by same-sex couples, and particularly those raised by same-sex couples of color, are also more likely to live in poverty.<sup>120</sup>

### The Wage Penalty for Gay and Bisexual Men

Studies conducted over the past decade show that gay and bisexual men experience a wage penalty and earn between 10% and 32% less than heterosexual men, even when controlling for important factors like education, occupation, and region of the country.<sup>121</sup> While researchers do not know the exact cause of this penalty, there several possible contributing factors:

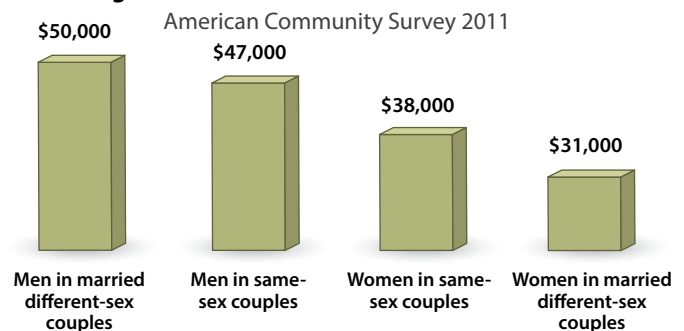
- **Different Career Choices.** Gay and bisexual men tend to work in different fields than heterosexual men. While research shows that gay and bisexual men overall have higher educational attainment than heterosexual men, they are less likely to enter "male-dominated" professions than heterosexual men, and jobs in male-dominated professions tend to pay better. A recent study found that gay men were much less likely than heterosexual men to work in occupations that were 80% male, such as public safety, transportation, architecture, engineering, construction, and repair.<sup>122</sup>

**Figure 21: Wage Gaps and Penalties**  
By Gender and Sexual Orientation



Source: Sears, Brad, and Christy Mallory. "Documented Evidence of Employment Discrimination & Its Effects on LGBT People." *The Williams Institute*. July 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>

**Figure 22: Median Annual Personal Income**



Source: Gates, Gary J. "Same-sex and Different-sex Couples in the American Community Survey: 2005-2011." *The Williams Institute*. February 2013. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/ACS-2013.pdf>. Data is for individuals in the labor force.

- **Bias and Fear of Losing a Job.** Another possible explanation for the wage penalty for gay and bisexual men is that they may be less likely to speak up and ask for a raise or negotiate for a higher salary out of fear that they could put their jobs in jeopardy.

- **Discrimination and Lack of Workplace Protections.** Gay and bisexual men also may be paid less as a result of outright discrimination. In states without workplace protections, the law may reinforce and exacerbate this discrimination by essentially saying it's OK for employers to pay these workers less or to fire them without cause.
- **Gender Nonconformity and Stereotypes.** Some economists suggest that nonconformity to traditional gender roles leads to wage differences for gay men, and also for lesbians.<sup>123</sup> It may be that because gay men are stereotypically thought to be more effeminate, they may be paid less, whereas lesbians are stereotypically thought to be more “masculine” in the workplace. Or it may be that even if they have a same-sex spouse/partner and/or children, gay and bisexual men are not perceived to have “real” families, so they may be less likely to get the same raises or cost of living adjustments as married non-LGBT peers to help cover family-related costs.

### *The Wage Advantage and Gender Gap for Lesbians and Bisexual Women*

In contrast to the wage penalty experienced by gay and bisexual men, lesbians and bisexual women tend to have a wage advantage over heterosexual women. There are several theories about why this is true:

- **Higher Educational Achievement and Different Career Choices.** Research shows that lesbians and bisexual women, on average, have higher educational attainment than heterosexual women.<sup>124</sup> And, lesbians and bisexual women are more likely to enter male-dominated professions, which pay more.<sup>125</sup>
- **More Work Hours.** Researchers have found that lesbian and bisexual women work more hours than heterosexual women.<sup>126</sup>
- **Lower Rates of Childrearing.** Fewer lesbian and bisexual women raise children than heterosexual women.<sup>127</sup> Given that they are less likely to have children, lesbians and bisexual women are also less likely to face delays in career advancement and raises as a result of time away from the labor market (the so-called “mommy track”). One study found that 35% of the wage advantage experienced by women in same-sex couples was explained by the absence of children in their households.<sup>128</sup>
- **Less Economic Security.** Older lesbians may invest more in their careers, or at least in gaining

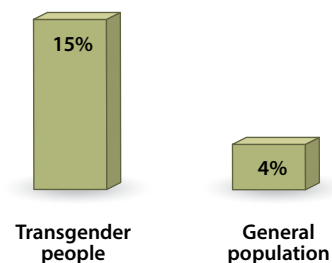
employment-related skills relative to heterosexual women. A possible reason: They may not have the same feeling of economic security as heterosexual women who plan a future that includes marriage to a male wage earner.<sup>129</sup> This quest for economic security may also make lesbians more likely to negotiate for higher salaries or regular pay increases. In fact, a study of lesbians found that those who had been previously married to men had a smaller wage advantage than lesbians who had never been married to a man.<sup>130</sup>

Despite this wage advantage, lesbians and bisexual women experience significant financial challenges because they still earn less than heterosexual, gay and bisexual men.<sup>131</sup> Household income for households headed by lesbian couples is considerably lower than it is for both opposite-sex households and households headed by gay men.<sup>132</sup> Two women—even if they individually earn more than comparable heterosexual women—may still have a combined household income that is lower than that of a married opposite-sex couple because both earners’ wages are affected by the gender wage gap. This “double-gap” multiplier means less money for the entire family every year and fewer resources to save for retirement.

### *Wage Inequities for Transgender Workers*

According to the National Transgender Discrimination Survey, 15% of transgender respondents have household incomes under \$10,000 per year compared to just 4% of the population as a whole (see *Figure 23*). Similarly, a 2009 study of transgender people in California found that transgender respondents were twice as likely to live below the poverty line.<sup>133</sup>

**Figure 23: Percent of People with Household Incomes Under \$10,000**



Source: Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

In another study, researchers tracked the wages of transgender people before and after their gender transitions.<sup>134</sup> The study found that transgender men made slightly more in wages after transitioning from female to male. Yet, transgender women saw their wages fall by nearly one-third after they transitioned from male to female. This study supports the findings above that women in the workplace have lower wages—regardless of whether they are heterosexual, bisexual, lesbian, or transgender.

## Barrier: A Lack of Legal Protections

Whether the issue is wage inequality or workplace harassment, LGBT people often have little recourse under the law when they face discrimination at work. Despite overwhelming public support for workplace protections for LGBT workers, many policymakers have shown a perplexing reluctance to expand existing nondiscrimination laws to cover sexual orientation or gender identity/expression. After almost 40 years of advocacy, there is still no federal law that explicitly protects LGBT workers from discrimination or harassment. And, while some state and local governments have taken steps to protect LGBT workers, the numbers that have done so are small, and local laws in particular have achieved widely varying effects.

### Inadequate Federal Protections

#### *No Explicit Protections Under Federal Law*

As detailed in the introduction to this report, several federal laws protect workers from discrimination and unfair firing based on race, ethnicity, religion, national origin, age, sex, disability, veteran status, and genetic information (see pages 8-10). Frequently referred to as “nondiscrimination laws,” these laws apply to federal, state and local government employers; private employers with 15 or more employees; and educational institutions.<sup>j</sup> Unfortunately, no federal law explicitly protects workers from discrimination or harassment based on sexual orientation or gender identity/expression.

#### *Some Protections Based on Federal Executive Orders*

Despite the lack of broader legislative protections, LGBT people who work for the federal government (with the exception of military personnel) have specific nondiscrimination protections stemming from two presidential executive orders.<sup>k</sup> A 1998 executive order expanded nondiscrimination protections for federal

workers to explicitly include sexual orientation.<sup>135</sup> An earlier order, signed in 1969 and amended in 1978, protects federal government workers based on “race, color, religion, sex, national origin, handicap and age.”<sup>136</sup>

Although neither order explicitly protects transgender federal workers, the prohibition against discriminating based on sex likely extends to transgender federal workers (see “Limited Protections Through the EEOC and the Courts,” below). A further demonstration of the federal government’s commitment to federal transgender employees came in 2011, when the U.S. Office of Personnel Management issued written guidance designed to support federal workers who transition while employed.<sup>137</sup>

While current executive orders and policy-level changes are designed to protect LGBT federal employees, they do not yet extend protections to the LGBT employees of organizations that do business with the federal government. As of the writing of this report, advocates continue to push for a federal executive order mandating that federal contractors have employment policies that prohibit discrimination on the basis of sexual orientation and gender identity/expression.

Previous executive orders have extended similar prohibitions on discrimination to federal contractors. For example, an executive order signed in 1965 prohibits federal contractors and subcontractors with contracts in excess of \$10,000 from discriminating in employment decisions on the basis of race, color, religion, sex or national origin.<sup>138</sup> A similar order covering LGBT employees would extend protections to an additional 16 million workers.<sup>139</sup> Combined with existing protections, such an executive order would ensure expanded coverage across more than 20% of the American private workforce.<sup>l</sup>

#### *Limited Protections Through the EEOC and the Courts*

Title VII of the Civil Rights Act prohibits harassment and discrimination based on sex. If an LGBT employee—or an employee who is perceived to be LGBT—can prove that discrimination faced in the workplace was a result of his or her sex, then such discrimination is illegal

<sup>j</sup> Not all employers are covered by these federal laws. Some laws exempt federally recognized Native American tribes, private nonprofit membership organizations, and religious organizations.

<sup>k</sup> Although executive orders are more vulnerable to change from subsequent administrations than federal law, they can also include more specificity in their provisions and greater reach than broader legislation.

<sup>l</sup> Unlike existing statutes, this order would cover employers with less than 15 employees as long as those employers are contracting with the federal government for at least \$10,000 annually. It would allow for proactive enforcement even when a particular employee has not filed a complaint.

under Title VII. As described below, discrimination claims based on sex have been more effective in protecting transgender and gender-nonconforming workers—but they are not effective in protecting workers who are fired solely because they are gay, lesbian or bisexual.

**Resolving Discrimination Charges.** An LGBT employee who wishes to challenge workplace discrimination under Title VII's protections based on "sex" must first file a complaint with one of the Equal Employment Opportunity Commission's (EEOC) 53 field offices. This has to happen before the employee can file a private lawsuit in court.<sup>m</sup> EEOC rulings apply to both public and private employers, including employers in the 29 states that lack nondiscrimination laws based on sexual orientation and gender identity/expression.<sup>140</sup> However, EEOC rulings only serve as the final rule of law for discrimination claims against the federal government, not state or local government or private employers.

When a complaint is filed, the EEOC reviews it, contacts the employer, and determines if a legal basis for the discrimination charge exists. If so, the EEOC mediates between the employee and employer in an attempt to avoid court action. If the EEOC cannot successfully mediate the complaint and the case is severe, the EEOC may sue the private employer on behalf of the employee.

In certain circumstances, a private worker who files an EEOC claim may sue his employer in federal court. This can happen if:

- The EEOC fails to successfully mediate between the employer and employee but does not choose to sue on behalf of the employee.
- The EEOC conducts an investigation and does not find a legal basis for the employee's claim based on the facts it is able to uncover.
- The EEOC takes more than six months to address the employee's claim. As the gatekeeper for most workplace discrimination charges, the EEOC has a significant case backlog, with more than 70,000 pending investigations<sup>141</sup> and delays often exceeding nine months.<sup>142</sup>

A worker filing a federal lawsuit must start by filing in U.S. District Court. Once the case is decided by the District Court, if there are grounds for either side to appeal the case, it may then go to a U.S. Court of Appeals, and in very limited circumstances, to the U.S. Supreme

Court. Filing such federal cases can be cost-prohibitive and involve years of litigation, making this legal remedy unattainable for most workers.

**Federal Case Law.** The first case to significantly expand the notion of sex-based workplace discrimination was decided by the U.S. Supreme Court in 1989. In that case, Ann Hopkins sued her employer, accounting firm Price Waterhouse, alleging that she was denied partnership in the firm because she was not "feminine" enough. She alleged that she was told she should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry."<sup>143</sup> The U.S. Supreme Court ruled that Title VII prohibited discrimination based not just on biological sex, but also "the entire spectrum" of discrimination based on sex, including gender or sex stereotypes.

Since the Supreme Court's ruling in *Price Waterhouse v. Hopkins* more than 14 years ago, federal courts throughout the country have continued to include sex stereotypes as a basis for Title VII claims of sex-based discrimination (see sidebar, "All Over the Map" on the next page). However, basing a legal claim on sex stereotypes is problematic for many LGBT workers. Federal courts have yet to find that when a person faces discrimination based solely on his or her sexual orientation or gender identity/expression, that such discrimination is in and of itself equivalent to sex stereotyping.

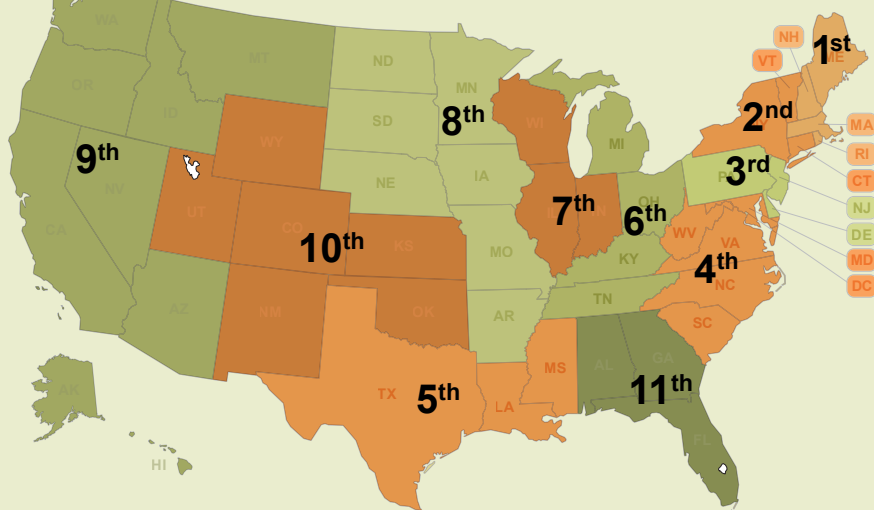
Consider the example of a gay employee who was fired once his employer became aware of his sexual orientation. At the appellate court level, most LGBT-supportive federal court decisions currently only protect the employee if sex-stereotyping behavior can be proven to exist—for example, an employer telling the employee he was fired because he needed "to act more like a man." If the employer simply fired the employee "for being gay," this is not currently considered sex stereotyping.

Not surprisingly, transgender workers have had more success in federal courts than gay, lesbian and bisexual workers. This is because courts are more accepting of arguments that firing employees because of how they express their gender, or because they are living as the "opposite sex," is sex stereotyping.

<sup>m</sup> Unless the lawsuit is based on discrimination under the Equal Pay Act, which allows a claimant to go directly to court.

## All Over the Map: Federal Appellate Case Law Offers Varying Protections for LGBT Workers Based on Sex Stereotypes

Geographic Boundaries of U.S. Circuit Courts of Appeals



Relying in large part on the U.S. Supreme Court's 1989 decision in *Price Waterhouse v. Hopkins*, many federal appellate courts across the country have issued decisions that provide some recourse for transgender and gender-nonconforming workers (including some gay and lesbian workers). These decisions create binding legal precedent for all states that fall within the federal court's circuit (see map). Unfortunately, they also create an inconsistent patchwork of protections nationwide, with decisions varying by court.

- In 1999, the **8th U.S. Circuit Court of Appeals** concluded that, even though Title VII of the Civil Rights Act does not explicitly address sexual orientation, the harassment experienced by a male employee who was perceived by other employees as "homosexual" met the standard for asserting sex-based harassment under Title VII.<sup>144</sup>
- In 2000, the **9th U.S. Circuit Court of Appeals** heard the case of a transgender prisoner who sued after being assaulted by a guard.<sup>145</sup> In part, the court concluded that "[d]iscrimination because one fails to act in the way expected of a man or a woman is forbidden under Title VII," and that a transgender person who is targeted on this basis is entitled to protection. Just a year later, the same court ruled that a male employee was entitled to legal recourse because of the discrimination he faced for failing to adhere to stereotypes of how a man should act or dress.<sup>146</sup>
- The **6th U.S. Circuit Court of Appeals**, in both 2004 and 2005, ruled in favor of transgender workers alleging sex discrimination under Title VII. In 2004, the court ruled that a transgender firefighter could not be suspended because of her "failure to conform to sex stereotypes by expressing less masculine and more feminine mannerisms and appearance."<sup>147</sup> The following year, the court held that, under Title VII, a police officer had been unfairly denied a promotion to sergeant for failing to conform to sex stereotypes while dressing as a man at work and as a woman when off duty.<sup>148</sup>
- In 2009, the **3rd U.S. Circuit Court of Appeals** reviewed a case about a man who was harassed and ultimately fired from his job because of his lack of adherence to male gender stereotypes. The court ruled that an employee may allege sex discrimination, regardless of his or her sexual orientation, as long as he or she can prove gender stereotyping.<sup>149</sup>
- In 2011, the **11th U.S. Circuit Court of Appeals** heard the case of Vandy Beth Glenn (see separate sidebar for Ms. Glenn's story, page 40). The court ruled that a transgender person is "defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes."<sup>150</sup> According to the court, the discrimination that Ms. Glenn experienced at work based on her gender presentation and transgender status was illegal under Title VII's protection from sex-based discrimination.

These cases demonstrate a broadening in the interpretation of Title VII's prohibition against sex-based discrimination.

**Emerging Law via the EEOC.** Although the EEOC is separate from the federal court system, it may rely on the reasoning of federal courts to inform its own investigations. Likewise, federal courts may look to EEOC decisions for additional guidance. In 2012, the EEOC issued an opinion in a Title VII sex discrimination case that went one step further than the federal courts. In *Macy v. Holder*, the EEOC found that a transgender worker facing discrimination can file a claim for sex-based discrimination, without having to first prove that the discrimination was based on sex stereotypes.<sup>151</sup>

The EEOC opinion came as a result of a complaint filed by Mia Macy. In 2010, while still living as a man, Macy applied for a job with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Macy had previously worked as a police detective in Phoenix and had extensive, relevant experience. Macy even spoke with the hiring manager, who was extremely enthusiastic about Macy's candidacy. While under consideration for the position, Macy informed the agency that she was changing her name and would be transitioning to living as a woman. Upon sharing this, Macy was told that the position had been eliminated, when in reality it was soon filled by someone else.

After an initial review of Macy's complaint, the ATF notified her that her claims alleging discrimination based on her gender identity were not covered by Title VII. Macy appealed this decision to the EEOC, which unanimously decided in her favor.

Although no federal appellate courts have yet used this decision as a basis for their own decision, the EEOC opinion in *Macy v. Holder* sets binding precedent for federal government employees and provides legal reasoning that may in turn guide both state and federal courts. This opinion is the first from the EEOC to address transgender employees. The EEOC now recommends that transgender people who experience employment discrimination because of their gender identity/expression file a sex discrimination complaint with the EEOC.

### *The Need for Federal Legislation*

Limited federal court and EEOC rulings, together with some protections for federal workers, are no substitute for federal legislation explicitly protecting LGBT workers in the United States. Among the major limitations of the current patchwork of legal protections are the following:

- Even if the President were to sign an executive order protecting employees of federal contractors, it would only cover approximately 20% of the U.S. workforce, and the order could be rescinded by future administrations.<sup>152</sup>
- Privately employed LGBT employees who experience discrimination face a lengthy EEOC backlog, which can mean waiting as long as six to nine months for an investigation to even start.
- Once an investigation is under way, private employers can refuse to go through mediation, leaving the EEOC and/or the employee with no option but to drop the case or file a lawsuit.
- Filing in court is expensive and complicated and often fails to provide legal recourse. It is especially difficult for workers to sue if they faced discrimination based solely on their sexual orientation.
- Federal courts can, and sometimes do, ignore or reject the EEOC's interpretation of federal laws.<sup>153</sup>
- When an LGBT worker crosses state lines to work for a new employer or to take a new job with the same employer, his rights and protections can change dramatically. Federal legislation is essential to ensure more uniformity in legal protections for LGBT workers.

A federal legislative solution that explicitly provides or extends nondiscrimination protections on the basis of sexual orientation and gender identity/expression would resolve many of these problems. It would eliminate the current patchwork of case law and replace it with consistent protections against discrimination for LGBT workers nationwide. As noted earlier in this report, most Americans already believe this level of protection exists for LGBT workers, even though it does not.<sup>154</sup> Federal legislation would ensure uniform understanding among American employers and workers alike of what discrimination looks like, what protections are available to LGBT workers, and how to create workplaces that promote nondiscrimination. Most importantly, when LGBT employees do face workplace harassment, federal legislation would provide a clear path to legal recourse.

To date, Congress has failed to provide these crucial protections for LGBT workers. This leaves LGBT workers with two choices when faced with harassment and discrimination—put up with it or leave the job—while discriminatory employers face few to no consequences.

## Nondiscrimination Laws Leave Religious Employers Free to Discriminate



Federal civil rights law explicitly excludes some religious organizations from its nondiscrimination provisions, allowing these organizations to fire or refuse to hire candidates based on the candidates' personal characteristics.

Proposed laws protecting LGBT people in the workplace often contain similar "religious exemptions." For example, some previous versions of the federal Employment Non-Discrimination Act (ENDA), which would protect workers on the basis of sexual orientation and gender identity, have included a three-part exemption: (1) a complete exemption for houses of worship, parochial and similar religious schools, and missions; (2) a "ministerial exemption" for positions at religious organizations that involve teaching or spreading religion, religious governance, or supervision of these activities; and (3) a provision that would allow religious organizations to create categories of employees who must adhere to a set of significant religious tenets. Although some religious institutions and faith leaders fully support federal nondiscrimination laws like ENDA,<sup>155</sup> many religious organizations still oppose these laws (whether at the federal, state or local level), even when the laws include the exemptions noted above.

## Vandy Beth Glenn's Story: Fired Transgender Worker Is Protected by Courts After Being Called "Immoral"

Photo by Joey Ivansco. Reprinted with permission from Lambda Legal.



Vandy Beth Glenn worked for two years in the Georgia General Assembly's Office of Legislative Counsel as an editor and proofreader of bill language. Ms. Glenn loved her job but privately struggled through years of unrelenting distress because, while living as a man, she always knew and felt herself to be a woman.

In 2007, Ms. Glenn informed her immediate supervisor, Ms. Yinger, that she planned to transition from male to female. To prepare her employer, she gave her supervisors pamphlets on how to handle the transition and a photo album with several pictures of herself dressed as a woman. Ms. Yinger passed the information to the General Assembly's legislative counsel, Sewell Brumby, who is the head of the office in which Ms. Glenn worked. After confirming that

Ms. Glenn intended to transition, Brumby fired her on the spot. Brumby told her it would be viewed as "immoral" and said she couldn't appropriately transition in the workplace.

On July 22, 2008, Lambda Legal brought a federal lawsuit against Georgia General Assembly officials on behalf of Ms. Glenn. The lawsuit stated that the General Assembly treated Ms. Glenn differently due to her nonconformity with gender stereotypes.

In December 2011, the 11th Circuit Court ruled that Ms. Glenn was fired illegally and that the discrimination she faced based on her status as a transgender woman constituted sex-based discrimination under the Constitution, in a ruling also applicable to claims brought under Title VII.

*Adapted from:* The Associated Press. "Federal Appeals Court Considers Case of Transgender Women Fired as Georgia Legislative Aide." December 1, 2011; Lambda Legal. *Glenn v. Brumby et al.* <http://www.lambdalegal.org/in-court/cases/glenn-v-brumby-et-al> (accessed March 4, 2013).

## Uneven State-Based Protections

In the absence of strong federal action, some states have stepped in to protect LGBT workers from discrimination and from being unfairly fired. States that provide these protections do so either through laws or executive policies.<sup>157</sup>

To date, only 16 states and the District of Columbia have expanded their laws to include explicit nondiscrimination protections for workers based on their gender identity/expression, while 21 states and the District of Columbia explicitly prohibit discrimination based on sexual orientation (see *Figure 24*).<sup>n,158</sup> In the states that have nondiscrimination protections, LGBT workers facing discrimination can seek legal recourse in state courts.

Even if Congress were to pass a federal nondiscrimination law that protects LGBT workers, state nondiscrimination laws still have an important role to play. They can extend workplace protections to employers that are not covered by the federal law, make it easier to file complaints and collect data, provide access to state courts in addition to federal courts, and broaden penalties for discriminatory employers.

Some states have also provided protection to LGBT workers through executive policies.<sup>o,159</sup> These policies can provide some LGBT workers (usually limited to state employees) with the ability to file complaints within the state agency or department in which they work (though not necessarily through the courts). Unfortunately, in addition to their limited scope, another significant drawback of executive policies is that they can be rescinded at any time.

While the number of states with laws prohibiting discrimination based on sexual orientation and gender identity/expression remains small, emerging research shows that LGBT workers benefit from such protections. For example, a 2009 study found that in states with sexual orientation nondiscrimination laws, the wages for men in same-sex couples rose to match the wages of men in opposite-sex couples.<sup>160</sup> This suggests that nondiscrimination laws hold the potential to narrow the wage penalty detailed earlier in this report, where gay men made 10% to 32% less on average than heterosexual men.<sup>161</sup> The wages of women in same-sex couples did not significantly change in states with sexual orientation nondiscrimination laws, with these women maintaining about a 2% wage advantage over women in opposite-sex couples.<sup>162</sup>

<sup>n</sup> Delaware, Maryland, New Hampshire, New York, and Wisconsin.

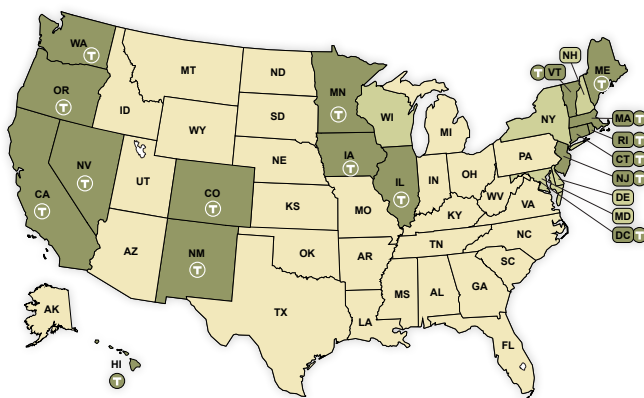
<sup>o</sup> Alaska, Arizona, Delaware (gender identity/expression), Indiana, Kansas, Kentucky, Michigan, Missouri, Montana, Ohio, and Pennsylvania.




*The bill* is another step forward in the fight for equal rights for all of Connecticut's citizens, and it's the right thing to do. ... Connecticut has led the way in other civil rights issues and I'm proud to be able to support and sign this bill.

Governor Dannel P. Malloy, "Governor Malloy on Bill Granting Gender Identity Protections Under Law: Right Thing To Do." State of Connecticut. June 4, 2011.



Figure 24: State-Level Nondiscrimination Laws



-  Employment nondiscrimination law covers sexual orientation and gender identity (16 states + D.C.)
-  Employment nondiscrimination law covers only sexual orientation (5 states)
-  No employment nondiscrimination law covering sexual orientation or gender identity (29 states)



### Uneven Protections Based on Local Laws and Policies

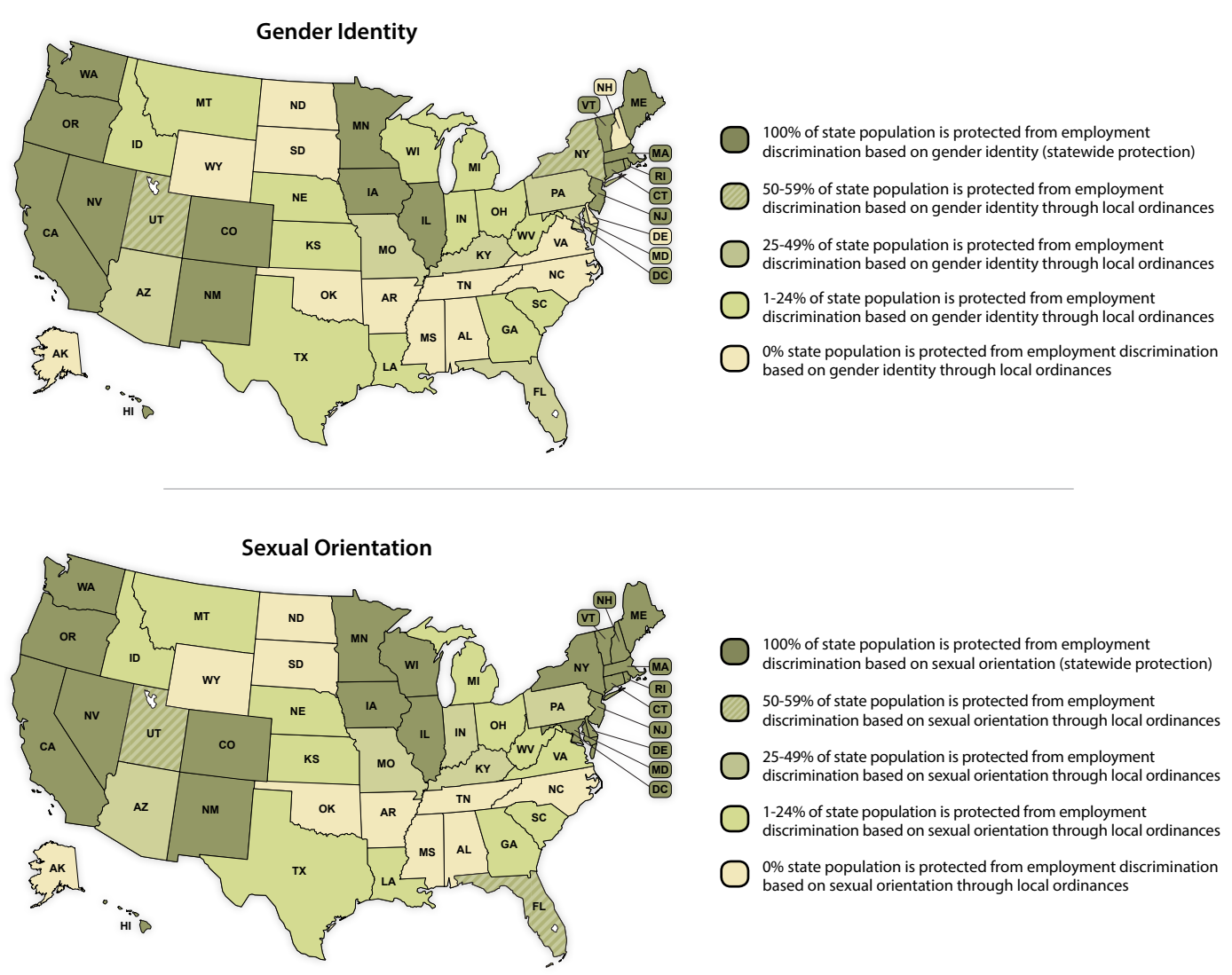
In the absence of LGBT-inclusive federal and state workplace laws, many cities and counties have passed their own nondiscrimination ordinances (see *Figure 25*).<sup>163</sup> In many communities across the country, comprehensive local ordinances provide the sole source of legal protection for LGBT municipal employees, LGBT employees of municipal contractors, and/or LGBT employees of local private employers.<sup>P</sup> Depending on local and state laws, these protections may be included in legislation approved by the city or county council, or may be implemented through executive order by a mayor or county executive. In some states, a city or

county must obtain permission from the state legislature if it wishes to pass a law or ordinance that is not already specifically permitted under state legislation.<sup>164</sup>

LGBT-inclusive local nondiscrimination ordinances strive to deliver much-needed protections to LGBT workers, while at the same time generating awareness about the lack of state-level protections. Yet, these ordinances are often ineffective at protecting workers. Some poorly framed ordinances may do little more than publicly restate the municipality's existing nondiscrimination policy. Others may fail to provide

<sup>P</sup> For employees in states with state-level protections, local ordinances may also expand avenues for filing complaints to include local enforcement offices.

Figure 25: Local Employment Nondiscrimination Protections



Source: Movement Advancement Project, Equality Maps, current as of May 15, 2013. For updates see [http://www.lgbtmap.org/equality-maps/non\\_discrimination\\_ordinances](http://www.lgbtmap.org/equality-maps/non_discrimination_ordinances).

## Equality Means Business in Florida



Florida does not have any state-level employment protections based on sexual orientation and gender identity/expression. However, through an extensive effort at the local level, 26 local governments have implemented ordinances ensuring protections that include LGBT workers.<sup>165</sup> In fact, an estimated half of Floridians live in places that prohibit discrimination based on sexual orientation, and one-third live in places that also prohibit discrimination based on gender identity/expression.<sup>166</sup>

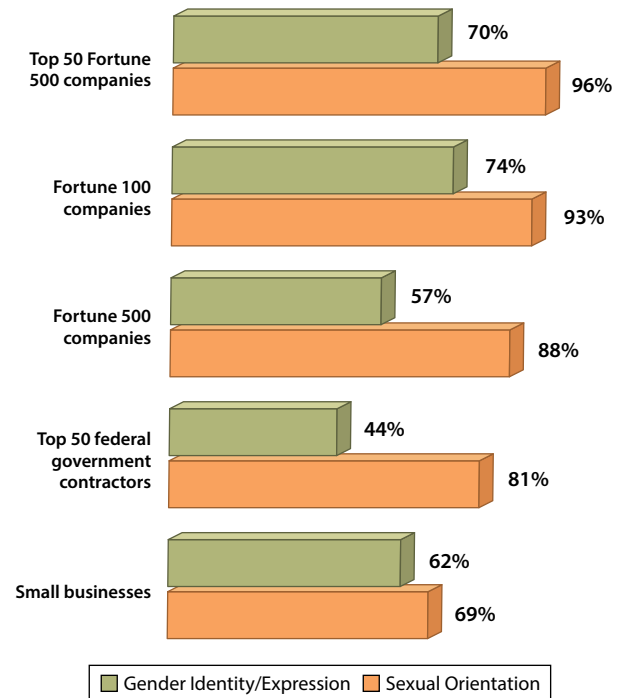
effective legal remedies for individual workers who experience discrimination. For example, ordinances may not include a mechanism for filing a complaint, or they may not provide city or county Human Rights Commissions or attorneys' offices with additional funding to investigate and resolve complaints.

### Strong Support for Equal Treatment from Private Employers and Unions

While policymakers at all levels of government continue to defy American values by blocking legal protections for LGBT workers, America's most successful corporations recognize that creating LGBT-inclusive workplaces is not only good for business, it is also the right thing to do. A large and growing number of private employers, ranging from large corporations to mom-and-pop small businesses, have put in place policies that protect LGBT workers in their workplaces (see *Figure 26*). For example:

- An overwhelming majority of the top 50 Fortune 500 companies (96%) and the top 50 federal governmental contractors (81%) include sexual orientation in their nondiscrimination policies. And, 70% of the top 50 Fortune 500 companies and 44% of the top 50 federal contractors include gender identity/expression.
- More than nine out of 10 Fortune 100 companies (93%) have nondiscrimination policies that include sexual orientation, and 74% include gender identity/expression. These numbers decrease slightly when looking at Fortune's Top 500 companies, but still remain high (88% and 57%, respectively).

**Figure 26: Percent of Employers with Nondiscrimination Policies**  
By Employer Type



Sources: Burns, Crosby and Jeff Krehely. "Ensuring Workplace Fairness Is Not Expensive." Center for American Progress. October 12, 2011. <http://www.americanprogress.org/issues/lgbt/news/2011/10/12/10465/ensuring-workplace-fairness-is-not-expensive/>; Burns, Crosby and Jeff Krehely. "Workplace Fairness for Gay and Transgender Workers: Big Benefits, Few-to-No Costs." Center for American Progress. January 27, 2012. <http://www.americanprogress.org/issues/lgbt/news/2012/01/27/11006/workplace-fairness-for-gay-and-transgender-workers/>; Human Rights Campaign Foundation. "Corporate Equality Index 2013: Rating American Workplaces on Lesbian, Gay, Bisexual and Transgender Equality." December 2012. [http://www.hrc.org/files/assets/resources/CorporateEqualityIndex\\_2013.pdf](http://www.hrc.org/files/assets/resources/CorporateEqualityIndex_2013.pdf); Sears, Brad, and Christy Mallory. "Economic Motives for Adopting LGBT-Related Workplace Policies." The Williams Institute. October 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>

- The majority of small business owners also already prohibit discrimination based on sexual orientation (69%) and gender identity (62%).

In addition to adopting written nondiscrimination policies, some employers have taken steps that allow LGBT workers and their allies to be more empowered, productive and successful at work. For example, employers may form LGBT employee resource groups, collect voluntary data on LGBT employees, and implement mentoring programs to develop and foster LGBT executive leadership.

LGBT employees in some unionized workforces may have additional protections thanks to collective bargaining agreements between unions and employers. Unions, for example, can negotiate wage scales that help to eliminate gaps and penalties for LGBT workers. In addition, bargaining agreements often specify that

union workers can be fired only for good reason (often called “just cause”). Separately, unions can bargain with employers for explicit nondiscrimination protections based on sexual orientation and gender identity/expression. Unions may also be able to formalize union-supported grievance and arbitration processes for discrimination should it occur.<sup>9,167</sup>

Employer nondiscrimination policies are a critical component of creating a truly welcoming workplace. If an employer tolerates workplace harassment and discrimination, it is likely to persist even when federal or

state nondiscrimination laws and policies are in place. On the other hand, when employers make it clear that all employees should be treated equally and judged only on their job performance and skills, they create a culture in which every worker has an opportunity to contribute and thrive.

### Recommendations/Solutions

A series of common-sense changes would help ensure that LGBT workers have the same chance as other workers to find and keep good jobs, receive fair wages, and secure equal opportunities at work. As shown in *Figure 27*, the federal government, state governments, and employers can all act to ensure workplace fairness and equality. The first critical step is for the federal government to pass a nationwide nondiscrimination law that includes explicit protections on the basis of sexual orientation and gender identity/expression. State/local government nondiscrimination laws and ordinances can also protect LGBT workers, both directly and through mandates applying to private companies that contract with state and local government. Finally, employers can put in place policies and procedures that reduce hiring bias, promote fair wages, foster welcoming and inclusive workplaces, and encourage diversity.

These recommendations are summarized in more detail on the pages that follow.

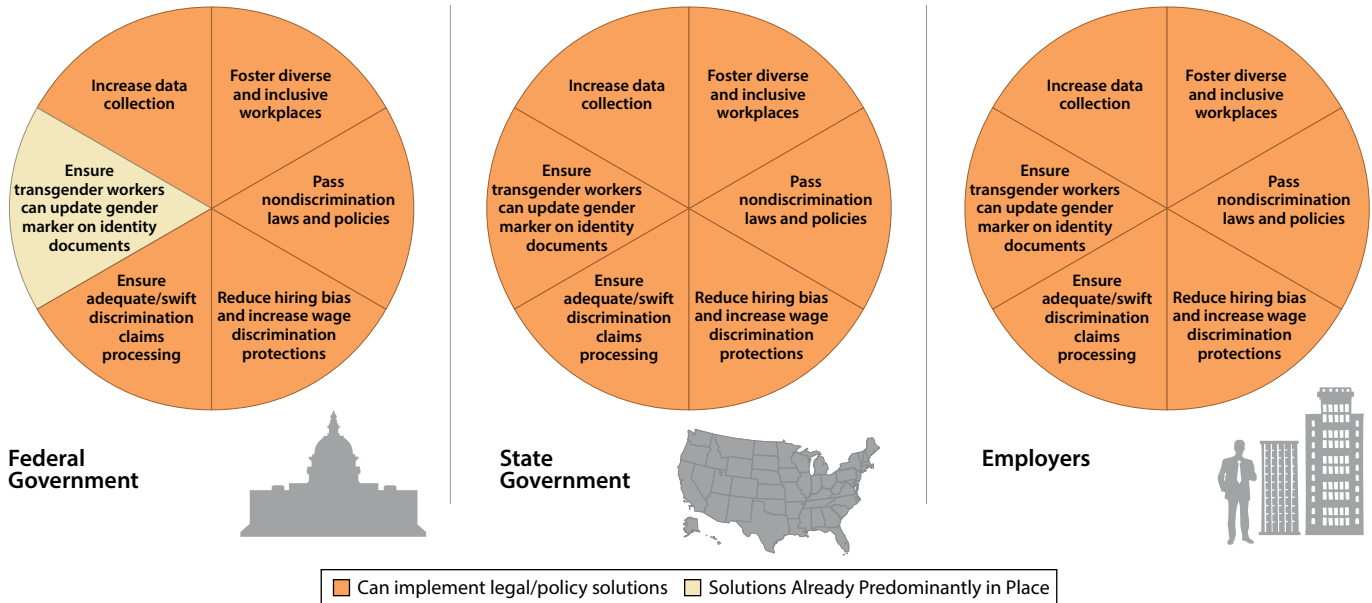
*Recognizing* the rights of same-sex couples to marry is more than just a constitutional issue. It is a business imperative. By singling out a group for less favorable treatment, Proposition 8 [which prevents same-sex couples from marrying] impedes businesses from achieving the market’s ideal of efficient operations—particularly in recruiting, hiring, and retaining talented people who are in the best position to operate at their highest capacity.

Supreme Court amicus brief, 100 leading U.S. companies, *Hollingsworth v. Perry*, February 2013.



<sup>9</sup> For example, at the 72nd annual convention of the United Electrical, Radio and Machine Workers of America in 2011, a resolution was passed to encourage local chapters to include in their labor contracts “anti-discrimination clauses that prohibit discrimination based on sexual orientation and gender identity.”

Figure 27: Government and Employers Can All Help End Discrimination Against LGBT Workers



## Recommendations to Eliminate or Reduce Bias, Discrimination and Wage Gaps for LGBT Workers



### Federal Solutions

<p><b>Congress should ban public and private employment discrimination nationwide on the basis of gender identity/expression and sexual orientation.</b></p>	<p>Congress should pass federal employment nondiscrimination legislation such as the Employment Non-Discrimination Act (ENDA) or amend Title VII of the Civil Rights Act of 1964 to ban discrimination based on actual or perceived sexual orientation and gender identity/expression.</p> <ul style="list-style-type: none"> <li>• The federal ban on discrimination against LGBT workers would extend workplace protections that already exist for race, color, religion, sex, national origin, pregnancy, disability, age, and genetic information.</li> <li>• The goal of federal action would be to prohibit public and private employers, employment agencies and labor unions from using a worker's sexual orientation or gender identity/expression as the basis for employment decisions like hiring, compensation, promotion and firing.</li> </ul>
<p><b>The president should mandate that federal contractors prohibit discrimination on the basis of gender identity/expression and sexual orientation.</b></p>	<p>In the absence of the comprehensive nationwide protections described above, the president should issue a federal executive order mandating that federal contractors have employment policies that prohibit discrimination on the basis of actual or perceived sexual orientation and gender identity/expression.</p> <ul style="list-style-type: none"> <li>• A mandate that federal contractors adopt policies that protect LGBT workers does not require an act of Congress.<sup>†</sup></li> <li>• The order could also ensure that smaller employers who receive at least \$10,000 in federal contracts are covered.</li> <li>• In some instances, the law would allow for proactive enforcement even when a particular employee has not filed a complaint.</li> <li>• The impact of an executive order would be immense and together with existing state-level protections, could help ensure that a majority of the American workforce is covered by employment protections based on sexual orientation and gender identity/expression.</li> </ul>
<p><b>The federal government and its agencies should clarify that existing executive orders that protect based on "sex" also include protections for transgender employees.</b></p>	<p>The Office of Federal Contract Compliance and/or the Department of Labor should, in the wake of the <i>Macy v. Holder</i> decision, issue guidance clarifying that Executive Order 11236's existing mandate require contractors to protect against discrimination based on sex include transgender employees.</p>
<p><b>Congress should increase protections against wage discrimination nationwide.</b></p>	<p>Congress should amend the Fair Pay Act or pass complementary legislation to expand existing protections against wage discrimination on the basis of race, color, religion, sex or national origin to include protections for sexual orientation and gender identity/expression.</p> <ul style="list-style-type: none"> <li>• The Fair Pay Act allows workers who have been subjected to wage discrimination to file a claim with the EEOC within 300 days of any of the following:             <ul style="list-style-type: none"> <li>• A discriminatory compensation decision or other practice is adopted by an employer;</li> <li>• An individual is subjected to a discriminatory compensation decision or other practice; or</li> <li>• An individual is affected by the application of a discriminatory compensation decision, including each time compensation, wage, or benefits are paid resulting from such a decision or practice.</li> </ul> </li> </ul>

<sup>†</sup> For more than 60 years, presidents have used executive orders to advance workplace protections. In 1941, President Roosevelt issued an executive order that banned discrimination by federal contractors against workers because of race, creed, color or national origin. President Roosevelt's action served as an important precursor to the passage of Title VII of the Civil Rights Act.

## Recommendations to Eliminate or Reduce Bias, Discrimination and Wage Gaps for LGBT Workers

<p><b>The federal government and its agencies should ensure efficient case processing by the EEOC.</b></p>	<p>The federal government and its agencies should put processes and procedures in place to ensure charges of discrimination are adequately and swiftly addressed.</p> <ul style="list-style-type: none"> <li>• The EEOC's 70,000-case backlog must be addressed so that workers who have faced discrimination and unfair firing no longer have to wait as long as nine months with no remedy.</li> <li>• The EEOC should continue to provide training as new federal nondiscrimination laws and policies are enacted or amended by agency and judicial interpretations, including recent interpretations of Title VII's prohibitions against sex-based discrimination.</li> <li>• The EEOC should expand existing field training to include all state agencies with which the commission has case-sharing agreements.</li> <li>• The EEOC's 2013-2016 Strategic Enforcement Plan commits to a concentrated and coordinated approach to national issue priorities for discrimination. For the first time, the EEOC has identified coverage of LGBT workers under Title VII's sex discrimination provisions as an emerging and developing issue. The EEOC should take steps to ensure that agency efforts result in early resolution of this unsettled area of the law.</li> </ul>
<p><b>The federal government and its agencies should expand research and data collection on LGBT workers.</b></p>	<p>The Bureau of Labor Statistics and the Department of Labor should include questions about sexual orientation and gender identity on surveys and other data collection tools to better understand the demographics and experience of the LGBT workforce.</p>



### State and Local Solutions

<p><b>State lawmakers should ban employment discrimination in states without current protections for gender identity/expression and/or sexual orientation.</b></p>	<p>In states that do not currently have explicit protections for LGBT workers, state lawmakers should amend existing laws or pass new ones to secure employment nondiscrimination protection on the basis of both sexual orientation and gender identity/expression.</p> <ul style="list-style-type: none"> <li>• As of May 2013, 34 states do not have statewide employment protections based on gender identity/expression; 29 states fail to protect lesbian, gay and bisexual workers on the basis of sexual orientation.</li> <li>• Without comprehensive federal protections, state laws can serve as a crucial stopgap and provide the only source of protection and legal recourse to an LGBT employee who faces discrimination.</li> <li>• State laws may also extend workplace protections to employees who are not covered by federal law, enhance complaint processing and data collection mechanisms, provide victims of discrimination with access to state courts in addition to federal courts, and expand upon available remedies such as compensatory and punitive damages.</li> </ul>
<p><b>State governors should mandate that state and local government employers and contractors prohibit discrimination on the basis of gender identity/expression and sexual orientation.</b></p>	<p>Governors should use their executive authority to extend nondiscrimination protections to their state's public employees. Governors also should issue executive orders requiring that state government contractors have employment policies that prohibit discrimination on the basis of sexual orientation and gender identity/expression. Note: These executive orders can be rescinded by future governors, which means that these protections are not as secure as law.</p>

Recommendations to Eliminate or Reduce Bias, Discrimination and Wage Gaps for LGBT Workers	
<b>State and local lawmakers should ensure nondiscrimination laws include mechanisms for swift and effective claims processing.</b>	In states and municipalities that protect workers from discrimination on the basis of sexual orientation and gender identity/expression, lawmakers should ensure implementation of investigation and enforcement mechanisms to quickly and effectively process, investigate and address workers' claims.
<b>State lawmakers should increase protections against wage discrimination.</b>	Lawmakers should pass state legislation that prohibits wage discrimination including on the basis of sexual orientation and gender identity/expression.
<b>In the absence of nationwide and state-level protections, local lawmakers should take local action to protect LGBT workers.</b>	Local municipalities like cities and counties should take action to prohibit workplace discrimination based on sexual orientation and gender identity/expression. <ul style="list-style-type: none"> <li>• As of May 13, 2013, at least 175 cities and counties in states lacking state-level protections prohibit employment discrimination on the basis of gender identity/expression via employment ordinances that govern all public and private employers in those municipalities.</li> </ul>
<b>State lawmakers should expand research and data collection on LGBT workers.</b>	States should include questions about sexual orientation and gender identity on state health, labor and other surveys and data collection tools to better understand the demographics and experience of the LGBT workforce.
<b>States lawmakers should adopt laws and policies that ensure transgender people can update their identity documents to match their lived gender.</b>	In states that do not already have such laws or policies, state lawmakers should: <ul style="list-style-type: none"> <li>• Revise the policies of state motor vehicle and vital records offices to allow transgender people to receive an updated driver's license or birth certificate without proof of sex-reassignment surgery.</li> <li>• The District of Columbia, for example, allows transgender people to fill out a form and have it signed by a medical or social service professional indicating they have reached the point in their gender transition where having an updated form of identification is appropriate. Similar policies have been adopted in many states, including Massachusetts, Nevada, New Mexico, New Jersey, Ohio, Pennsylvania, and Washington State.</li> </ul>

## Recommendations to Eliminate or Reduce Bias, Discrimination and Wage Gaps for LGBT Workers



### Employer Recommendations

<p><b>Employers should send a clear message that all workplace discrimination is prohibited at their workplace.</b></p>	<p>Employers should craft employer-based LGBT-inclusive nondiscrimination policies and procedures designed to significantly reduce hiring bias, foster welcoming and inclusive work environments, and reduce discrimination.</p> <ul style="list-style-type: none"> <li>• Consider simple procedures like using hiring panels instead of individual reviewers, or asking each hiring manager to review and sign the nondiscrimination policy prior to interviews.</li> <li>• Workplace policies should seek to ensure wage equity for individuals with similar job responsibilities and years of experience. In addition, all employees should be considered and evaluated for base pay, pay increases and promotions using objective, performance-related criteria.</li> <li>• Employers should ensure that both actual and perceived sexual orientation and gender identity/expression are explicitly included in nondiscrimination and anti-harassment policies. Specific education and training designed to ensure that policies are fully implemented are essential.</li> <li>• Employers should ensure there is an effective and responsive grievance system.</li> <li>• In unionized workplaces, unions can negotiate specific policy language and grievance procedures as part of collective bargaining agreements.</li> <li>• Employers also should consider specific activities to support transgender employees (such as a written transition policy available to all, dress code/bathroom policies).</li> </ul>
<p><b>Employers should dispel myths/stereotypes and increase awareness through workforce diversity training.</b></p>	<p>Employers should include LGBT workplace-related issues and concerns as a routine part of employer-provided or employer-sponsored diversity and cultural competency training.</p> <ul style="list-style-type: none"> <li>• Trainings should be integrated with the employer’s existing diversity training systems, be delivered to all employees (including top-level managers), and include ongoing accountability and evaluation.</li> <li>• Training should address issues common to most LGBT workers, but should also focus on sub-groups that may face particular issues, including but not limited to bisexual workers, transgender workers, and LGBT workers of color.</li> <li>• For one example of existing training, see Out &amp; Equal’s “Building Bridges Toward LGBT Diversity” training at <a href="http://outandequal.org/BuildingBridgesTraining">http://outandequal.org/BuildingBridgesTraining</a>.</li> </ul>

Recommendations to Eliminate or Reduce Bias, Discrimination and Wage Gaps for LGBT Workers	
<p><b>Employers should encourage employees to voice workplace issues, concerns, and opportunities.</b></p>	<p>Employers should provide both formal and informal opportunities for LGBT employees and allied colleagues to have a voice in workplace-related concerns.</p> <ul style="list-style-type: none"> <li>• Formal measures may include employee satisfaction surveys, affinity groups, employee resource groups, business advisory groups, mentorship programs, and other networking opportunities.</li> <li>• At unionized workplaces, union leaders can supplement employer-based initiatives by creating regular opportunities for members to share concerns or issues.</li> </ul>
<p><b>Employers should ensure support for transitioning transgender employees.</b></p>	<p>Employers can reference resources like the “Workplace Gender Transition Guidelines” by the Human Rights Campaign to learn more about how to create supportive work environments for transitioning transgender workers. <a href="http://www.hrc.org/resources/entry/workplace-gender-transition-guidelines">http://www.hrc.org/resources/entry/workplace-gender-transition-guidelines</a></p>
<p><b>Employers should expand their talent pool by targeting outreach to potential LGBT employees.</b></p>	<p>Employers should boost diversity in the workplace and find highly-qualified workers from previously untapped pools of candidates through targeted LGBT recruiting.</p> <ul style="list-style-type: none"> <li>• LGBT-specific job fairs and online career services can help connect employers with LGBT workers who are actively seeking new, challenging positions in LGBT-inclusive workplaces.</li> <li>• Employers should consider partnering with community-based organizations that provide workforce development programs for unemployed and underemployed LGBT workers. Some of these programs provide government subsidies and other workplace supports for employees who are hired through these programs.</li> </ul>



## Leo Kattari's Story: A Smooth Transition, Flexible Leave, Meal Train and All



I'm 27 years old, with a master's in social work and a great job as training and education manager for Colorado Youth Matter, a small Denver-based nonprofit.

When I inherited money from my grandmother last year, I knew that I could finally afford to transition completely, so I came out as transgender at work. First, I told my supervisor and our executive director and they couldn't have been more supportive. Neither was really surprised since I had always been fairly androgynous. In fact, my supervisor confessed that she had always felt uncomfortable calling me by my birth name and using female pronouns.

The next step was to come out to the rest of the team. Since we have a tight-knit staff, I told them myself at our regular staff meeting, where I was met with unconditional support, kudos, and excitement for the next steps of my journey. Following that, our executive director sent an email to our external partners, noting the change of my name and which pronouns to use. The tone was matter-of-fact, respectful, enthusiastic, and positive.

As I prepared for surgery, our human resource manager did some research to see if our health benefits could help cover the surgery or hormone replacement therapy, but as I expected, the answer was no. And although we have a clear nondiscrimination policy that includes sexual orientation and gender identity/expression, our existing leave provisions didn't specifically cover leave for the surgery. I had intended to rely on sick leave and vacation to get me through, but my supervisor and director didn't want me to exhaust all my personal time. So, they sought and received permission from our board of directors to allow me to take two weeks under a flexible interpretation of the paid leave policy, and I worked a third week from home. While I was out, my coworkers independently organized a "meal train" and took turns cooking and bringing meals to me at home.

Once I returned to work, the transition was very smooth and everyone adapted with no problem. I credit my positive experience to Colorado Youth Matter's commitment to social justice, and to honoring uniqueness and diversity—not only of program participants, but also of our staff—every step of the way.

—Leo Kattari, Denver

## THE BROKEN BARGAIN: FEWER BENEFITS AND MORE TAXES

### Overview: Unequal Treatment Puts LGBT Workers and Their Families at Greater Risk

Fairness is a core American value, and part of America's basic bargain with its workers. Fairness demands that when an employer asks two workers to contribute equally and do the same work, they should receive the same pay and benefits. It demands that when the government asks those workers to fulfill one of their core responsibilities as citizens by paying income and other taxes, the government should not tax one worker one way and the other worker another way. In a fair America, the same tax rules would apply to both.

But in the same way that America is not holding up its end of the bargain with LGBT workers when it comes to providing equal access to good jobs and fair pay, the nation also falls short in offering LGBT workers and their families the same job-related benefits and tax advantages available to non-LGBT workers. LGBT workers may do the same jobs and work just as hard as their non-LGBT counterparts, but the broken bargain means they are performing equal work for unequal compensation (including benefits) and also have to pay more in taxes.

This unfair treatment has a significant negative impact on LGBT workers. The reason? For most workers in the United States, a paycheck is only one of many important benefits that come with having a job. Other work-related benefits include health insurance, vacation and sick days, family leave, employer-supported retirement plans, and Social Security benefits. Among civilian workers, almost one-third of compensation (31%) comes from these non-wage benefits, including health insurance (8.5%), retirement savings plans (4.6%), and paid leave (6.9%).<sup>168</sup>

These work-related benefits are often a necessary part of overall compensation for employees who are juggling work and family responsibilities. Nine out of 10 workers (89%) report that benefits are important when choosing a job, and six out of 10 workers (58%) say that health insurance is the most important benefit.<sup>169</sup>

However, LGBT workers do not receive equal compensation and benefits. Nor are LGBT workers eligible for most of the family-based tax relief that can result in thousands of dollars in savings each year for most other workers and their families.

*We must no longer* be a nation that allows loving, committed same-sex couples to be denied the economic and workplace rights and protections that heterosexual couples simply take for granted. The right to join your spouse's healthcare plan, to enjoy the tax benefits of marriage, to receive the Social Security and pension benefits following the loss of a spouse, to visit your spouse in the hospital or make end-of-life decisions—these are all denied to same-sex couples.

Randi Weingarten, President, American Federation of Teachers. "Labor Movement Stands Up for Full Equality for Gay and Lesbian Americans." March 5, 2013.



### Denial of Individual Health Benefits

In general, employers offering individual health coverage to non-LGBT workers must also extend individual coverage to LGBT workers. For example, an employer cannot offer a dental insurance plan to a heterosexual employee but deny a gay employee access to the plan. Therefore, LGBT workers who are single tend to have equal access to job-related health insurance coverage alongside their single heterosexual colleagues.

However, while transgender employees may have equal access to coverage, they may still be denied appropriate healthcare and medical leave when employers, medical providers or health insurance companies do not adequately understand transgender health needs (see infographic on the next page). For example, an employer may offer health insurance for individual workers, but a transgender employee may find that the insurance company refuses to cover a range of routine and other medically necessary care because of coverage exclusions that directly or inadvertently target transgender people. Or, a transgender worker may be eligible for job-protected, unpaid leave under the federal Family and Medical Leave Act (see pages 75-76), but be denied leave because his or her medical needs are inaccurately deemed not to be a "serious health condition."

As a result, transgender workers who do the same job as their coworkers may have to pay out-of-pocket for healthcare needs that should be covered by insurance—or put off important care if they cannot afford to pay for it. Additionally, they must sometimes choose between

# TRANSGENDER WORKERS WORK AS HARD, DENIED HEALTHCARE & LEAVE

## → THE PROBLEM

LACK OF UNDERSTANDING  
OF TRANSGENDER HEALTH  
NEEDS

Employers and health insurance companies often discriminate and/or erroneously assume health care for transgender workers is not medically necessary



## → THE IMPACT

TRANSGENDER WORKERS  
DENIED NEEDED  
HEALTHCARE AND LEAVE:

DENIED  
HEALTH  
COVERAGE  
AND CARE



DENIED  
NEEDED  
MEDICAL  
LEAVE



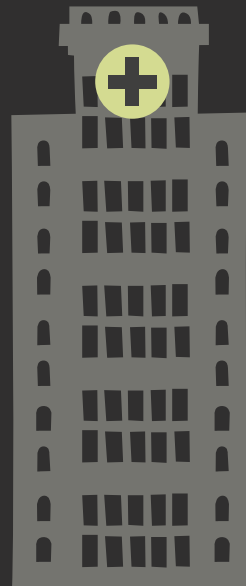
## → THE SOLUTION

### EQUAL ACCESS TO HEALTHCARE AND LEAVE

Pass or amend laws to end inappropriate healthcare and medical leave exclusions for transgender workers

### EMPLOYER POLICIES

Employers can extend needed health insurance and leave to transgender workers



forgoing needed medical leave or losing their jobs if an employer denies their request for such leave. The message to transgender workers: You don't deserve equal benefits for equal work—and your health isn't as important as the health of other workers.

## Denial of Family Benefits

Job-related benefits do not just support workers, they also support workers' families—keeping them healthy and strengthening them financially. The goal of supporting workers' families is so central to American society that it has become a critical focus of tax and workplace laws, spanning issues from healthcare to retirement to disability benefits.

Unfortunately, restrictive laws and workplace policies also often fail to ensure that workers are treated fairly and equally when they receive benefits for their families. Because of federal and state laws on a range of issues, LGBT workers with families<sup>5</sup> can be and are legally denied family benefits extended to their coworkers. The result: Even when an LGBT worker and a non-LGBT worker do the same job, the LGBT worker may not be able to access benefits designed to protect the health and economic security of American families. The message to LGBT workers: You don't deserve equal pay (including benefits) for equal work—and your family isn't as important as everyone else's.

### LGBT Workers With Families Face a “1-2-3 Punch.”

When it comes to family benefits, LGBT workers face a “1-2-3 punch” that hurts their families (see infographic on the next page):

**First, couples have to be married, and workers must have a legal parent-child relationship with their children, in order to access most family benefits and tax relief.** State and federal laws and policies governing most family-related worker benefits and tax relief rely on restrictive, narrow definitions of family. This results in unequal treatment for workers with an unmarried same-sex partner, as well as those in other family configurations such as unmarried heterosexual couples or two financially interdependent siblings who are living together. Similarly, access to child-related benefits is limited in many instances to workers who have a legal parent-child relationship with their children. Such laws and policies do not recognize those who are raising children but who are not legal parents—a category that can include an LGBT worker or an uncle or aunt raising a niece. This creates particular problems for LGBT parents, who lack legal ties to their children in disproportionate numbers.<sup>170</sup>

**Second, most states prevent same-sex couples from marrying and/or have no mechanisms for some LGBT**

**parents to create legal ties to the children they are raising. This often makes it impossible for LGBT workers to meet the legal requirements for accessing family benefits.** Same-sex couples may only marry in 12 states and the District of Columbia (see *Figure 28* on page 55). Another seven states offer comprehensive civil unions or domestic partnerships, which provide state-level legal protections equivalent to marriage. In the remaining states, however, same-sex couples are denied comprehensive legal recognition under the law. Therefore, in most of the nation, an LGBT worker with a same-sex partner cannot meet the requirement that his or her partner be a legal spouse in order to receive family benefits. Also, because some parenting rights flow from or are tied to marriage, LGBT workers may be legal strangers to their children. For example, same-sex couples are often denied access to joint or stepparent adoption, and the partner of a lesbian woman using donor insemination may not be considered a legal parent under state law.<sup>171</sup> When LGBT workers are barred by law from creating legal ties to the children they are raising, they may also be denied benefits meant to protect workers' children and stepchildren.

**Third, even when LGBT workers can marry a same-sex partner, their marriages are not recognized by the federal government.** Under the Defense of Marriage Act (DOMA), the federal government defines marriage as “a legal union between one man and one woman as husband and wife.”<sup>172</sup> DOMA also states that the word “spouse” refers only to “a person of the opposite sex who is a husband or a wife.”<sup>173</sup> This allows employers to extend benefits to workers with an opposite-sex spouse—but then deny those same benefits to workers with a same-sex spouse.

A challenge to DOMA's discriminatory federal treatment of married couples is currently before the U.S. Supreme Court, with a decision expected in mid-2013.<sup>174</sup> That case is challenging Section 3 of DOMA, which prevents the federal government from recognizing married same-sex couples. However, even if the Supreme Court strikes down Section 3 and requires the federal government to recognize married same-sex couples, only 12 states and the District of Columbia currently have laws allowing same-sex couples to marry. This

<sup>5</sup> In this section of the report, we use “LGBT families” to refer to families headed by same-sex couples because this is where most of the inequities occur. Our more restrictive use of the term “LGBT families” is not meant in any way to diminish bisexual or transgender people in an opposite-sex relationship, nor other LGBT workers whose families do not meet this definition. We also recognize that many LGBT adults form families with other loved ones and “families of choice” who provide support and that laws may be inadequate in these areas as well.

<sup>171</sup> For example, a same-sex couple may want to adopt a child from foster care, but unmarried couples may be barred by law from adopting jointly, leaving one parent with no legal ties when the adopted child joins the family. Similarly, in most states that lack relationship recognition for same-sex couples, the partner of a lesbian woman using donor insemination will remain a legal stranger to her child, while the husband in a married opposite-sex couple using donor insemination is generally considered the child's legal father (even though he lacks a biological tie to the child).

# LGBT WORKERS WORK AS HARD GET FEWER BENEFITS AND PAY MORE TAXES

## → THE PROBLEM

**DISCRIMINATORY  
BENEFITS, TAXATION  
AND FAMILY LAW**

### THE 1-2-3 PUNCH



Family benefits and tax relief often restricted to legal spouses & children



But state marriage and parenting laws exclude LGBT families



And same-sex couples' marriages aren't recognized federally

## → THE IMPACT

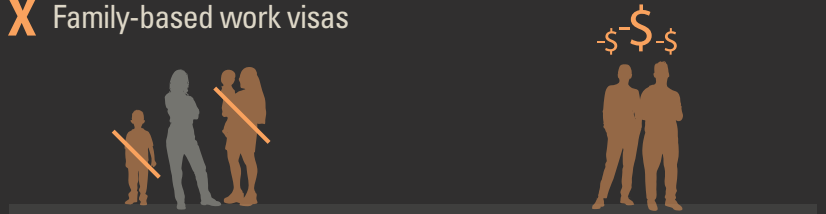
**UNFAIR TAXATION AND  
REDUCED ACCESS TO  
BENEFITS LEAVES LGBT  
WORKERS AND THEIR  
FAMILIES VULNERABLE**

### UNEQUAL BENEFITS

- X** Family health benefits
- X** Family medical leave
- X** Spousal retirement benefits
- X** Family death and disability benefits
- X** Family-based work visas

### UNFAIR TAXATION

- X** Denied family tax relief



## → THE SOLUTION

### FAIR BENEFITS AND TAXATION

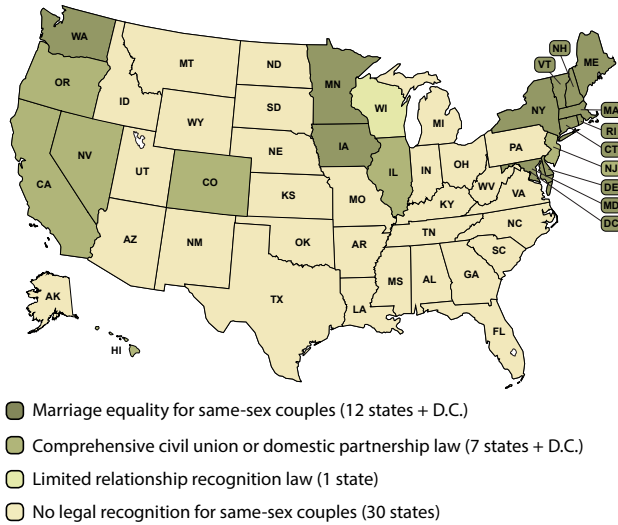
Revise benefit and tax law to more broadly recognize today's families

### FAMILY RECOGNITION

Legally recognize the partners and children of LGBT workers

### EMPLOYER POLICIES

Employers can adopt policies that minimize the impact of unfair laws

**Figure 28: State Marriage and Relationship Recognition Laws**

Source: Movement Advancement Project, Equality Maps, current as of May 15, 2013. For updates see [http://lgbtmap.org/equality-maps/marriage\\_relationship\\_laws](http://lgbtmap.org/equality-maps/marriage_relationship_laws).

means that it is unlikely that a Supreme Court decision would remove barriers to federal recognition of same-sex couples in the remaining 38 states.

### How the 1-2-3 Punch Affects LGBT Workers and Their Families

When narrow definitions of family are coupled with laws that make it difficult or impossible for LGBT families to be legally recognized, serious harms can result:

- **LGBT workers may be denied the family health insurance that is extended to their non-LGBT coworkers.** This can leave the family of an LGBT worker uninsured or scrambling to make ends meet after paying for health insurance out-of-pocket—while a non-LGBT worker can reap the benefits of employer-offered family coverage.
- **LGBT workers can be denied leave to take care of a same-sex spouse or partner—leave that employers are required to grant to married workers with an opposite-sex spouse under federal law.** This can force LGBT workers to choose between being at their partner’s bedside during an illness or surgery—or losing a job that supports the entire household.
- **The same-sex spouses and partners of retired LGBT workers may be denied Social Security spousal and survivor benefits available to opposite-sex spouses.** This can substantially reduce the retirement income of same-sex couples relative to other workers, even though the LGBT worker, like every other worker, paid into Social Security paycheck after paycheck to secure these benefits. The denial of these benefits also












can result in severe financial problems—and even poverty—for surviving same-sex spouses or partners in the event of a worker’s death.

- **Families of LGBT workers are denied governmental benefits provided to support families when a worker dies or becomes disabled.** As a result, the family of a disabled or deceased LGBT worker may face economic devastation on top of the emotional trauma that follows the death or disability of a loved one.
- **LGBT workers may be denied family tax relief and face a higher tax burden.** LGBT workers with a same-sex spouse or partner cannot receive the significant tax advantages of the “married filing jointly” federal tax status. Unlike heterosexual workers, they also must pay income and payroll tax on the value of employer-sponsored family health insurance. Last but not least, LGBT workers can be denied important child-related tax deductions and credits, particularly when the family’s primary wage earner is not a legal parent of the child or children.

### Legal Landscape: Worker Benefits and Taxation

*Table 2* provides a summary of major benefits that can—and often must—be extended to American workers, yet are not equally available for LGBT workers and their families. The table includes information about whether or not the programs and laws broadly or narrowly recognize workers, children, and spouses/partners—and, as a result, whether they include or exclude LGBT workers and their families. While this analysis is specific to LGBT workers, similar or identical principles apply to many other households, such as households headed by unmarried heterosexual couples, or households in which a worker is parenting or providing for a child without a legal parent-child relationship.

The remainder of this section of the report provides more detail on many of the important non-wage benefits available to U.S. workers and how LGBT workers are denied equal access to these benefits. Many of America’s most successful businesses are doing what they can to provide more equal compensation for LGBT employees; other companies, however, choose not to even try. However, even LGBT-inclusive employers cannot address every inequity, especially when it comes to government-provided benefits in areas like Social Security, immigration, and federal and state taxation. At the end of the section, we include policy recommendations for addressing the unequal treatment of LGBT workers. We also include recommendations for employers who want to foster an inclusive workplace and a diverse workforce.














Table 2: How LGBT Workers Face Unequal Access to Benefits and Tax Relief			
Benefit or Tax Relief and How it Helps Workers/Families	Do LGBT Workers/Families Have Equal Access?	Impact on LGBT Workers and Their Families	Cost of Being Denied This Benefit
<b>Health Benefits</b>			
<b>Individual Health Insurance Coverage (Employer-Based)</b> Provides access to basic and condition-related care.	<b>Individual Coverage Through Employers</b> (in all 50 states + D.C.)   <b>Individual Workers</b> Individual workers have equal access to benefit, yet transgender workers often denied care	 <b>Unequal access to individual benefits.</b> Transgender employees may face denials ranging from basic care to transition-related care.	Transgender workers in particular may need to forgo care or pay out-of-pocket.  LGBT workers have higher rates of chronic illnesses and psychological distress. LGBT workers of color are at highest risk for health disparities.
<b>Family Health Insurance Coverage (Employer-Based)</b> Provides health insurance for spouses/partners and/or children of an employee.	<b>Family Coverage Through Self-Insured Employers</b> (in all 50 states + D.C.)  <b>Spouse or Partner</b>  Only legal opposite-sex spouse  <b>Children</b>  Only legal children	 <b>Unequal access to family benefits.</b> Employers offering family benefits to employees are not required to offer benefits to LGBT families.	Private insurance for a family may range from \$5,076 to \$7,615 annually. <sup>u,175</sup>
	<b>Family Coverage Through Fully Insured Employers</b> (in states without relationship recognition)  <b>Spouse or Partner</b>  Only legal opposite-sex spouse  <b>Children</b>  Only legal children	 <b>Unequal access to family benefits.</b> Employers offering family benefits to employees are not required to offer benefits to LGBT families.	Private insurance for a family may range from \$5,076 to \$7,615 annually. <sup>v</sup>
	<b>Family Coverage Through Fully Insured Employers</b> (in states with marriage or comprehensive relationship recognition, excluding Nevada) <sup>w</sup>  <b>Spouse or Partner</b>  Any spouse/partner in a legally recognized relationship  <b>Children</b>  Any child whose parents are in a legally recognized relationship	 <b>Equal access to family benefits.</b> LGBT workers offered same family benefits as non-LGBT workers. <sup>x</sup>	

<sup>u</sup> The average monthly premium for individual health insurance purchased on the private market in the 33 states that lack relationship recognition for same-sex couples is \$212. If we assume that the employee's spouse/partner and one child are required to purchase insurance on the private market because coverage is not available through the employer, the family will spend \$5,076 annually, whereas if the employee's spouse/partner and both children cannot receive coverage through the employer, the cost of coverage annually would be \$7,615.

<sup>v</sup> See note u above.

<sup>w</sup> Nevada's domestic partnership law specifically exempts employers from being required to offer domestic partnership health benefits to same-sex couples on an equal basis with married opposite-sex couples, although nothing prevents employers from doing so if they so choose.

<sup>x</sup> Equal access to family benefits for LGBT workers is not guaranteed by law in Nevada.

Table 2: How LGBT Workers Face Unequal Access to Benefits and Tax Relief						
Benefit or Tax Relief and How it Helps Workers/Families	Do LGBT Workers/Families Have Equal Access?	Impact on LGBT Workers and Their Families	Cost of Being Denied This Benefit			
<b>Continuation Health Insurance Coverage (COBRA)</b> Allows employees to keep their existing individual and family health insurance coverage for up to 18 months after a job transition. <sup>y, 176</sup>	<b>Derivative COBRA Rights</b> (offered to an employee)  <b>Spouse or Partner</b>  Any spouse/partner or children covered under worker's existing health insurance	  <b>Equal access to derivative COBRA rights.</b> All employees can equally elect to extend their individual and family health insurance coverage.				
	<b>Children</b>  Only legal opposite-sex spouse			<b>Independent COBRA Rights</b> (offered to an employee's family)  <b>Spouse or Partner</b>  Only legal opposite-sex spouse	  <b>LGBT families denied equal access to independent COBRA benefits.</b> A same-sex spouse/partner and their children may not have an independent right to extend their family coverage (e.g., upon death of the worker).	Cost of private health insurance for a family ranges from \$7,614 to \$11,421 for 18 months of coverage. <sup>z</sup>
<b>Tax Relief for Family Health Insurance Premiums</b> Allows employees to exempt the value of family health insurance benefits from taxation—and to pay their family health insurance premiums using pre-tax dollars.	<b>Federal Taxes</b>  <b>Spouse or Partner</b>  Same-sex spouse/partner only when they qualify as worker's dependent	  <b>Unfair taxes on benefits.</b> LGBT employees pay federal income and payroll taxes on family benefits in all 50 states; cannot use pre-tax dollars for family premium payments.	LGBT workers with an average wage and average family benefits could easily pay more than \$3,900 in federal taxes each year. <sup>aa, 177</sup>			
	<b>Children</b>  Legal children & children who qualify as worker's dependent			<b>State Taxes in States Without Relationship Recognition</b> (majority of states)  <b>Spouse or Partner</b>  Same-sex spouse/partner only when they qualify as worker's dependent	  <b>Unfair taxes on benefits.</b> LGBT workers pay unfair state income tax on family benefits; cannot use pre-tax dollars for family premium payments. <sup>bb</sup>	LGBT workers with an average wage and average family benefits could pay more than \$1,800 in additional state taxes each year. <sup>cc</sup>
	<b>State Taxes in States with Relationship Recognition</b> (minority of states)  <b>Spouse or Partner</b>  Any spouse/partner in a legally recognized relationship			<b>Children</b>  Any child whose parents are in a legally recognized relationship	  <b>Equal tax relief.</b> LGBT workers equally exempted from paying state tax on benefits. <sup>dd</sup>	

<sup>y</sup> COBRA may also be extended to 36 months for spouses and dependent children if the employee becomes entitled to Medicare, in cases of divorce or legal separation, if an employee dies, or if a child loses dependent child status.

<sup>z</sup> See note u above, for the calculations and sources for these estimates. We multiplied the annual estimates by 1.5 to estimate the cost of coverage for 18 months of COBRA.

<sup>aa</sup> Assumes a wage of \$48,202, and an adjusted gross wage of \$47,112 (excludes employee-paid individual health premiums of \$1,090). The employee who receives coverage for his opposite-sex spouse and children does not have to pay taxes on the value of the employer-provided family benefits (\$6,928) and can exempt family-related premiums from income (\$2,872), leaving taxable income at \$44,240. The employee who receives coverage for his same-sex spouse and two children cannot exempt family-related premiums and must add \$6,928 to his taxable income, taking it to \$54,040. The employee with the opposite-sex spouse pays total federal tax of \$5,744 in taxes. The employee with the same-sex spouse pays total federal tax of \$9,689, owing \$3,945 more.




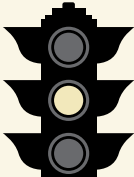







<sup>bb</sup> Alaska, Florida, South Dakota, Texas and Wyoming have no state income tax. Tennessee does not tax wages.

<sup>cc</sup> See note aa above. The employee who receives coverage for his opposite-sex spouse and children has federal taxable income at \$44,240. The employee who receives coverage for his same-sex spouse and two children has federal taxable income of \$54,040. Using California 2013 state income tax tables, the employee with the opposite-sex spouse pays \$2,695 in state tax and the employee with the same-sex spouse pays \$4,557, a difference of \$1,892.

<sup>dd</sup> Nevada and Washington have no state income tax. New Hampshire does not tax wages.



Table 2: How LGBT Workers Face Unequal Access to Benefits and Tax Relief

Benefit or Tax Relief and How it Helps Workers/Families	Do LGBT Workers/Families Have Equal Access?		Impact on LGBT Workers and Their Families	Cost of Being Denied This Benefit
<b>Family Pre-Tax Healthcare Savings Plans (FSAs, HSAs)</b> Allows workers to use pre-tax savings to pay for out-of-pocket health expenditures for themselves and their families, including COBRA premiums.	<b>Federal Tax-Free Savings</b> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <b>Spouse or Partner</b>              Only legal opposite-sex spouse         </div> <div style="text-align: center;"> <b>Children</b>              Legal children &amp; children who qualify as worker's dependent         </div> </div>		 <b>Denied use of pre-tax savings to pay for family medical expenses or COBRA premiums.</b>	Inability to use pre-tax savings to pay for ordinary out-of-pocket family health expenses may cost an additional \$779 annually—and up to \$14,994 more if adding 18 months of family COBRA premiums. <sup>ee, ff</sup>
<b>Medical Leave To Take Care of Self, Partners and Children</b>				
<b>Federal Individual Medical Leave (FMLA)</b> Allows workers to take up to 12 weeks of job-protected unpaid leave for a serious medical condition for themselves. <sup>gg</sup>	<b>Individual Worker FMLA Leave</b>  <b>Workers</b> Covered by FMLA, yet transgender workers often denied leave		 <b>Denied individual FMLA leave.</b> Transgender workers may face denials of leave for transition-related care.	Transgender workers may lose their jobs or be forced to forgo needed care.
<b>Federal Family Medical Leave (FMLA)</b> Allows workers to take up to 12 weeks of job-protected unpaid leave for a serious medical condition for a spouse, a “son or daughter” or a parent. <sup>hh</sup>	<b>Family FMLA Leave</b> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <b>Spouse or Partner</b>              Only legal opposite-sex spouse         </div> <div style="text-align: center;"> <b>Children</b>              Any child for whom worker acts as a parent         </div> </div>		 <b>Denied family FMLA leave.</b> Workers denied leave to care for a same-sex spouse/partner, though can take care of children.	An LGBT worker may be unable to care for sick spouse/partner, lose job to provide such care, or spend \$2,100 to provide equivalent in-home care. <sup>ii,178</sup>
<b>Retirement Benefits</b>				
<b>Social Security Retirement Benefits</b> Provides retirement income for retired older adults and their spouses through “pay-as-you-earn” federal mandatory payroll taxes.	<b>Federal Social Security Spousal Benefits</b> <b>Spouse or Partner</b>  Only legal opposite-sex spouse	<b>Federal Social Security Survivor Benefits</b> <b>Spouse or Partner</b>  Only legal opposite-sex spouse	 <b>Denied spousal and survivor benefits.</b> The same-sex spouse/partner of an LGBT worker is denied Social Security income provided to opposite-sex spouses.	A same-sex spouse/partner of a worker who retires at age 65 could be denied up to \$14,484 while the worker is living, and up to \$28,968 a year after the worker dies. <sup>jj,179</sup>

<sup>ee</sup> According to the Kaiser Family Foundation, 2009 out-of-pocket expenses for healthcare averaged \$795 per person (see The Henry J. Kaiser Family Foundation. “Health Care Costs: A Primer,” page 21. May 2012. <http://www.kff.org/insurance/upload/7670-03.pdf> (accessed February 28, 2013)). If an employee must instead pay for these expenses using after-tax dollars, the employee would have \$540 less. We multiplied \$795 by three for a total of \$2,385 and then assumed a tax rate of 32.65% (25% income tax plus 7.65% payroll/FICA tax).

<sup>ff</sup> See note aa above. We took the family coverage paid for by the employer (\$6,928) and added the employee-paid premiums of \$2,872 for a total annual cost of family coverage of \$9,800. We then multiplied the annual estimates by 1.5 to estimate the cost of coverage for 18 months of COBRA and added a 2% administration fee as allowed by COBRA.














<sup>gg</sup> To be eligible, an employee must have worked for at least 1,250 hours for a covered employer with more than 50 or more employees over the previous 12 months.

<sup>hh</sup> Also allows leave when a new child joins the family.

<sup>ii</sup> On average, an employee taking FMLA leave is away from work for 10 days. If an employee cannot take these 10 days to care for a same-sex spouse or partner, we assume they will need 10 days of care from a home health aide. We assume 10 hours of care per day at the average hourly rate of \$21 yielding \$2,100 for 10 days.

<sup>jj</sup> Assumes retirement in 2013 at age 65, with earnings at the maximum level since age 22.

<sup>kk</sup> We calculated the basic retirement income for an employee participating in a pension plan opting for a single life annuity compared to opting for a 100% continuance of benefits for a surviving spouse. We assumed that the employee retired at age 65 with 20 years of service and a salary of \$50,000 for the purposes of this calculation. We also assumed that the employee's spouse/partner lived for 10 years after the death of the employee. An employee whose spouse/partner can continue receiving benefits would receive \$1,827 per month while the retired employee is alive, and the spouse/partner would receive \$1,827 after the employee's death until his or her own death. An employee who can only opt for a single life annuity would receive \$2,016 per month. Assuming the employee lives for 10 years after retirement and the spouse lives for 10 additional years, this family would receive \$196,560 more in pension benefits.

Table 2: How LGBT Workers Face Unequal Access to Benefits and Tax Relief				
Benefit or Tax Relief and How it Helps Workers/Families	Do LGBT Workers/Families Have Equal Access?	Impact on LGBT Workers and Their Families	Cost of Being Denied This Benefit	
<b>Defined-Benefit Plans (Pensions)</b> Offers employees and their beneficiaries a set level of benefits during retirement, and may include health benefits for retirees and dependents. Pension plans automatically extend financial protection to a worker's spouse should the worker die before retirement or post-retirement.	<b>Pension Survivor Benefits for Spouse of a Worker</b>   <b>Spouse or Partner</b> Only legal opposite-sex spouse	 <b>Unequal access to survivor benefits.</b> Employers required to offer pension survivor benefits to opposite-sex spouses but may deny them to same-sex spouses/partners nationwide.	A same-sex spouse/partner who lives for an additional 10 years after the death of the retired employee could lose \$196,560 over 10 years. <sup>kk,180</sup>	
<b>Defined-Contribution Plans</b> Allows employees and their employers to contribute to a tax-deferred retirement account. Should the worker die, the worker's spouse receives tax advantages on the inherited plan.	<b>Federal Tax Advantages for Surviving Spouse of a Worker</b>   <b>Spouse or Partner</b> Only legal opposite-sex spouse	 <b>Excess taxes on distributions.</b> Same-sex spouses and partners are treated as "non-spouses" and are denied tax-advantaged rollover and distribution options.	A same-sex spouse/partner who inherits a \$50,000 IRA could lose as much as \$1,282-\$3,205 in post-retirement after-tax income per year. <sup>ll</sup>	
<b>Family Protections When a Worker Dies or Becomes Disabled</b>				
<b>Social Security Survivors and Disability Insurance Benefits (OASDI)</b> Provides financial benefits to a deceased or disabled worker's minor children and spouse who is caring for the children.	<b>OASDI Family Benefits</b> <b>Spouse or Partner</b>  Only legal opposite-sex spouse	<b>Children</b>  Only legal children	 <b>Denied death and disability benefits.</b> LGBT families are denied death and disability benefits.	The surviving family (spouse and two children) of a worker earning \$40,000 annually could lose as much as \$29,520 in benefits. <sup>mm,181</sup>
<b>Tax Credits and Deductions to Ease the Costs of Raising a Family</b>				
<b>Family Tax Relief</b> Helps all families, regardless of economic circumstance, ease the financial burdens of raising a family via tax credits and deductions.	<b>Family Tax Relief</b> <b>Spouse or Partner</b>  Same-sex spouse/partner only when they qualify as worker's dependent	<b>Children</b>  Legal children & children who qualify as worker's dependent	 <b>Unequal access to family-related tax relief.</b> LGBT families can be denied access to joint filing status and child and family-related tax credits.	Families can be left with less money, both to provide for their families now, and to save for their future. An average household with a same-sex spouse/partner and two children can pay more than \$6,600 annually in extra federal income tax. <sup>nn</sup>
<b>Immigration Visas</b>				
<b>Immigrant Visas</b> Provides federal work and family-related immigrant visas that allow foreign workers and their families to live and work in the U.S.	<b>Immigrant Family Visas</b> <b>Spouse or Partner</b>  Only legal opposite-sex spouse	<b>Children</b>  Only legal children	 <b>Denied work and family-related visas.</b> LGBT family members can be denied work and family-related visas because their relationships are not recognized.	An LGBT worker could be forced to choose between: (1) living without his or her family to take a U.S. job, (2) trying to secure temporary visas for family members that will not allow them to work, or (3) remaining abroad.

<sup>ll</sup> See footnote aaaa on page 87 below.

<sup>mm</sup> Assumes a worker earning \$40,000 annually who dies at age 35. For a non-LGBT worker, each child under age 18 is eligible to receive \$1,018 per month—as is the surviving spouse who is caring for children age 16 or under. Although  $\$1,018 \times 3 = \$3,054$ , the maximum monthly family benefit allowable is \$2,460 or \$29,520 annually.

<sup>nn</sup> See detailed calculations on pages 91-92. (tax scenario)

## Barrier: Unequal Access to Health Insurance Benefits

### Health Insurance in America

The United States is one of the few industrialized nations that does not provide universal healthcare. As a result, the majority of Americans (55%) receive health insurance through their employer, their spouse's employer, or the employer of a parent.<sup>182</sup> Among working-age Americans (ages 25-64), more than six in 10 (62%) receive health insurance through an employer,<sup>183</sup> and more than half of these workers choose coverage that includes at least one family member (see *Figure 29*).

The likelihood that an employer will offer health benefits varies by employer size, industry, and worker wages. In 2012, 61% of all U.S. employers offered health insurance; the majority of employers with 10 or more workers offered insurance, compared to less than half of small employers with three to nine workers (see *Figure 30*).

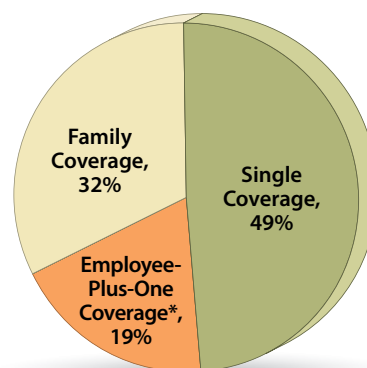
Workplaces that employ high percentages of low-wage workers are less likely to offer health benefits, as are employers in certain industries.<sup>184</sup> For example, only 45% of retail employers offered health benefits, compared to 59% of finance employers. Of employers who do offer coverage, less than a third of small employers (28%) and less than half of large employers (45%) extend coverage to part-time employees.<sup>185</sup>

In 2011, 55.1 million employees were enrolled in health insurance plans offered by private employers, and 32.2 million were enrolled in plans offered by government employers.<sup>186</sup> The majority of employees in the private sector enrolled in single-coverage plans that insured only themselves, while the majority of employees in state and local government jobs chose plans covering one or more additional family members as well (see *Figure 31* on next page).

Although many employers offer health benefits, no federal or state law *requires* that they do so. State and federal laws regulating employer-provided health benefits are usually aimed at ensuring the affordability of health insurance plans, while also assuring minimum coverage levels and protection from discrimination for employees. Some laws, such as the Affordable Care Act (ACA) signed by President Obama in 2010, also provide employer incentives for providing benefits. The ACA extends tax credits to employers that offer health benefits beginning in 2014,<sup>189</sup> and will require employers with

**Figure 29: Single vs. Family Health Insurance**

For Employees Who Had Access To and Chose Some Form of Employer-Sponsored Health Insurance

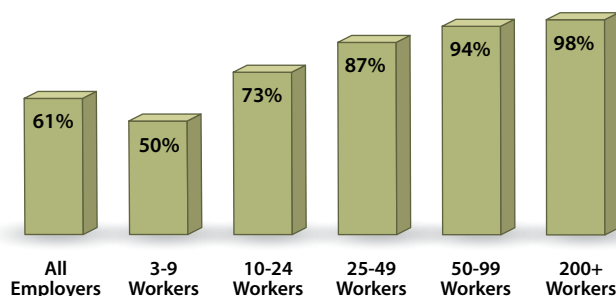


\*This is health insurance that covers the employee and one other family member at a lower premium level than family coverage.

Source: Davis, Karen E. "Statistical Brief #398: Premiums and Employee Contributions for Employer-Sponsored Health Insurance: Private V. Public Sector, 2011." U.S. Department of Health and Human Services, Agency for Healthcare Research and Quality, Medical Expenditure Panel Survey. [http://meps.ahrq.gov/mepsweb/data\\_files/publications/st398/stat398.pdf](http://meps.ahrq.gov/mepsweb/data_files/publications/st398/stat398.pdf).

**Figure 30: Percent of Employers Offering Health Insurance**

By Number of Workers Employed



Source: The Kaiser Family Foundation and Health Research & Educational Trust. "Employer Health Benefits: 2012 Annual Survey." 2012. "Employer Health Benefits: 2012 Annual Survey." 2012. <http://ehbs.kff.org/pdf/2012/8345.pdf>.

50 or more full-time workers who do not provide health insurance to their employees to pay an annual penalty.<sup>90</sup> The ACA will also provide premium subsidies for workers who earn less than 400% of the federal poverty line.

<sup>90</sup> The Affordable Care Act does not address tax credits or penalties for employees' dependents, such as spouses or children.

## The High Cost of Health Insurance Leaves Workers Unprotected

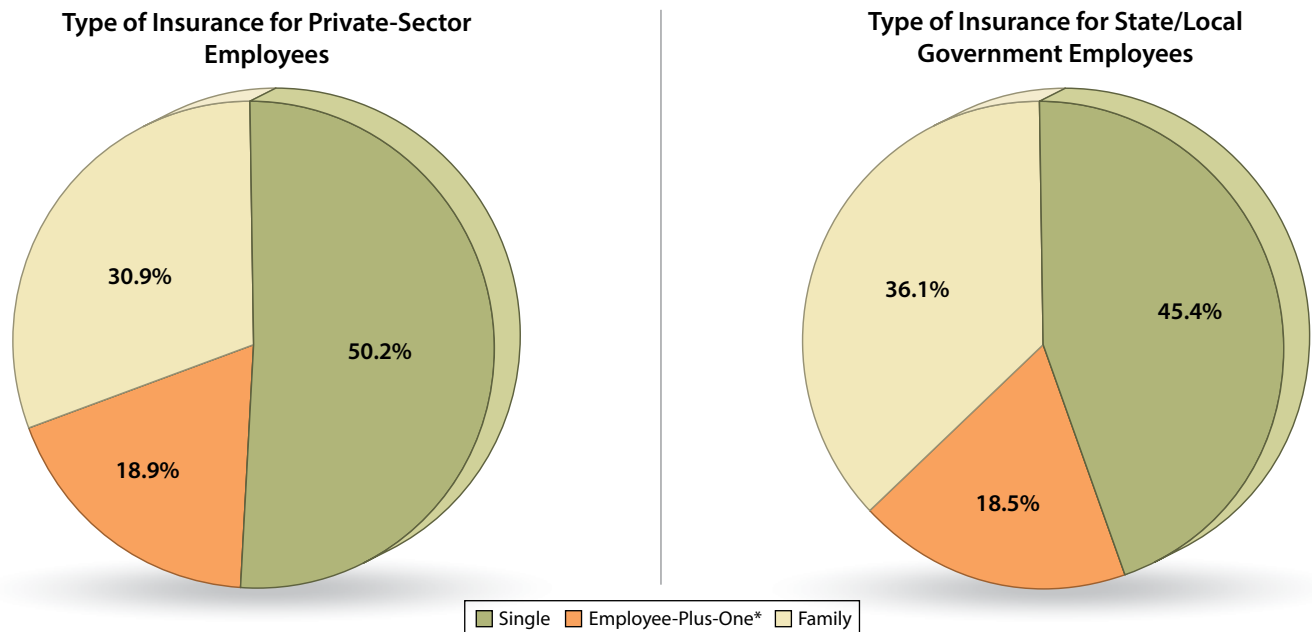
- In 2011, 15.7% of Americans, or 48.6 million people, lacked health insurance.<sup>187</sup> The most common reasons? Employers did not offer them health insurance, or when offered, their share of the premiums was too costly.<sup>188</sup>
- A private-sector employee pays, on average, \$90 per month in premiums for single health coverage and \$330 per month for family coverage. For workers making the minimum wage (\$7.25 per hour), this means premiums for family coverage would eat up more than a quarter (28%) of their monthly income before taxes.

## Health Disparities and Lack of Access to Healthcare

For LGBT workers, the barriers to accessing health benefits are more than just stumbling blocks; they can jeopardize an individual's long-term health.<sup>190</sup> As described below, LGBT workers have lower rates of health insurance, encounter discrimination when receiving healthcare, and experience significant health disparities when compared to non-LGBT workers.<sup>191</sup>

**Lower rates of health insurance.** Research shows that LGBT adults are less likely to have health insurance than their non-LGBT counterparts, with transgender workers having particularly low rates of health insurance (see *Figure 32* on the next page). This reduced access is also more pronounced among LGBT people of color. In general, people of color are

**Figure 31: Family Health Benefits for Private-Sector and State/Local Government Employees**  
By Employee Selection Type



\*This is health insurance that covers the employee and one other family member at a lower premium level than family coverage.

Left chart source: Crimmel, Beth Levin. "Statistical Brief #376: Employer-Sponsored Single, Employee-Plus-One, and Family Health Insurance Coverage in the Private Sector: Selection and Cost, Medical Expenditure Panel Survey, 2011." *Agency for Healthcare Research and Quality*. July 2012. [http://meps.ahrq.gov/data\\_files/publications/st376/stat376.pdf](http://meps.ahrq.gov/data_files/publications/st376/stat376.pdf).

Right chart sources: Agency for Healthcare Research and Quality. "Table III.E.4(2011) Percent of state and local government employees enrolled in a health insurance plan that takes employee-plus-one coverage through state and local government jobs by government type and size and census division: United States, Medical Expenditure Panel Survey, 2011." 2011. [http://meps.ahrq.gov/mepsweb/data\\_stats/summ\\_tables/insr/national/series\\_3/2011/tiii4.pdf](http://meps.ahrq.gov/mepsweb/data_stats/summ_tables/insr/national/series_3/2011/tiii4.pdf); "Table III.D.4(2011) Percent of state and local government employees enrolled in a health insurance plan that takes family coverage through state and local government jobs by government type and size and census division: United States, Medical Expenditure Panel Survey, 2011." 2011. [http://meps.ahrq.gov/mepsweb/data\\_stats/summ\\_tables/insr/national/series\\_3/2011/tiiid4.pdf](http://meps.ahrq.gov/mepsweb/data_stats/summ_tables/insr/national/series_3/2011/tiiid4.pdf); "Table III.C.4(2011) Percent of state and local government employees enrolled in a health insurance plan that takes single coverage through state and local government jobs by government type and size and census division: United States, Medical Expenditure Panel Survey, 2011." 2011. [http://meps.ahrq.gov/mepsweb/data\\_stats/summ\\_tables/insr/national/series\\_3/2011/tiiic4.pdf](http://meps.ahrq.gov/mepsweb/data_stats/summ_tables/insr/national/series_3/2011/tiiic4.pdf).

less likely to have health insurance coverage and less likely to work in industries with relatively high levels of employer-sponsored health insurance—and this trend holds for LGBT workers as well. LGB Latino/a adults and black transgender adults are the least likely to have health insurance (see *Figures 33 and 34*).

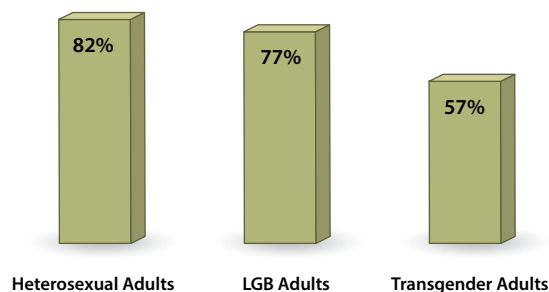
**Discrimination when receiving healthcare.** Even when LGBT workers have health insurance, research shows these workers face pervasive discrimination from healthcare professionals (see *Figure 35* on the next page). For example, 27% of transgender people say a health professional has refused to provide them with care, while 21% report a healthcare professional used harsh or abusive language.

**Health disparities.** When lack of health insurance is coupled with the daily stress of stigma and discrimination, it is not surprising that a growing body of research finds that LGBT Americans have poorer health outcomes, including higher rates of chronic illnesses<sup>192</sup>, greater incidence of psychological distress (see *Figure 36* on the next page), and overall poorer health (see *Figure 37* on the next page). Lower rates of health insurance, in addition to the stress and discrimination experienced as a result of being both a racial/ethnic minority and a sexual minority, combine in unique and devastating ways for LGBT people of color.<sup>193</sup> For example, only 35% of black lesbian and bisexual women have had a mammogram recently, compared to 70% of black heterosexual women.<sup>194</sup> Similarly, African American LGB adults are more likely than other African American adults to have diabetes, and Asian/Pacific Islander LGB people are more likely than other Asian/Pacific Islanders to report experiencing psychological distress.<sup>195</sup>

### Healthcare Barriers Faced by Transgender Workers

Transgender people require the same preventive and acute healthcare services as the rest of the population. In addition, the transition-related care that many transgender patients receive is similar to treatments used every day for other medical conditions. However, even when transgender workers pay the same premiums for healthcare coverage that other workers pay, they derive fewer benefits from that coverage. This is because transgender workers often face denials of coverage, higher premiums, and exclusions for both basic and transition-related care.

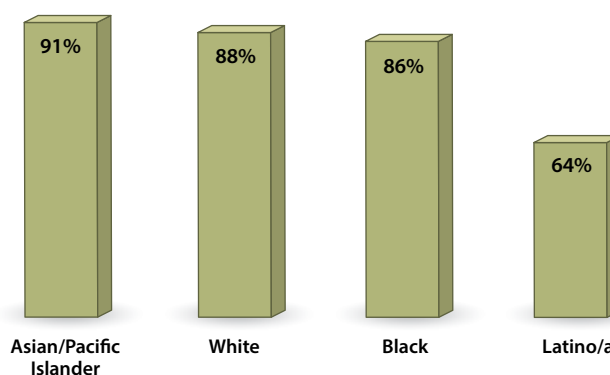
**Figure 32: Percent of Adults with Health Insurance**



Source: Krehely, Jeff. "How to Close the LGBT Health Disparities Gap." *Center for American Progress*. December 21, 2009. <http://www.americanprogress.org/issues/lgbt/report/2009/12/21/7048/how-to-close-the-lgbt-health-disparities-gap/>.

**Figure 33: LGB Adults with Health Insurance**

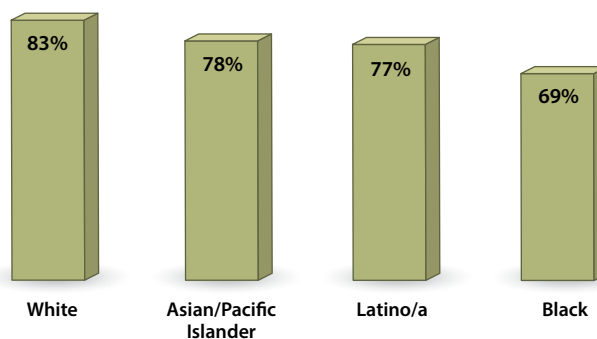
By Race/Ethnicity



Source: Krehely, Jeff. "How to Close the LGBT Health Disparities Gap." *Center for American Progress*. December 21, 2009. <http://www.americanprogress.org/issues/lgbt/report/2009/12/21/7048/how-to-close-the-lgbt-health-disparities-gap/>.

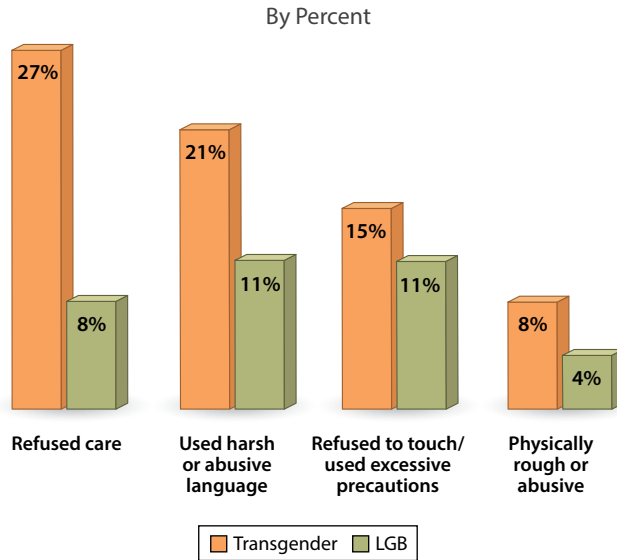
**Figure 34: Transgender Adults with Insurance**

By Race/Ethnicity



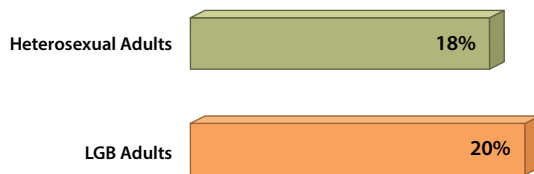
Source: Grant, Jamie M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf).

**Figure 35: LGBT People Experiencing Healthcare Discrimination from Healthcare Professionals**



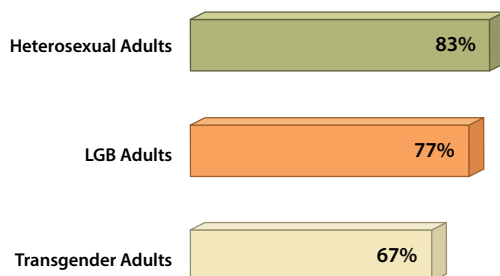
Source: Lambda Legal. "When Health Care Isn't Caring: Lambda Legal's Survey of Discrimination Against LGBT People and People with HIV." 2010. <http://www.lambdalegal.org/publications/when-health-care-isnt-caring>

**Figure 36: Percent of Adults Reporting Psychological Distress**



Source: Krehely, Jeff. "How to Close the LGBT Health Disparities Gap." *Center for American Progress*. December 21, 2009. <http://www.americanprogress.org/issues/lgbt/report/2009/12/21/7048/how-to-close-the-lgbt-health-disparities-gap/> (accessed March 1, 2013).

**Figure 37: Percent of Adults Reporting Excellent or Very Good Overall Health**



Source: Massachusetts Department of Public Health. "The Health of Lesbian, Gay, Bisexual and Transgender Persons in Massachusetts." July 2009. <http://www.masstpc.org/wp-content/uploads/2012/10/DPH-2009-lgbt-health-report.pdf>

**Denial of routine care.** Transgender people may have problems accessing even routine healthcare. An insurer may create broad exclusions for anyone with a history of hormone use or gender dysphoria. These exclusions, especially if broadly worded, may result in sweeping denials of care that have nothing to do with whether a worker is transgender. For example, a transgender employee may be unable to receive mental health counseling, even when that counseling is not related to gender dysphoria or a gender transition.

**Denial of gender-specific care.** Insurance companies' classifications of members as male or female can result in inappropriate denial of gender-specific care. For example, if a transgender man submits paperwork as "male" with his insurance provider, he may be rejected for gynecological care for ovarian cancer.<sup>196</sup> Similarly, a transgender woman might be rejected for prostate cancer treatment. Even routine screenings like mammograms and prostate exams can be problematic.

**Denial of essential health benefits for issues irrationally deemed "related" to gender transition.** Some insurance companies reject claims based solely on the fact that the person is transgender. For example, one insurance company denied a claim for coverage of a transgender man's high blood pressure based on a medically unsupported argument that it was related to his testosterone treatment. The U.S. Department of Health and Human Services has confirmed that these types of rejections and denials, as well as the denial of routine, gender-specific care (see above), are considered illegal discrimination under the Affordable Care Act and will apply to most individual and small group plans offered by fully insured employers beginning in 2014.<sup>197</sup>

**Exclusions for transition-related care.** Transition-related care is essential to the health and well-being of many transgender people. Furthermore, there is a well-established consensus among medical associations (such as the American Medical Association) that gender identity is a deep-seated, inherent aspect of human identity, and that some transgender people require individualized medical treatment that may include counseling, hormone therapy, surgeries and other treatments.

Yet many insurers still exclude coverage for transition-related care, even when they cover the exact same services (such as mastectomies or hormone replacement therapy) for non transgender

## The American Psychiatric Association Updates How it References Transgender People

This year (2013), the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* will change how it references transgender people. Specifically, the prior diagnostic label of "Gender Identity Disorder" is being updated to more accurately reference *Gender Dysphoria*, or a conflict between the gender a person feels they are and the gender assigned to them at birth.

Having a diagnostic label can open the door for insurance reimbursement and help define a "serious medical condition" for the purposes of medical leave from work. It can also help substantiate the medical necessity for, and insurance coverage of, transition-related care, such as hormone treatment or sex-reassignment surgery.

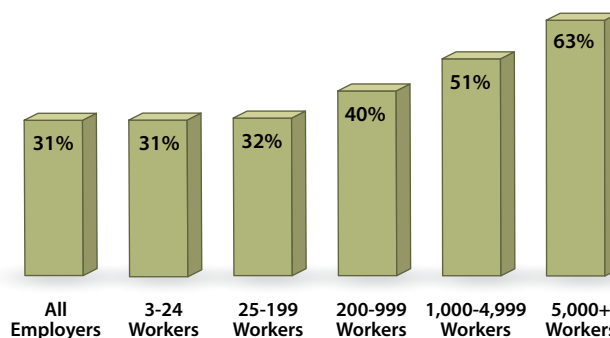
On the other hand, a catch-all diagnosis like "Gender Identity Disorder" can be inaccurately interpreted as indicating "mental illness"—which not only creates unwarranted stigma, but can also be used to exclude insurance coverage for related care and treatment under the rubric of "mental health" limitations or pre-existing condition exclusions.

people under other circumstances.<sup>pp</sup> Insurers also routinely exclude coverage for treatments such as psychological counseling and health monitoring for transgender patients undergoing hormone therapy. Other employer-based health insurance policies ignore clinical evidence and erroneously define transition-related care as "cosmetic" and therefore refuse to cover this care as medically necessary.<sup>qq,198</sup> Just recently, state insurance regulators in California and Oregon (both states with strong state nondiscrimination laws) have issued clarifying regulations designed to stop these discriminatory practices. When insurers refuse to cover transition-related and other care, transgender employees must choose between forgoing needed medical care, or, if they can afford to do so, paying for it out-of-pocket.

### Health Insurance for the Families of LGBT Workers

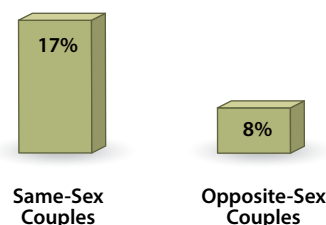
Despite the challenges outlined above, when an employer offers health insurance to individual workers, the employer cannot systematically exclude individual LGBT workers from its health coverage. However, many employers can offer health benefits to the families of heterosexual workers, while systematically excluding the families of LGBT workers. As a result, the availability of health coverage that includes the families of LGBT workers varies widely (see *Figure 38*). Overall, married heterosexual workers are far more likely to be offered family benefits than workers with same-sex partners.<sup>200</sup> According to a recent report from the Williams Institute analyzing five years of data from the Census Bureau's American Community Survey, same-sex couples are twice as likely as opposite-sex couples to have only one spouse or partner covered by health insurance (17% v. 8%, respectively; see *Figure 39*).

**Figure 38: Percent of Employers Offering Health Insurance to Unmarried Same-Sex Partners**  
By Number of Workers Employed



Source: The Kaiser Family Foundation and Health Research & Educational Trust. "Employer Health Benefits: 2012 Annual Survey." 2012. <http://ehbs.kff.org/pdf/2012/8345.pdf> (accessed March 1, 2013).

**Figure 39: Percent of Couples Where Only One Partner/Spouse is Covered by Health Insurance**  
By Type of Couple



Source: Gates, Gary J. "Same-sex and Different-sex Couples in the American Community Survey: 2005-2011." February, 2013. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/ACS-2013.pdf>

<sup>pp</sup> Some employer-based health insurance policies define gender reassignment processes as "cosmetic" and therefore refuse to cover them as medically necessary.

<sup>qq</sup> Problems can also occur when a transgender individual seeks other gender-specific surgeries such as a hysterectomy.

### Private-Sector LGBT Workers

Private-sector workers account for 84% of the U.S. workforce.<sup>201</sup> A private-sector employer that offers family health benefits to workers with an opposite-sex spouse may or may not be required by law to also provide these benefits to workers with same-sex spouses/partners. As shown in *Figure 40* on the next page, whether this is the case depends on two factors: 1) how the employer purchases insurance; and 2) what state the employer is in.

*Fully insured employers*, or those that buy insurance through health insurance companies, are subject to state health insurance laws. In most states with marriage equality or other forms of comprehensive legal recognition for same-sex couples, legally recognized same-sex couples must be treated the same as married opposite-sex couples under state health insurance law.<sup>rr,202</sup> In these states, fully insured employers that offer family health benefits to employees with opposite-sex spouses must also extend health benefits to legally recognized same-sex spouses/partners and their children.

By contrast, *self-insured employers* forgo buying health insurance through insurance companies and instead pay claims directly.<sup>ss</sup> Self-insured employers together employ 60% of American workers.<sup>203</sup> State law does not regulate health benefits provided by these employers. Instead, the federal government regulates the activities of self-insured employers under the Employee Retirement Income Security Act of 1974 (ERISA).<sup>204</sup> The purpose of ERISA is to ensure that large companies have one set of insurance rules to go by, rather than varying laws in every state where they have operations.

ERISA, combined with several other federal laws, requires self-insured employers that offer health insurance benefits to do so without discriminating against any class of worker protected under Title VII of the Civil Rights Act.<sup>205</sup> For example, an employer cannot offer benefits to white employees, but deny those same benefits to employees of color. Nor could an employer offer family health benefits to male workers but not female workers.

However, when it comes to extending family health insurance benefits to LGBT employees, employers can discriminate. ERISA does nothing to

<sup>rr</sup> The exception is Nevada, where the state's domestic partnership law specifically exempts employers from being required to offer domestic partnership health benefits on an equal basis with married opposite-sex couples, although nothing prevents employers from doing so if they so choose.

<sup>ss</sup> Note that self-insured employers may contract with a claims administrator.

### Donna's Story: Compromising a Career and Working Two Jobs to Get Domestic Partner Benefits



Seven years ago, my partner and I moved back to Minneapolis. Kelly and I were so excited to return to the Midwest, where we had attended college and made many friends. I started a job at my current company, primarily because I would be able to sign Kelly up for health benefits.

The reality is I like my company. I'm grateful they recognize my family. But it isn't my dream job—it's not even in my field. It certainly isn't where I saw myself landing after graduate school. Still, I'm thankful to have a job, particularly one that sees Kelly as my spouse and that will cover her under the company health plan.

My boss realizes that I stay because of the health benefits. I've applied for other jobs, and twice I've been a finalist. But neither company offered benefits to same-sex spouses or partners. I tried to negotiate with one company who offered me a job—I asked them to offer coverage for Kelly or increase my salary so we could purchase additional insurance on the private market. But they wouldn't do it. So I declined the job and feel stuck professionally.

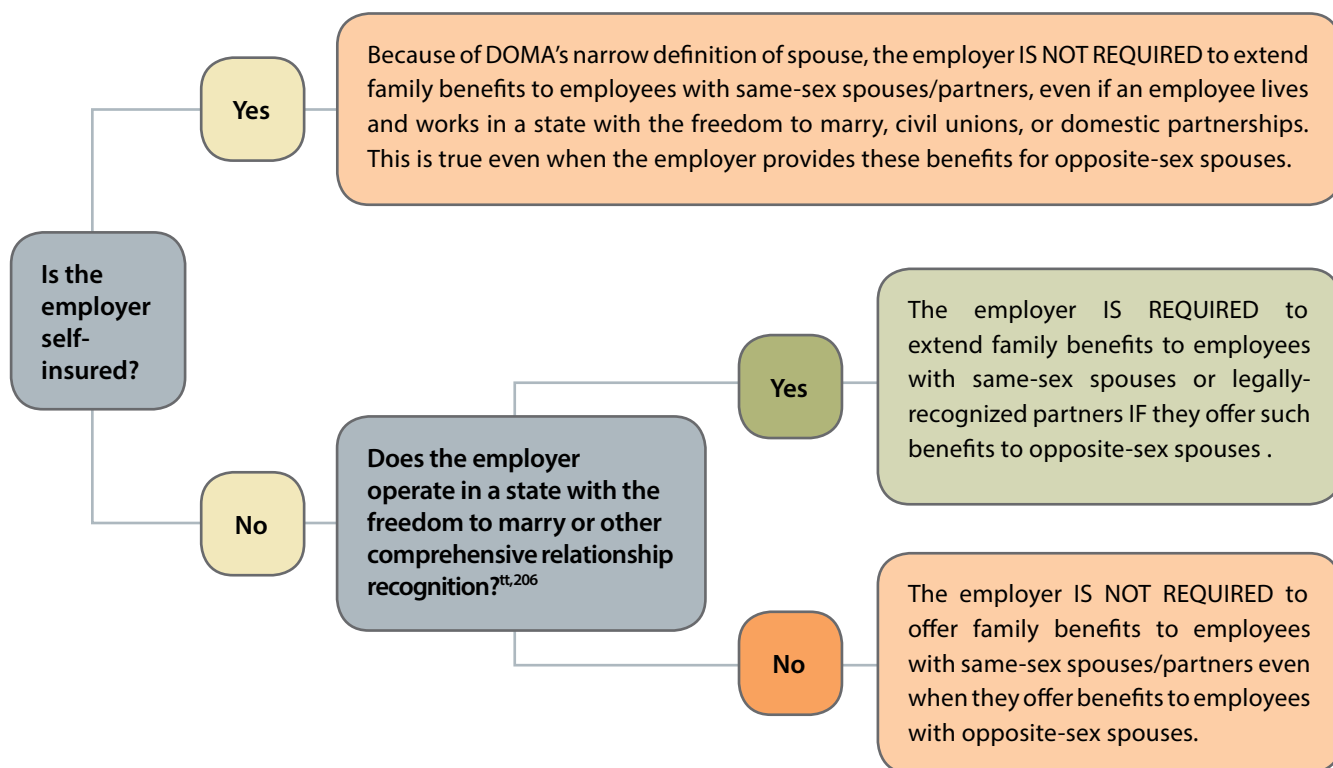
Even though Kelly and I consider ourselves lucky to receive domestic benefits, my paycheck takes a hit every month. I have to pay taxes on the cost of her health insurance, and I have to pay for her insurance using post-tax dollars. The costs add up. For us, it means Kelly and I both work second jobs.

—Donna, Minnesota

prevent employers from offering health insurance to married couples and legally recognized children while denying such insurance to unmarried couples and non-legally recognized children. This creates obvious problems for LGBT workers who are denied marriage and the ability to create legal parenting ties in most states. Furthermore, since employers who are self-insured are governed by federal law, DOMA allows these employers to extend health insurance to married opposite-sex couples while simultaneously refusing to extend the same



Figure 40: When Must a Private Employer Offer Benefits to the Same-Sex Spouses/Partners of Employees?



insurance to married same-sex couples. This means two married employees (one to an opposite-sex spouse and one to a same-sex spouse) who are doing the same type of job at the same company could receive dramatically different benefits.

Should the Supreme Court strike down Section 3 of DOMA, self-insured employers that extend benefits to spouses would likely be required to provide equal benefits for married same-sex couples and married opposite-sex couples. (These employers would very likely not have to extend equal benefits to same-sex couples living in states without marriage equality.) However, as things stand currently, a married LGBT employee working for a fully insured employer could receive coverage for his entire family, while a married LGBT worker working for a self-insured employer in the same state could be denied access to family benefits (see Figure 40).<sup>44</sup>

It should be noted that while neither federal law nor the majority of state laws *require* that employers extend family benefits to cover the same-sex partners and non-legally recognized children of LGBT employees, there is no federal or state law that *prohibits* private employers from offering these benefits if they choose to do so.

*DOMA deprives* married gay and lesbian working people and their children of significant benefits associated with employment. Because most Americans obtain health insurance through their own employer or through their spouse's employer, DOMA prevents or substantially restricts access to spousal healthcare benefits.

Supreme Court amicus brief, AFL-CIO and Change to Win, *Hollingsworth v. Perry*, 2013.



<sup>44</sup> This question is applicable for every state that offers comprehensive relationship recognition *except Nevada*. Nevada law does not require a government or private employer to provide domestic partner healthcare benefits for the partner of an employee, although Nevada does offer these benefits to state employees even though not required to do so.

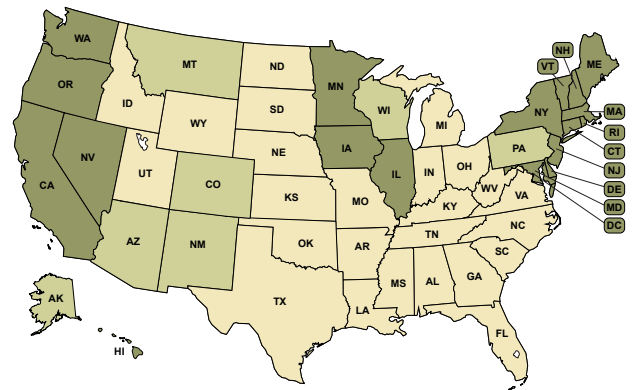
<sup>45</sup> It is not always clear whether an employer is fully insured or self-insured. Employees should carefully review their paperwork, or ask a benefits administrator or human resources staff person. For example, both of these employees could have insurance cards from the same carrier because the carrier is acting as an insurer for the fully insured company, and an outsourced benefits administrator for the self-insured company.

## State and Local Government LGBT Workers

Roughly 19 million people work for state and local government in the United States.<sup>207</sup> Whether and how state and local public employers extend family health benefits to LGBT employees varies by state. All *state governments* offer health insurance benefits to full-time employees and also allow employees to enroll an opposite-sex spouse and other dependents, such as children.<sup>208</sup> Some local government employees are covered by the state employee health plan, while other local governments have their own health plans.<sup>209</sup> Virtually all *local government* employers offer family health insurance benefits for opposite-sex spouses and a worker's legal children.

In 25 states and the District of Columbia, a state or local government employee can enroll a same-sex partner, and the children of that partner, in a health insurance benefit plan (see *Figure 41*). The state governments in the remaining 25 states do not offer health insurance benefits to a worker's same-sex partner,<sup>vv,210</sup> although

**Figure 41: States Offering Same-Sex Partner Health Benefits to State Employees**



- 18 states & DC offer equitable health benefits to same-sex spouses or partners (may require being legally married or in civil union or domestic partnership)
- 7 states offer domestic partner benefits to same-sex spouses or partners even though state lacks marriage or comprehensive relationship recognition

Source: National Conference of State Legislatures. "State Employee Health Benefits." December 2010. <http://www.ncsl.org/issues-research/health/state-employee-health-benefits-ncsl.aspx#Partner>. (Updated to reflect states with marriage equality and comprehensive relationship recognition).

<sup>vv</sup> Additional complexity in understanding same-sex spouse and partner benefits vis-à-vis state and local government employees comes from the fact that 21 states have state-level statutes or constitutional amendments that may - or may not - be interpreted as precluding state and local governments and other state entities from offering benefits to same-sex couples. These statutes and constitutional amendments are very broad in their language prohibiting the recognition of same-sex couples, and most not only exclude them from marriage, but also prohibit the recognition of domestic partnerships or civil unions for other purposes. For example, Virginia's amendment states that, "This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage."

### Dr. Andries Coetzee's Story: Uncertain Healthcare Coverage for a Professor's Partner



Andries Coetzee, left, and his partner Gary Woodall stand outside of their home in Ann Arbor

When Dr. Andries Coetzee moved from South Africa to teach linguistics in the United States, he turned down a job with New York University in favor of the University of Michigan.

He chose Michigan before the state passed legislation eliminating domestic partner benefits for public employees. Coetzee's longtime partner, Gary Woodall, was in remission from a rare type of soft tissue cancer, and having health insurance was crucial. To risk losing his healthcare coverage also risked his ability to access the very specialists who managed his cancer treatment.

Immediately after the legislation was signed into law, Coetzee started applying for jobs at universities with comprehensive domestic partnership benefits. In an interview with *annarbor.com*, he said, "Michigan appears to be moving in the opposite direction of most communities. I question my decision to come to Michigan. I chose Michigan because it just seemed better. But now New York just made same-sex marriage legal and now in Michigan... they want people like my partner to not get treated."

Legal challenges to the legislation are working their way through the courts. In the meantime, Coetzee and Woodall worry that future court decisions may jeopardize access to lifesaving healthcare.

Coetzee told *annarbor.com*, "I don't want to leave the University of Michigan, I am really happy here. It's a great school to work at, but I have to take care of my family."

some local governments in these states do.<sup>www.211</sup> But even when local public employers in states without comprehensive relationship recognition choose to provide health benefits for same-sex partners, the state may force the local employer to stop its inclusive health coverage (see “The Battle for Domestic Partner Health Benefits for Public Employers in Michigan,” below).

<sup>www</sup>For example, in Texas, several local governments permit the same-sex partner of employees to enroll in health insurance, including Austin, Dallas and El Paso. In November 2010, voters in El Paso approved a ballot initiative that ended partner benefits for gay and lesbian partners of employees as well as other unmarried partners. The City Council voted to restore these benefits; however, several council members may face a recall election as a result of their votes. Of the employees whose partners would have lost benefits, 19 were in domestic partnerships, and only two were same-sex couples. The city estimated these benefits cost approximately \$34,000 per year. Similarly, in Utah, Salt Lake City provides health benefits to the “adult designees” of city employees. The nuance of each state’s law and the interpretation of state officials may determine whether such laws or amendments preclude a state from offering benefits to the same-sex partners of state and local government employees. For example, the state of Alaska has a broad constitutional amendment barring recognition of same-sex relationships, yet it continues to provide partner benefits to state employees as a result of a state Supreme Court decision.

### The Battle for Domestic Partner Health Benefits for Public Employers in Michigan

In 2004, voters in Michigan approved a constitutional amendment stating that “the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.” When the amendment went into effect later that year, many Michigan employers were still offering benefits to the same-sex partners of their employees. These employers included public universities such as the University of Michigan and Michigan State University, and various city and county governments such as the city of Kalamazoo.

Both the Michigan Court of Appeals and the Michigan Supreme Court subsequently determined that the amendment prohibited Michigan’s state and local government employers from extending family health insurance benefits to cover the same-sex partners of their employees. In 2009, Blue Cross/Blue Shield of Michigan announced that it would no longer offer same-sex partner benefits in its public employee plans in the state because of the ruling.

Some employers responded to the new restrictions with innovative efforts to extend domestic partner benefits in ways that complied with the law. For example:

- Michigan universities, which rely on comprehensive benefit packages as a primary recruiting and retention tool, reported that the Michigan amendment caused top candidates for key faculty and administration positions to reject job offers or withdraw applications. In an effort to stay competitive, several Michigan public universities and cities and counties redefined and broadened their qualifying criteria for health benefits to permit employees to enroll “other qualifying adults” and children of such adults. Employers that took this step included the University of Michigan; the cities of Ann Arbor and Kalamazoo; Washtenaw, Ingham, and Eaton counties; and several community colleges.
- In January 2011, the Michigan Civil Service Commission voted to allow nearly 50,000 state civil service employees (many of whom belong to a union) to enroll in the state’s various health insurance plans non-family members who have lived with state workers for at least a year. Following a lawsuit by Michigan’s attorney general, a divided Michigan Court of Appeals upheld the constitutionality of the commission’s vote and stated that it did not violate the state’s constitutional ban on recognizing same-sex relationships. The state attorney general appealed this ruling, but in May 2013, the Michigan Supreme Court declined to hear the appeal.

In late 2011, the Michigan legislature passed, and the governor signed, specific legislation explicitly prohibiting some public employers from extending family benefits to cover unmarried partners or including these benefits as part of their collective bargaining agreements. The state’s public universities and state employees covered by the Michigan Civil Service Commission were explicitly excluded from this legislation. However, local school districts, cities and counties, and community colleges must abide by the law’s requirements. This means they are currently unable to offer health benefits to the unmarried partners of employees as part of new collective bargaining agreements or employment contracts.

Existing agreements or contracts that permit employees to enroll an “other eligible individual” remain in effect, but coverage may not be continued when these contracts expire. The ACLU and the ACLU of Michigan filed a federal lawsuit in early 2012 on behalf of school teachers, city and county workers, and their domestic partners who lost, or will lose, benefits as a result of the new law. That case is still pending.

## America Compromises National Security In Order to Treat Gay Service Members Unfairly

Since the repeal of the U.S. military's "Don't Ask, Don't Tell" policy in 2011, lesbian, gay and bisexual<sup>xy</sup> service members have been able to openly serve their country. However, the families of LGB soldiers are still denied benefits like healthcare, military housing and family support programs. When LGB soldiers die serving their country, they cannot even count on the government to notify their same-sex partner or spouse as next of kin. As OutServe-SLDN, an association of actively serving LGBT military personnel, explains in an amicus brief filed in support of striking down DOMA:

*The military demands far more from those who serve and their families than does a typical employer. ... [In return] the military assures service members it will provide for their families in their absence, whether that absence results from a temporary deployment or death. It keeps that promise by providing military families a host of benefits and family support services.*

*In the military context, the denial of equal benefits for equal service and equal sacrifice is more than a fairness issue. The military consistently has emphasized that providing benefits to military spouses improves morale and is critical to national security. These benefits address an important source of worry for service members, allowing them to focus on the tasks at hand. ... A Marine who is ordered to kick down a door or to take a hill in the midst of incoming gunfire should not have to worry about what would happen to his or her spouse if the Marine were to die in battle. The military knows this and has explicitly made that point to Congress in seeking spousal benefits in the past.*

*In addition to recognizing the need for spousal benefits, the military recognizes the importance of uniformity in benefits. Uniformity is a bedrock military principle, which fosters the unit cohesion necessary for the military to function effectively. Providing disparate benefits to service members, who are performing the same service and making the same sacrifices, sends the wrong signal that the military does not value all service members or their families equally.*

Source: Supreme Court amicus brief, Outserve-SLDN Inc., *United States v. Windsor*, February 2013. [http://www.americanbar.org/content/dam/aba/publications/supreme\\_court\\_preview/briefs-v2/12-307\\_resp\\_amcu\\_ossi.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-307_resp_amcu_ossi.authcheckdam.pdf)

### Federal LGBT Workers

As of 2013, approximately 2.8 million workers were employed by the federal government; 80% of these employees work outside the Washington, D.C. metropolitan area.<sup>212</sup> As an employer, the federal government limits family health benefits to an employee's spouse and children under age 26, including legally adopted children, stepchildren, recognized natural children (children born to unmarried heterosexual parents), and foster children if they live with the employee in a parent-child relationship.<sup>xx,213</sup>

LGBT employees working for the federal government are ineligible for spousal and, in many cases, child-related benefits because of the 1-2-3 punch described on pages 53-55. First, to determine eligibility for benefits the federal government only recognizes married couples and a worker's legal children. Second, state law makes it difficult or impossible for many LGBT workers to meet the spousal and parenting requirements. Third, because the federal government only recognizes opposite-sex spouses under DOMA, it

does not extend spousal health benefits to same-sex couples, even those who are married or in a state-recognized domestic partnership or civil union.

Should Section 3 of DOMA be struck down or overturned, federal workers with a same-sex spouse will likely have the same access to family health benefits as federal workers with an opposite-sex spouse.

### Unequal Access to COBRA

Whether they work for a private or a public employer, many LGBT workers and their families are at a disadvantage when it comes to healthcare coverage after the loss of a job. Under the Consolidated Omnibus Budget Reconciliation Act (COBRA), the federal government requires that employers with 20 or more employees offer

<sup>xx</sup> Oddly, due to some further complexities raised by DOMA, the federal government also refuses to recognize the legal stepchildren of an LGBT employee. Unlike the IRS code, which does not define "stepchild," the Federal Employee Health Benefits Code defines stepchild as a "spouse's legitimate or adopted child or child born out of wedlock." When so defined, DOMA limits the definition to the children of only federally recognized opposite-sex spouses.

<sup>yy</sup> The repeal of DADT did not change the regulatory ban in place for aspiring or current service members who identify as transgender.

## Tracy Johnson's Story: Military Tells Fallen Staff Sergeant's Parents of Death—But Not Her Wife



On October 1, 2012, Staff Sergeant Donna Johnson was killed by a suicide bomber in Afghanistan.

Donna met her wife, Tracy Johnson, when Donna joined the North Carolina National Guard in 2006. They were both stationed at Fort Bragg. They fell deeply in love and upon the repeal of “Don’t Ask, Don’t Tell,” they married on Valentine’s Day.

Donna called Tracy every morning, their daily ritual. One morning, Donna didn’t call and Tracy read online that three soldiers were victims of a suicide bomber near where Donna was stationed. In the case of a fallen soldier, it is Army protocol for widowed spouses to be personally informed by a casualty officer and invited to meet the casket as it is returned to American soil. Tracy never received that visit. Donna’s parents did.

Although Donna and Tracy were legally married in the District of Columbia, Tracy was denied the ceremonies, rituals and spousal survivor’s benefits that usually go to widows because they were a same-sex couple. Under DOMA, same-sex widows cannot be treated equally when their spouses are killed.

their workers the opportunity to continue to receive health insurance coverage after a “qualifying event”—like leaving or losing a job<sup>zz</sup>, or experiencing a reduction in work hours.<sup>214</sup> Whatever family benefits an employer offers full-time workers must also be extended to COBRA-eligible workers facing a job transition.

### Derivative COBRA Rights for Workers’ Families.

Employees receiving benefits under COBRA must be offered continuing access to the same individual and family health benefits that they were receiving when they were full-time employees.<sup>aaa</sup> A COBRA-eligible employee can choose to continue coverage for herself and already-covered family members, choose continuation coverage just for herself, or choose not to use COBRA for continuation coverage at all. Under “derivative rights” for family members, if an employee does not choose to receive benefits under COBRA, then the family also cannot receive these benefits. In other words, the family COBRA coverage is derived from, and dependent on, the employee taking COBRA coverage.

### Independent COBRA Rights for Workers’ Families.

In certain circumstances, the family members of a worker may want to continue to receive health benefits even if the worker cannot or does not choose to extend the family health coverage. For example, this may happen if the spouses divorce, the employee dies, or the employee becomes entitled to Medicare or obtains employee-only coverage through a new job, which

would usually automatically terminate an employee’s COBRA and derivative coverage. To address these types of circumstances, the law also grants “independent” COBRA rights to a worker’s spouse and dependent children. These independent rights allow family members to choose to continue receiving the health benefits they received before the employee’s job transition—even if the employee does not or cannot support the family’s coverage.

Unlike derivative benefits, independent COBRA rights only need to be extended to a worker’s federally recognized legal spouse and dependent children. This means that while families of heterosexual workers can maintain their existing health benefits regardless of the worker’s choices and circumstances, LGBT families could lose all coverage if a worker dies or if parents divorce.

Of course, nothing prevents employers from electively offering independent COBRA-like rights to the families of LGBT workers. As of June 2011, the Human Rights Campaign’s Workplace Project found that LGBT workers could receive some form of family continuation benefits at 73% of Fortune 100 companies, 61% of the largest law firms in the country, and 47% of Fortune 500 companies.<sup>215</sup>

<sup>zz</sup> The employee may not qualify for continuation coverage if the employee loses his or her job because of “gross misconduct.”

<sup>aaa</sup> If an employee did not take family coverage before the qualifying event and if an open enrollment period occurs during the COBRA period, then the employee may also be able to enroll family that could have been covered earlier during the COBRA period, even if not previously covered.

## Unfair Taxation of Family Health Benefits

An LGBT employee who enrolls a same-sex spouse or partner and/or the partner's children in an employer-sponsored health insurance plan will likely end up paying more for family insurance coverage than a married colleague with an opposite-sex spouse. The reason: LGBT employees face a double tax penalty on these family benefits.<sup>bbb</sup>

- First, an employee who receives family health insurance coverage for his opposite-sex spouse and children receives it as a benefit that is exempt from federal income tax. For a worker with a same-sex spouse and non-legally recognized children, however, the value of the benefit is added to the employee's taxable income

(even though the employee does not receive any additional salary). The employee must then pay income and payroll (FICA) tax on this benefit. Not only does this taxation reduce the LGBT worker's overall income relative to other employees, LGBT workers also usually pay a higher tax rate because they are unable to use the "married filing jointly" tax status (see full discussion on pages 89-90). The resulting higher taxable income may also push the LGBT worker into a higher tax bracket.

- Second, workers who receive health benefits are often required to pay a portion of the total cost via an employee premium. The cost of the family health insurance premiums are deducted pre-tax for employees with opposite-sex spouses, while

A Tale of Two Working Families: Unfair Federal Taxation on Family Health Insurance		John (employee), his wife, Marie, and their two children Base salary of \$50,000	James (employee), his husband, Leo, and their two children <sup>ccc</sup> Base salary of \$50,000
<b>Federal Tax Hit #1: Tax on Value of Family Health Benefits</b> Each worker receives both individual and family health benefits.			
• Value of employer-paid family benefits <sup>ddd</sup>	\$6,928	\$6,928	
• Employer-paid family benefits exempt from taxable income	-\$6,928	0	
<b>Total Additional Taxable Income</b>	<b>\$0</b>	<b>\$6,928</b>	
<b>Federal Tax Hit #2: Inability to Exempt \$2,872 Employee Premium for Family Health Benefits from Taxation</b>			
<b>Total employee-paid portion of family health premium exempt from taxable income<sup>eee</sup></b>	-\$2,872	\$0	
<b>Total Reduction or Increase in Taxable Income</b>	-\$2,872	\$6,928	→
<b>Difference in Taxable Income</b>		↓	<b>\$9,800</b>
<b>Unfair Federal Taxation on Extra Taxable Income</b>			
• <b>Extra federal income tax for James (\$9,800 additional claimed income @ 25% tax rate) (using 25% marginal tax rate since James must file as "single" not "married filing jointly")<sup>fff</sup></b>			<b>\$2,450</b>
• <b>Extra payroll tax for James (FICA at 7.65%) on \$9,800 additional income<sup>ggg</sup></b>			<b>\$750</b>
<b>Total Additional Federal Tax Burden</b>			<b>\$3,200</b>

<sup>bbb</sup> An LGBT employee who enrolls a same-sex spouse/partner, child, or other family member who qualifies as a dependent can access these benefits exempt from both income taxation and payroll taxation.

<sup>ccc</sup> James lacks a legal tie to both of the children he is raising with Leo. Neither Leo nor their children can be counted as dependents.

<sup>ddd</sup> Excludes value of individual portion of employer-paid family benefits for which both employees are treated equally.

<sup>eee</sup> Excludes premiums paid by employee for individual health benefits for which both employees are treated equally.

<sup>fff</sup> James cannot file as "married filing jointly" because the federal government does not recognize his marriage. James therefore files as single, which puts him at a 25% marginal tax rate given his \$50,000 base salary.

<sup>ggg</sup> The \$9,800 difference is also subject to payroll tax at a rate of 7.65%.

LGBT employees are denied this tax deduction when paying for family health benefits. This again means the LGBT employee receives less take-home pay.

This unequal taxation again stems from the 1-2-3 punch where: 1) federal tax law only recognizes married couples and, often, only legal children; 2) same-sex couples are denied marriage in most states, and LGBT workers in most states may be unable to form legal ties to their children; and 3) the federal government refuses to recognize married same-sex spouses under DOMA.

These tax penalties can be extremely costly for LGBT workers receiving family benefits. Consider two workers, each with a spouse and two children enrolled to receive health benefits. Both workers earn \$50,000 and receive \$6,928 worth of family health benefits. As illustrated on page 71, unequal taxation of family health benefits costs the LGBT worker approximately \$3,200 in income and payroll taxes. These added taxes are a significant portion of the family's take-home pay—and may mean the LGBT worker cannot even afford to receive family health benefits.

This unfair taxation is not limited to LGBT employees; it also penalizes their employers. Employers that offer family benefits to married or unmarried same-sex couples must pay payroll taxes on the value of these benefits, even though they do not have to pay these taxes on benefits offered to married opposite-sex couples.<sup>hhh</sup> Across the nation, employers pay an estimated \$57 million per year in additional federal payroll taxes because of these penalties, while shouldering significant record-keeping burdens to manage two unequal tax systems.<sup>216</sup>

Adding to the tax burden related to this unequal treatment of LGBT workers and their families, many employees and employers have to pay state taxes on these benefits as well. When benefits for same-sex spouses/partners are provided in states with marriage or comprehensive relationship recognition, neither employees nor employers are required to pay state taxes on the value of the benefits.<sup>iii</sup> Instead, benefits for same-sex spouses or partners are treated the same as benefits for opposite-sex spouses. However, in income tax-levying states that do not extend the freedom to marry nor offer comprehensive relationship recognition, these benefits are taxed at both the state and federal levels.<sup>jjj</sup>

Unfair taxation of family health benefits does not just affect LGBT families. It can result in additional tax burdens and unaffordable healthcare for a wide variety of families—from unmarried heterosexual couples to an aunt who is

raising her nephew and wants to cover the child under her health insurance plan. These other impacted families are disproportionately likely to be families of color.

### Unequal Access to Family Pre-Tax Healthcare Savings Plans

As the cost of offering health insurance to employees continues to rise, employers have increasingly begun to ask employees to share the burden. In most cases, this means that employees are paying more for the care that they and their families receive through higher deductibles and copayments. In 2012, almost three-quarters of workers covered by employer-sponsored health plans were required to pay an annual deductible with costs averaging \$1,097 per covered individual.<sup>217</sup> To encourage employees to set aside funds to help pay for deductibles and other health expenses that are not covered by health insurance, the IRS recognizes three tax-free savings programs:

- **Health Flexible Spending Arrangements (FSAs)** are programs that allow workers to use pre-federal-tax dollars to pay for out-of-pocket health-related expenses for themselves, their spouse, and their eligible dependents.<sup>kkk</sup> Many employers offer programs to administer these accounts for their employees. As of 2013, the maximum that employees could contribute to these accounts was \$2,500 per year. These funds must be spent in the calendar year in which they are contributed or they are forfeited by the employee.
- **Health Savings Accounts (HSAs)** are available to individuals who are enrolled in high-deductible health plans. Unlike FSAs, these accounts allow an employee to accumulate tax-deferred savings from year to year. If funds are still available after a worker retires, she can use them as a general source of savings to supplement other retirement funds. In order to be eligible for an HSA, workers must have a health plan that requires them to pay at least \$1,200 annually in out-of-pocket expenses for individual expenses or \$2,400 for family coverage. Individuals can contribute to an HSA using pre-tax dollars and then use this money for individual, spouse and

<sup>hhh</sup> Assuming that the same-sex spouse or partner does not qualify as a dependent.

<sup>iii</sup> Note that two states with comprehensive relationship recognition (Nevada and Washington) have no state income tax, so even without relationship recognition, LGBT employees with a domestic partner would not pay additional state taxes.

<sup>jjj</sup> Alaska, Florida, South Dakota, Texas, Tennessee, and Wyoming do not recognize same-sex couples but also do not tax income at the state level.

<sup>kkk</sup> Programs may vary by name and may also include medical savings accounts (Archer MSAs and Medicare Advantage MSAs) or health reimbursement arrangements. These plans are usually, but not always, offered via a mechanism governed by IRS Tax Code Section 125 and fall under the umbrella of "Cafeteria Plans."

dependent health-related expenses.<sup>iii</sup> In 2013, employees could contribute up to \$3,250 annually.<sup>mmmm</sup>

- **Dependent Care Assistance Programs (DCAPs)** allow employees to pay for up to \$5,000 in dependent care expenses using pre-tax dollars. Employers are not required to offer DCAPs, but many choose to do so as an added benefit for employees. Employees can choose to use DCAP rather than taking the child and dependent care tax credit, but they may not take both. And, much like the child and dependent care credit, expenses are only eligible for DCAP if the dependent meets the IRS definition of an eligible child or dependent. Because an employee may not be able to claim a same-sex partner's child as a dependent for tax purposes, the pre-tax savings available to other employees may be out of reach for LGBT employees.

Because they are governed by federal tax law, FSAs, HSAs and DCAPs cannot be used by LGBT workers to pay for the health-related expenses of a same-sex partner or spouse—nor for the children of a spouse or partner if those children are not the worker's dependents. This harms LGBT families in three major ways:

- **LGBT workers cannot pay for everyday family expenses with pre-tax dollars.** Unlike colleagues with an opposite-sex spouse, a worker with a same-sex spouse or partner is unable to use pre-tax dollars to pay for their spouse or partner's copayments, deductibles, and other out-of-pocket costs such as eyeglasses.<sup>nnn</sup> An LGBT worker can use an HSA, FSA or DCAP to pay for the medical expenses of a non-related child, but only if the child is a dependent.<sup>ooo,218</sup> These restrictions can result in hundreds or even thousands of dollars in added healthcare and childcare costs for LGBT workers and their families, relative to other workers.
- **LGBT families cannot use pre-tax dollars to pay for COBRA if they lose a job.** When employees with opposite-sex spouses lose their jobs, they can use

FSA and HSA funds to pay for COBRA premium costs for themselves and their families. However, an LGBT employee cannot use HSA and FSA dollars to pay a same-sex spouse's or partner's health insurance premiums.<sup>ppp</sup> The costs of COBRA coverage can be significant, as the employee must now pay for both employee-paid health insurance premiums and the cost of the coverage previously paid by the employer, plus a 2% administration fee. Depending on the plan, COBRA costs can exceed an individual's unemployment benefits and leave a family teetering on the edge of financial ruin.

- **LGBT workers cannot transfer FSA and HSA funds tax-free upon death.** When an employee with an opposite-sex spouse dies and designates his spouse as a beneficiary, his FSA/HSA savings are automatically converted into a savings account for the spouse, leaving all tax benefits intact. When an employee with a same-sex spouse or partner dies, however, the funds are automatically liquidated and the same-sex spouse/partner is taxed on the proceeds. Consider a worker who has saved \$20,000 over 10 years in a HSA. If that worker has an opposite-sex spouse, the spouse would receive the full \$20,000 to use for future medical expenses or retirement. But if a same-sex spouse inherits the savings, he or she would have to count the inherited savings as income and immediately be liable for a payment of \$5,000 in taxes, assuming a 25% tax rate.

Particularly with respect to HSAs, which allow an employee to accumulate and invest savings over a period of several years, an LGBT worker's inability to use or pass on these funds to pay for family medical expenses can have serious impact on a family's finances, both immediately and in the future. The current restrictions on FSAs and HSAs harm a broad range of families, including unmarried heterosexual couples and other workers raising unrelated children.

### What Can Employers Do?

Employers recognize that health benefits are a crucial form of compensation and support for workers with families. Likewise, many employers realize that when LGBT workers cannot access benefits for themselves or their families, or are penalized for doing so, they are not being compensated fairly. As a result, some public and private employers across the country have stepped up to ensure that LGBT employees have equal access to benefits, and to help counter the financial penalties that LGBT employees incur when they receive these benefits.

<sup>iii</sup> The Affordable Care Act establishes uniform standards for "qualifying medical expenses" for FSAs and HSAs. These include: prescription drugs, insulin (even without a prescription), over-the-counter medicines purchased with a prescription, contact lenses or glasses, dental care, acupuncture, treatment for alcoholism, ambulance services, artificial limbs and teeth, wheelchairs and crutches, and bandages and other medical supplies. Additionally, qualified medical expenses for the employee's spouse and dependents or the employee's children under the age of 27 can also be paid through or reimbursed by an employee's FSA or HSA.

<sup>mmmm</sup> Employees aged 55+ can save an additional \$1,000 in these accounts in 2013.

<sup>nnn</sup> Unless spouse and children qualify as dependents.

<sup>ooo</sup> Qualified medical expenses are those for the person who had the savings account, all dependents that person claims on his or her tax return, and any dependent that person could have claimed on his or her tax return except if: (a) the person filed a joint return, (b) the person had gross income of \$3,800 or more, or (c) the person or the person's spouse could be claimed as a dependent on someone else's tax return.

<sup>ppp</sup> Unless spouse and children qualify as dependents.



**Extending Full Health Insurance Benefits to Transgender Workers.** Even fair-minded employers who want to provide transition-related health insurance coverage may not be able to find and buy “off-the-shelf” insurance packages that allow them to do so. Instead, they may need to carefully scrutinize their contracts and negotiate the removal of gender identity-related exclusions. But removing such contract exclusions may *still* not be enough to ensure that transgender workers or family members receive medically necessary care. Employers may also need to take steps to add language to these contracts affirming the availability of basic care and transition-related care.<sup>219</sup>

In 2001, the County of San Francisco became the first major American employer to offer comprehensive coverage for gender transition. Since then, a growing number of large employers have updated health plans to include coverage of transition-related care and related costs. Between 2009 and 2013 alone, the number of companies offering these health benefits, as measured by the Corporate Equality Index, grew from 49 to 287.<sup>220</sup> Recently, unions have added to the pressure on insurers to update their offerings by including transgender-inclusive healthcare in their bargaining negotiations. For example, the Service Employees International Union (SEIU), which has more than 2.1 million members, passed a resolution that recommends that local unions now bargain for transgender-inclusive healthcare in contracts.<sup>221</sup>

**Extending Health Insurance Benefits to Families of LGBT Employees.** Given the unequal access to family health insurance benefits among LGBT workers, surveys show that significant numbers of employers are taking steps to electively extend these benefits (see *Figure 44* on page 78). For example:

- The 2013 Corporate Equality Index administered by the Human Rights Campaign found that 89% of Fortune 500 companies extended benefits to employees with a same-sex spouse/partner.<sup>222</sup> More than half (52%) of the top 50 federal government contractors extended these benefits.<sup>223</sup>
- Small businesses are less likely than large ones to offer health benefits to their employees, and thus less likely to offer dependent coverage to their families.<sup>224</sup> However, 75% of small business owners surveyed by Small Business Majority in 2013 said that they either provide family health benefits to same-sex spouses or partners of their employees (21%) or would be willing to do so if they had a gay or lesbian employee (54%).<sup>225</sup>

- More than half (53%) of state and local government employees that belong to unions have access to health insurance coverage for a same-sex spouse/partner, compared to only 17% of non-union state and local government employees.<sup>226</sup>

As part of the Affordable Care Act, the federal government’s health insurance website allows employers to search for insurance plans that fit their needs. The website has been expanded to identify plans that offer coverage for same-sex domestic partners.<sup>227</sup>

**Reducing the Impact of Federal/State Taxation of Health Benefits.** In addition to extending benefits to the families of LGBT workers, some employers have begun to compensate employees for the inequitable taxation of benefits for same-sex spouses/partners. Employers do this by increasing (or “grossing up”) pay for workers with same-sex spouses/partners to counterbalance the unfair taxation. Just a few of the companies and firms that have done so are Accenture, Barclays, Cisco, Discovery Channel, Deutsche Bank, Ernst & Young, JetBlue, Goldman Sachs, Symantec and Winston & Strawn.

Another employer that has done this is Teach for America, the national nonprofit that recruits diverse leaders to teach for two years in a low-income community. According to Rex Varner, vice president on the human assets team at Teach for America, “We realized that it was the right thing to do and we were in a position to do it, so we did.”<sup>228</sup> Similarly, Jeffrey G. Davis, managing director and co-chairman of Barclays’ LGBT employee group, said that LGBT employees at the global financial services firm worked with human resources to figure out the most efficient way to make up for the unequal tax treatment. According to Davis, the company now reimburses LGBT employees who opt for family coverage with a lump sum at the end of the year.

Although employers can take many steps to lessen the unequal financial burden on LGBT workers and their families, in most cases it is not possible to completely negate the impact of unfair state and federal laws on the availability, cost and taxation of family health benefits. This is why many employers are speaking out for changes in tax law so that LGBT workers and their families are treated fairly. The Business Coalition for Benefits Tax Equity is a group of more than 80 leading U.S. employers that support legislative efforts to end the taxation of health insurance benefits for domestic partners and treat them the same as health benefits for federally recognized spouses and dependents. The coalition’s members include a range of companies, from Aetna and Alcoa to Verizon and Xerox.<sup>229</sup>

## Barrier: Denial of Family and Medical Leave

Even the most dedicated employees sometimes need to take time off work for unexpected reasons. Employers acknowledge the inevitability of such things as car trouble, jury duty, sudden illness or injury, doctor appointments, a sick child, a death in the family and other family emergencies—and many offer excused absences with pay and “sick days.”

As of 2012, 61% of private-sector workers had access to paid sick leave.<sup>230</sup> By comparison, 89% of state and local government workers had paid sick leave.<sup>231</sup> On average, private-sector employees had access to eight paid sick days per year after working for at least one year, compared to 11 paid sick days annually for state and local government employees after a year of service. If employees have exhausted their paid leave and still require additional time off, some employers may allow them to use paid vacation time, if available.

From time to time, workers also may need extended leave due to the birth or adoption of a child, a serious illness or injury, or the need to provide care for a family member with a serious medical condition. Under these circumstances, the 1993 federal Family and Medical Leave Act (FMLA) requires most employers to allow employees to take up to 12 weeks of job-protected unpaid leave.

### Federal Leave Under FMLA

Before 1993, American workers were not guaranteed time off—even without pay—to care for themselves or their families without fear of losing their jobs. Now, under the FMLA, eligible employees are entitled to up to 12 weeks of unpaid leave to care for a spouse, parent or child with a “serious health condition.” FMLA leave can also be used for the birth or adoption of a new child or for a “serious health condition” that makes an employee unable to perform the functions of her job.

To be covered under the FMLA, employees need to have worked for their covered employer for at least a year; they also need to have worked at least 1,250 hours in the past 12 months (more than part-time). FMLA applies to all public agencies (including state, local and federal employers), public schools, and all private employers with at least 50 employees.<sup>999</sup>

### Lack of Paid Leave Adds to Challenges Facing Low-Wage Workers

An estimated four in 10 private-sector workers lack access to paid leave, which means that they may be forced to choose between coming to work sick or losing their jobs.<sup>232</sup> Low-wage workers are even less likely to have access to paid leave. According to 2011 data from the National Partnership for Women and Families, more than 80% of low-wage workers did not have any paid sick leave.<sup>233</sup> In addition, in 2007, 40% of low-income working parents said that they had no paid leave of any kind—sick days, paid vacation or personal days to care for sick children.<sup>234</sup> According to one 2011 study, 68% of employees went to work when they were sick for fear of losing their jobs.<sup>235</sup>

Access to paid leave also varies by race. In 2011, only 43% of Latino/a workers had access to paid leave, compared to 59% of white workers, 61% of African American workers and 62% of Asian American workers.<sup>236</sup>

Low-wage LGBT workers and LGBT workers of color may find themselves in a double bind when it comes to accessing leave. First, they may be less likely to qualify for paid leave because of their race/ethnicity. Second, this disadvantage is compounded by the fact that LGBT employees are unable to take FMLA leave to care for a same-sex spouse or partner.

### Individual Medical Leave and Challenges for Transgender Workers

The term “serious health condition,” as defined under FMLA, includes any period of incapacity or treatment connected with inpatient care in a hospital (i.e., an overnight stay), hospice, or residential medical care facility, or a period of incapacity requiring absence of more than three calendar days from work that involves continuing treatment by a healthcare provider.<sup>237</sup>

For transgender workers, accessing FMLA-covered time off for transition-related care can pose several challenges. First, the FMLA allows employers to ask

<sup>999</sup> Because FMLA does not apply to employers with fewer than 50 employees, many employees may be unable to take FMLA leave to care for a spouse, partner or child. In fact, it is estimated that only 59% of employed Americans are eligible for FMLA-covered leave. See: Klerman, Jacob, Daley, Kelly, and Ponzniak, Alyssa. “Family and Medical Leave in 2012: Technical Report.” Cambridge, MA: Abt Associates. September 6, 2012. <http://www.dol.gov/asp/evaluation/fmla/FMLAMethodologyReport.pdf> (accessed March 4, 2013).

medical providers to verify that an employee requesting leave has a “serious health condition.” Some physicians and employers may not correctly categorize transition-related healthcare as a serious medical condition, which means that a transgender employee could be unfairly denied FMLA-covered, job-protected time off.

Additionally, as part of the verification process, an employee may need to release protected health information to the employer. The release of this information, or even the simple request for the FMLA leave, could result in an employee revealing his or her transgender status when the employee might otherwise choose to keep this information private. Given that transgender people lack explicit workplace protections in most states, this could pose a serious risk for transgender workers and may dissuade them from seeking FMLA time off or seeking needed medical care.

### Family Leave to Care for a Child

When it comes to caring for children, FMLA uses a broad definition of family that allows an LGBT worker to take time off to take care of his or her child, regardless of whether the worker is a legal parent of that child. This is because the FMLA defines a worker’s “son or daughter” as a biological, adopted or foster child; a stepchild; or “a child of a person standing *in loco parentis*.”<sup>238</sup>

In 2010, the U.S. Department of Labor issued a clarification indicating that the *in loco parentis* clause allows any worker who is acting (or intends to act) as a parent to take leave under FMLA to care for a sick, newborn or newly adopted child, even if the worker is not recognized as a legal parent under state law. This clarification was an important step and sent a strong signal to the many different kinds of caretakers who act as parents (for example, a family friend who takes leave to care for a child whose single parent is on active military duty).

Researchers estimate that the clarification would allow care for up to 100,000 additional children living in LGBT households.<sup>239</sup> One concern, however, is that LGBT employees may not be able to take time off to care for a same-sex spouse/partner’s child without revealing their sexual orientation. For employees in states that lack employment protections for LGBT workers, this poses a serious problem. A worker might be granted time off under the FMLA to care for a child, only to be unfairly fired because requesting such leave required the worker to directly or indirectly disclose his sexual orientation.

### Family Leave to Care for a Same-Sex Spouse/Partner

Unfortunately, when it comes to caring for a same-sex spouse or partner, the FMLA leaves LGBT workers in a bind. While the law defines “child” broadly, it is much less inclusive in its definition of adult partners. The FMLA only allows workers leave to care for a “spouse.” Most workers live in states where they cannot marry a same-sex partner, and even when they can do so, their marriage is not recognized by the federal government due to DOMA. Therefore, while an employee with an opposite-sex spouse can take spousal FMLA leave, a coworker with a same-sex spouse/partner cannot. In a nation where family remains at the heart of society, this unequal treatment sends a message to LGBT workers that their families are not valued, and that they are on their own when family problems arise.

An employee who has a sick same-sex spouse or partner will likely face difficult decisions. Does she take time away from work and risk losing her job? Or does she leave her sick spouse or partner alone in a hospital room all day? If her spouse is at home but still requires expensive round-the-clock care, does she put her job security on the line to try and save money by personally providing that care? Or does she leave her spouse’s care to someone else and sit at work worrying about whether the person she loves is really getting the care she needs?

The FMLA’s lack of protection for LGBT workers also raises other concerns. For example, if an LGBT employee decides to risk taking non-FMLA time off to care for a same-sex spouse/partner, the employee may have to “come out” to his employer. And, since workers are not protected from discrimination on the basis of sexual orientation in the majority of states, this kind of disclosure could place the LGBT worker’s job in jeopardy and have a devastating effect on his family.

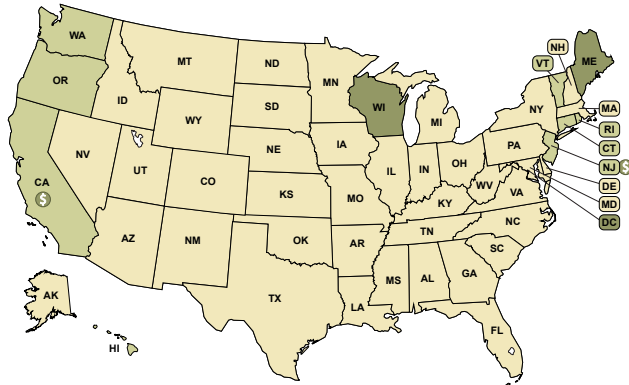
Finally, the narrow definition of “spouse” does not just exclude LGBT workers from FMLA-protected leave. It also excludes unmarried heterosexual couples, who are disproportionately likely to be families of color—as well as adults in other family structures such as two siblings living together and supporting one another.

### Varying Protection Under State Leave Laws

In addition to federal FMLA leave, several states have passed legislation that provides employees with more expansive, flexible or comprehensive leave benefits. When a state has a more expansive law, state law governs an employee’s ability to take time from work.

**Figure 42: Family Leave Laws**

State Law Permits Leave To Care For a Same-Sex Spouse or Partner



- Law grants workers leave to care for a same-sex partner even if the couple is not in a legally recognized relationship (2 states + D.C.)
- Law grants workers leave to care for a same-sex partner, but only if the couple is in a legally recognized relationship such as a marriage or civil union (8 states)
- State lacks leave law that applies to same-sex couples
- State leave law includes pay during time off (2 states)

Note: Workers with same-sex spouses and partners cannot take federal FMLA leave as the federal government does not recognize the relationships of same-sex couples even when the couples are legally recognized under state law.

Source: MAP Analysis; <http://www.lgbtmap.org/equality-maps/>

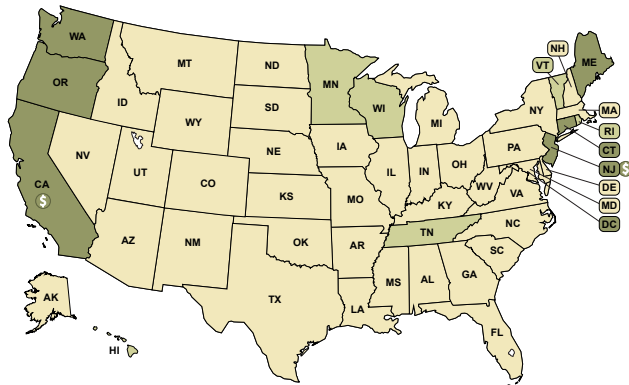
In the few states where state laws are more restrictive than the FMLA, the federal FMLA governs the leave that employers are required to provide. In general, state leave laws differ from the FMLA in several ways:

- Some states expand the types of employers who must provide unpaid leave to include businesses with fewer than 50 employees.
- Some states allow workers to qualify for leave after working for less time.
- Some states expand the length of leave (from 12 weeks to 16 weeks, for example).
- Two states have expanded leave requirements to include paid leave.

Most importantly for LGBT employees, 10 states and the District of Columbia have enacted laws allowing an LGBT employee to take leave to care for a same-sex spouse or partner. Of these, eight states require that the spouse or partner be in a legally recognized relationship, while two states and the District of Columbia extend leave to same-sex couples even if they are not in a legally recognized relationship (see *Figure 42*). In the remaining 40 states, LGBT employees are unable to take leave to care for a same-sex partner.

**Figure 43: Family Leave Laws**

State Law Permits Leave To Care For a Child



- Law grants workers leave to care for a child for whom the worker is parenting, even if the worker lacks a legal or biological relationship to the child (6 states + D.C.)
- Law grants workers leave to care for a child only if the worker has a legal or biological relationship to the child (6 states)
- State lacks leave law
- State leave law includes pay during time off (2 states; WA has passed a paid leave law, but it is not yet funded)

Note: Workers caring for children who are not their legal children can still take federal FMLA leave as the federal government does not require the person acting as a parent be a legal parent to the child.

Source: MAP Analysis; <http://www.lgbtmap.org/equality-maps/>

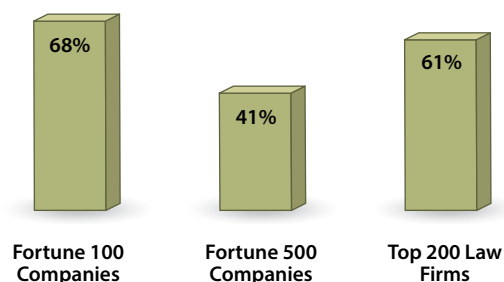
There are 12 states with leave laws that include provisions allowing workers to take leave to care for children. The scope of those laws varies (see *Figure 43*). Six states and the District of Columbia broadly permit leave to provide care for a child who may not have a biological or legal tie to a worker. Six additional states require a legal parent-child relationship—in these states, the FMLA's more expansive definition of parent governs leave for those parents who lack legal ties to their children.

### What Can Employers Do?

With the federal and most state governments failing to guarantee LGBT workers the same leave available to their colleagues, many employers have voluntarily stepped in to try as best they can to uphold America's bargain of fairness and equality for workers. The Human Rights Campaign's Workplace Project found that 68% of Fortune 100 companies provide expanded unpaid leave benefits for same-sex partners of LGBT workers, as do 41% of Fortune 500 companies and 61% of the top 200 law firms (see *Figure 44* on the next page).<sup>240</sup>

In many cases, even small businesses that are not covered by the FMLA offer more expansive benefits. In

**Figure 44: Percent of Companies Offering Expanded Family Medical to LGBT Employees**



Source: Human Rights Campaign Foundation. "Corporate Equality Index 2013: Rating American Workplaces on Lesbian, Gay, Bisexual and Transgender Equality." December 2012. [http://www.hrc.org/files/assets/resources/CorporateEqualityIndex\\_2013.pdf](http://www.hrc.org/files/assets/resources/CorporateEqualityIndex_2013.pdf)

In addition to providing leave to take care of a sick partner or spouse, many employers permit an employee to take time off when a same-sex spouse/partner is giving birth or adopting a child. Employers may also have policies that reassure transgender workers that they will be granted leave for transition-related care. Also, some unions have been able to encourage employers to expand leave benefits for LGBT and other workers.

While independent actions by states and employers have helped some LGBT workers, the narrow definition of "spouse" under the FMLA (and DOMA) still leaves tens of thousands of LGBT workers and their families without the same protections that many other workers take for granted when family needs arise.

### Barrier: Denial of Spousal Retirement Benefits

During the 20th century, the percentage of older Americans who were working dropped dramatically. In 1945, 47% of men age 65 and older were still working, compared to just 21% in 2007.<sup>241</sup> Much of this trend has to do with the creation and growth of two systems that help Americans save income during their working years so that they can retire—or at least work less—when they reach older age: the Social Security system and employer-sponsored retirement plans.

But even with these two systems in place, many Americans face serious challenges when it comes to ensuring that they have the financial resources they need in retirement. Research finds that there are differences in the retirement savings of Americans based on race, gender, educational attainment, homeownership status, and marital status.<sup>242</sup> Among the groups most likely to

enter retirement without sufficient savings are women, people of color, and low-wage workers.

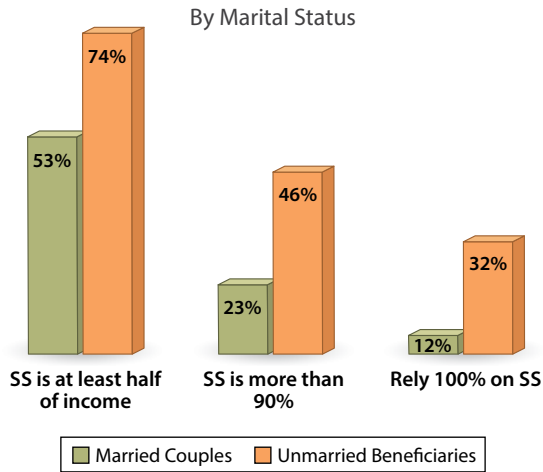
Single LGBT employees receive equal treatment under both Social Security and employer-sponsored retirement plans. However, LGBT workers with a same-sex spouse or partner are at a clear disadvantage when it comes to accumulating savings for retirement and accessing hard-earned benefits meant to protect a retiree's spouse:

- First, same-sex couples face cumulative wage gaps and penalties that can affect their ability to save for retirement (see pages 33-36).
- Second, even when an LGBT worker has contributed to Social Security for his entire working life, his surviving same-sex spouse will be denied financial benefits in the event of the worker's death.
- Third, same-sex partners and spouses of LGBT workers face unequal taxation on employer-provided retirement plans.
- Finally, same-sex spouses and partners may also be denied benefits offered to other retirees' families, such as health insurance or medical subsidies.

As Americans continue to live longer, inadequate retirement savings can have dire consequences. Unequal treatment of LGBT workers with families has a compounding effect, substantially reducing income for retired same-sex couples and the surviving spouses or partners of LGBT workers. This puts older same-sex couples and widowed same-sex spouses at a heightened risk of poverty. It also makes it substantially more difficult for LGBT workers to plan for retirement—and may mean that an LGBT employee must work years longer than a non-LGBT coworker to achieve a comparable level of retirement security.



**Figure 45: Percentage of Social Security Beneficiaries Age 65 or Older with High Reliance on Social Security Benefits**



Source: 2010 Figures; U.S. Social Security Administration. "Fast Facts & Figures About Social Security, 2012." [http://www.ssa.gov/policy/docs/chartbooks/fast\\_facts/2012/fast\\_facts12.pdf](http://www.ssa.gov/policy/docs/chartbooks/fast_facts/2012/fast_facts12.pdf)

### Marvin Burrow's Story: 77-year-old Shoe Salesperson Denied Partner's Social Security Benefits



Marvin Burrows and Bill Swenor were married in San Francisco in 2004 under the direction of the city's Mayor Gavin Newsom. Although their marriage was soon rendered void by a ruling by the California Supreme Court, they had spent more than 50 years together when Bill died in 2005.

Marvin, who was then a retired 77-year-old shoe salesman, faced not only the grief of losing Bill, but was also forced to leave their family home and his pets and his furniture behind when he couldn't afford to stay any longer. Why? Because unlike married opposite-sex couples in the United States, members of same-sex couples cannot collect any of their partner's Social Security benefits. According to Bill, who lives on a fixed income and is facing heart surgery, the \$1,100 a month in Social Security spousal benefits could have helped him not only keep his home, but pay his medical bills.

Source: Adapted from New, Catherine. "Social Security Benefits Denied To Same-Sex Couples, Costing Thousands: Report." *Huffington Post*, March 5, 2013. [http://www.huffingtonpost.com/2013/03/05/social-security-benefits-same-sex-couples\\_n\\_2806755.html](http://www.huffingtonpost.com/2013/03/05/social-security-benefits-same-sex-couples_n_2806755.html)

## Denial of Social Security Spousal Benefits

No retirement plan is more important for retired American workers than Social Security. Across the United States, almost all older Americans (86%) receive Social Security benefits,<sup>243</sup> and almost a third of single retirees receive income *only* from Social Security (see *Figure 45*).

Social Security is what keeps a large portion of the American people out of poverty in their older years. The poorest one-fifth of retired married couples rely on Social Security for 90% of their income.<sup>244</sup> Excluding Social Security benefits from seniors' incomes, the poverty rate among older adults would rise from roughly 9% to more than 43%.<sup>245</sup>

Workers are not automatically granted Social Security; it is an earned benefit. Eligibility and benefit amounts are based on how much workers contribute to Social Security in the form of mandatory payroll taxes throughout their working lives. Single LGBT workers are eligible for Social Security retirement benefits in the same manner as their non-LGBT counterparts.

But when it comes to supporting a worker's same-sex spouse/partner and their children, the benefits available to LGBT workers are subject to the 1-2-3 punch and fall far short of the benefits available to other workers. This is true even when LGBT workers are paying into the system in the same way and contributing amounts equal to those of their non-LGBT colleagues.

The main problem is that same-sex spouses and partners of LGBT workers are systematically denied Social Security benefits designed to protect workers' families during the post-retirement years. Social Security only recognizes a worker's legal spouse; this disqualifies the vast majority of same-sex couples because they cannot marry. Social Security is then further limited by DOMA to include only opposite-sex spouses, effectively disqualifying same-sex couples nationwide.<sup>246</sup>

A retiree with a same-sex partner is therefore denied three types of critical family benefits:

- **Denied the Social Security spousal benefit that increases household income.** The spousal benefit allows a current or former opposite-sex spouse of a worker to receive up to 50% of the worker's earned Social Security benefit if that amount is higher than

<sup>246</sup> Unlike several other federal laws and programs, Social Security law is based on legal definitions that extend beyond just "spouse" and use gendered terms such as "wife" and "husband," or "widow" for a surviving "wife." However, Social Security also defines an eligible applicant for spousal benefits as "the wife, husband, widow, or widower of a fully or currently insured individual . . . if the courts of the State in which such insured individual is domiciled at the time such applicant files the application."

the benefit the spouse earned herself or himself. The main purpose of this benefit is to support families who chose to have one parent forgo paid work to stay at home with children. For example, a heterosexual woman who has never worked outside the home may nonetheless claim \$500 monthly in Social Security if her husband receives \$1,000 monthly. A same-sex spouse, however, will receive no such benefits. This puts same-sex couples at higher risk of poverty during retirement years, while also increasing the risks for LGBT families who choose to have one parent stay at home with children during the couple's working years. The lack of spousal benefits could cost a retired same-sex couple up to \$14,484 a year in lost benefits (assuming one partner retires at age 65 and earns the maximum monthly Social Security payout and the other does not qualify for Social Security due to lack of legal recognition).<sup>sss,247</sup>

- **Denied the Social Security survivor benefit when a retired worker dies.** This benefit allows a surviving opposite-sex spouse (or ex-spouse) to receive the greater of his or her individual Social Security benefit or 100% of the deceased worker's benefit amount. At worst, the lack of survivor benefits can cost an LGBT surviving spouse/partner up to \$28,968 a year in lost benefits.<sup>ttt</sup> This means that, for two families who contributed equally into Social Security, a heterosexual widow who has never worked outside the home would receive \$28,968 annually upon her husband's death, while a similarly situated lesbian widow receives nothing. Given that the median income for households of individuals over age 65 (including widows and widowers) is \$18,819, the denial of Social Security survivor benefits can literally mean the difference between a survival income and living in poverty.<sup>248</sup>
- **Denied the Social Security one-time death benefit.** Social Security usually provides the surviving family with a one-time "death benefit" amount of \$255, which often helps cover funeral, burial or cremation expenses.<sup>249</sup> This benefit is denied to same-sex spouses/partners.

Data show the grim effects of this unequal treatment. Female same-sex couples receive an average of 32% less in Social Security, and male same-sex couples receive 18% less, when compared to opposite-sex couples (see *Figure 46*).<sup>250</sup> This is true despite the fact that same-sex and opposite-sex couples are similarly dependent on Social

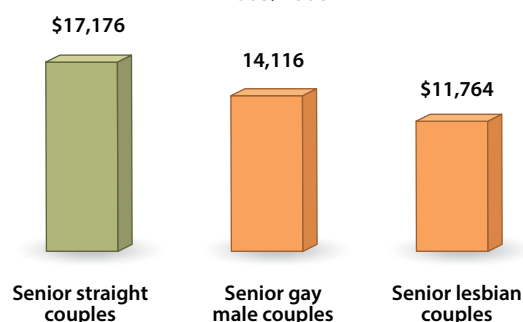
Security to maintain a living-wage income. For example, in households where both partners are over age 65, Social Security accounts for 33.4% of all income for retired opposite-sex couples, 31.1% of income for retired male couples and 36.2% of income for female couples.<sup>uuu,251</sup>

Over time, the effects of unequal benefits compound, potentially leaving a same-sex couple or surviving spouse in poverty, while providing adequate financial security for an opposite-sex couple with an identical initial financial situation. The table on page 81 illustrates these disparities by showing two couples: George and Maria, a married opposite-sex couple; and Christine and June, a married same-sex couple.

For both couples, the primary breadwinner (George/Christine) retires with an average Social Security benefit of \$1,230 per month, while the breadwinner's spouse has a sporadic work history that puts her individual benefits at \$365 per month. However, George's wife, Maria, is eligible for a Social Security spousal benefit, bringing her benefit up to \$615 per month, but Christine's wife, June, is not. This means George and Maria receive \$3,000 more per year in Social Security support than Christine and June.

When George dies 10 years later at age 75, his wife, Maria, is eligible for the Social Security survivor benefit, bringing her monthly Social Security support up to \$1,230 per month (the amount George was receiving).

**Figure 46: Annual Social Security Income of Older Couples 2005/2006**





Source: Goldberg, Naomi G. "The Impact of Inequality for Same-Sex Partners in Employer-Sponsored Retirement Plans." The Williams Institute. October 2009. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Goldberg-Retirement-Plans-Report-Oct-2009.pdf>

<sup>sss</sup> Assumes retirement in 2013 at age 65, with earnings at the maximum level since age 22.

<sup>ttt</sup> Assumes one same-sex spouse/partner retired at age 65 and earned the maximum monthly Social Security payout and the other is not recognized as a spouse by Social Security.

<sup>uuu</sup> The Williams Institute used data from the American Community Survey; therefore, the data is slightly different from that of the Social Security Administration, but is still directionally correct. For example, the Williams Institute report states that Social Security provides 33.4% of the income for an average older opposite-sex couple, while the Social Security Administration reports that Social Security provides 31.7% of income for an average older opposite-sex couple.

A Tale of Two Retired Families: Social Security for One, Fear-Filled Financial Future for the Other	Married Heterosexual Couple		Married Lesbian Couple	
	George	Maria	Christine	June
Individual Monthly Social Security Benefit <sup>www</sup>	\$1,230 (average benefit for a retired worker)	\$365 (based on sporadic work history at lower income)	\$1,230 (average benefit for a retired worker)	\$365 (based on sporadic work history at lower income)
Monthly Social Security with Spousal Benefit	\$1,230	\$615 (half of George's benefit)	\$1,230	\$365 (denied spousal benefit)
Combined Social Security Benefit	\$1,845/mo (\$22,140/yr)		\$1,595/mo (\$19,140/yr)	
Annual Difference			-\$3,000 per year	
George and Christine both die at age 75—Social Security for Maria and June	George's Social Security Income	Maria's Social Security Income	Christine's Social Security Income	June's Social Security Income
	\$1,230	\$1,230 (Maria's Social Security increased to George's amount)	<del>\$1,230</del> (Social Security)	\$365 (June is denied Social Security survivor benefits)
Social Security Benefit for Surviving Spouse	\$1,230/mo (\$14,760/yr)		\$365/mo (\$4,380/yr)	
Annual Difference			-\$10,380 per year	
TOTAL DIFFERENCE OVER 20 YEARS			-\$133,800	
THE BOTTOM LINE	 Income at <b>128%</b> of the poverty line <sup>www</sup>		 Income at <b>38%</b> of the poverty line. Received <b>\$133,800</b> less in Social Security over 20 years	

<sup>www</sup>The average Social Security benefit for a retired worker in 2012. U.S. Social Security Administration. "Average monthly Social Security benefit for a retired worker." [http://ssa-custhelp.ssa.gov/app/answers/detail/a\\_id/13/~/average-monthly-social-security-benefit-for-a-retired-worker](http://ssa-custhelp.ssa.gov/app/answers/detail/a_id/13/~/average-monthly-social-security-benefit-for-a-retired-worker) (accessed March 4, 2013).

<sup>www</sup>2013 Federal Poverty Guidelines are \$11,490 for one person.



June, on the other hand, is denied this benefit when Christine dies and continues to receive only \$365 per month. This means Maria receives \$10,380 more per year in Social Security than June. Maria’s support brings her to 128% of the federal poverty line while June’s Social Security support brings her to just 38% of the federal poverty line. The total difference 20 years later, when surviving spouses Maria and June are 85 years old? A whopping \$133,800—solely because Maria is heterosexual and June is not.

### Unequal Treatment Under Employer-Sponsored Retirement Plans

Employers play an important role in helping workers save for retirement. In addition to providing wages and salaries that can bolster worker savings, some employers offer optional retirement plans that help workers set aside money for future needs. Today, employer-sponsored retirement plans comprise 4% of total compensation for private-sector employees and 8% of state and local government employee compensation. Workers’ access to these retirement plans varies based on type of employer, employer size, and whether or not an employee is a member of a union (see *Figure 47*).

There are two main types of employer-sponsored retirement plans: *defined-benefit plans* and *defined-contribution plans*.

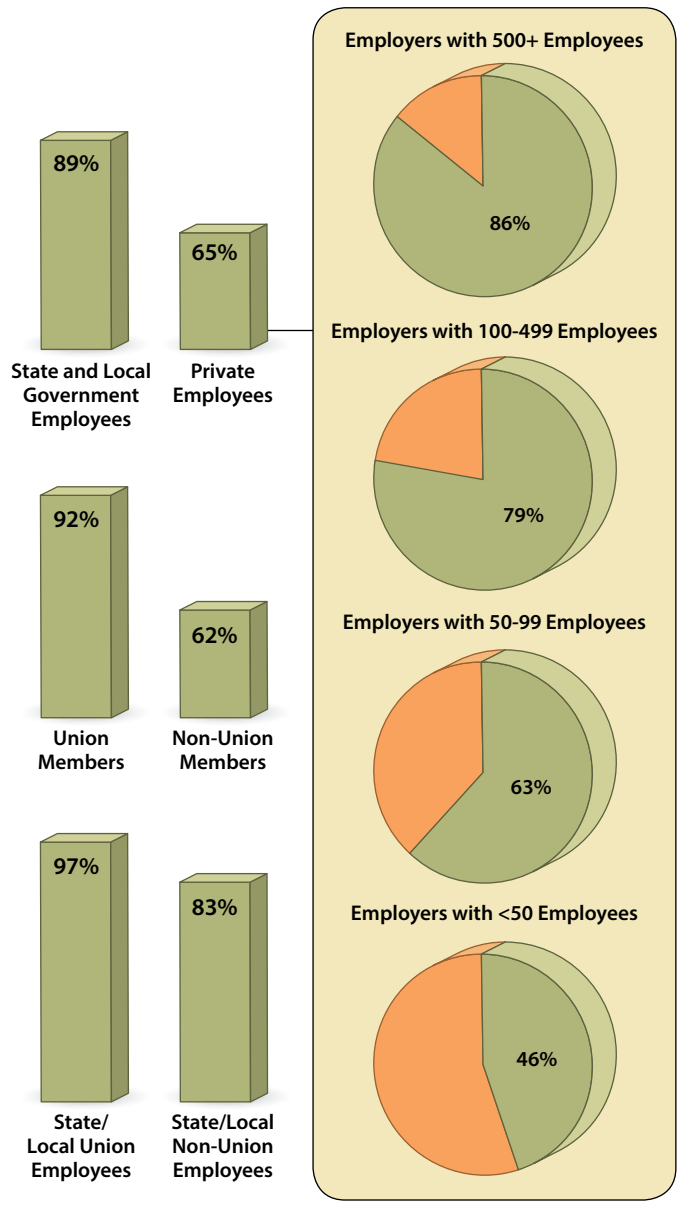
#### Defined-Benefit Pension Plans

Defined-benefit plans, often called “pension plans,” usually allow a retired employee to receive a set level of benefit payments (usually monthly) over the course of his or her retirement. The benefits level is usually based on a formula that considers salary and time of service.

Pensions provide an important source of retirement income. Nearly one-third (31%) of retirees age 65 and older receive some income from pension plans.<sup>252</sup> Retired employees who receive pensions may also be eligible for retirement-based health insurance or medical subsidies designed to help them pay for out-of-pocket healthcare costs not covered by Medicare.

Pension benefits do not just help individual workers. Pension law requires that companies that offer pension benefits also offer options that extend financial security to a worker’s spouse. These spousal protections take two forms:

**Figure 47: Access to Retirement Benefits**  
By Employer Type and Size



Source: U.S. Department of Labor, Bureau of Labor Statistics. “Table 2: Retirement benefits: access participation, and take-up rates” for both private industry workers and state and local government, National Compensation Survey, March 2012. <http://www.bls.gov/ncs/ews/benefits/2012/ownership/private/table02a.pdf> and <http://www.bls.gov/ncs/ews/benefits/2012/ownership/govt/table02a.pdf>

- **Qualified Joint and Survivor Annuity (QJSA).** A QJSA starts making pension payments upon an employee's retirement and continues payments for the lives of both the employee and the employee's spouse (albeit, with a smaller monthly payment than for retired single workers). When an employee with an opposite-sex spouse participates in a pension plan, federal law usually requires that the participant be automatically "opted in" to a QJSA in order to protect the worker's spouse.<sup>253</sup>
- **Qualified Pre-Retirement Survivor Annuity (QPSA).** With a QPSA, if the employee participating in a pension plan dies before retirement and has participated in the plan long enough to be "vested" (or to have met the plan's requirements for time of participation), then the employee's opposite-sex spouse usually automatically becomes a direct participant in the plan. The widow or widower can receive the deceased employee's benefit in the same manner and amount in which the worker would have received it, with payments beginning at the earliest date that the employee would have qualified for retirement.

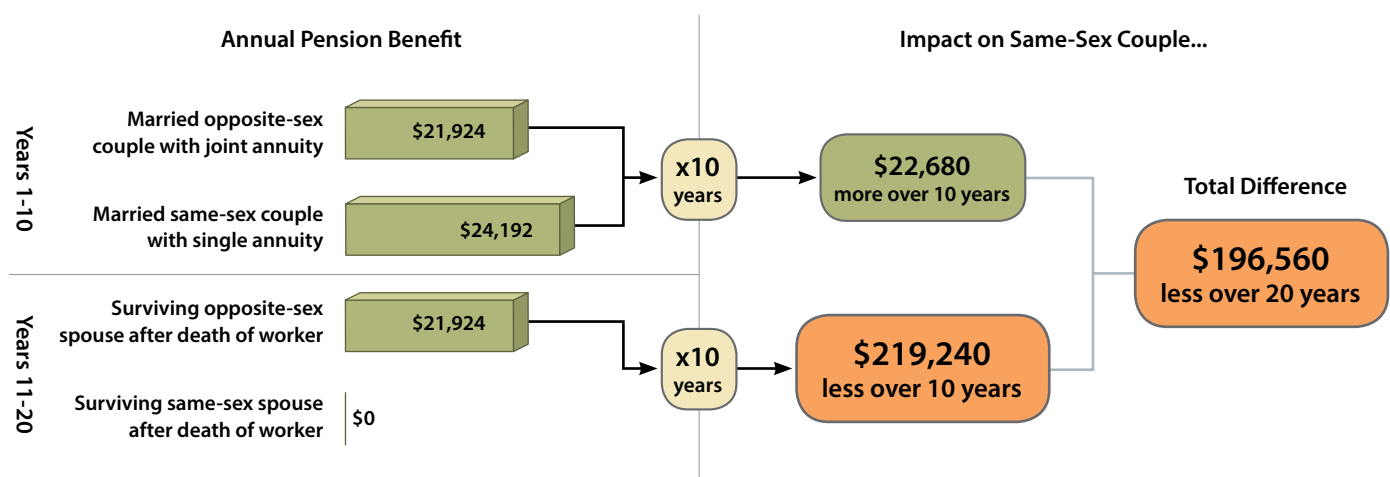
Spousal benefits under pension plans provide opposite-sex spouses with a vital safety net in their older years in the event of the death of a husband or wife. However, because federal law regulates most aspects of pensions, employers are not required to make this safety net available for same-sex partners or spouses (though many employers still elect to do so).

For same-sex couples, this can be devastating. Unless an employer offers a more expansive plan, a worker with a same-sex spouse or partner is treated as a single person. This means LGBT workers have to live with the anxiety of knowing that there may be nothing in their pension plans to ensure continuing support after their death (including post-retirement health benefits) for a surviving same-sex spouse or partner.

*Figure 48* illustrates the cumulative impact of these disparities. Two workers, one heterosexual and one gay, retire at age 65, having earned the exact same pension benefit amount. The heterosexual worker receives a lower payment of \$1,827 monthly or \$21,924 annually, but in return, benefit payments will continue through the death of either spouse. The gay worker can only choose a single life annuity and receives a slightly higher payment amount of \$2,016 monthly or \$24,192 annually.

If both workers die at age 75, the gay worker and his spouse are at a clear disadvantage. For the next 10 years, the wife of the heterosexual worker continues to receive her husband's pension. The husband of the gay worker, however, receives nothing and struggles to make ends meet. The net difference in income over 20 years, starting from the day the workers retire, totals \$196,560. Even with other sources of income, the husband of the deceased gay worker struggles to make ends meet.

**Figure 48: Lack of Joint Survivor Options for a Same-Sex Partner Creates Significant Financial Hardship**



Assumes both employees retired at age 65 with 20 years of service and a salary of \$50,000. An employee with a joint life annuity would receive \$1,827 per month through the death of either spouse, while an employee with a single life annuity would receive \$2,016 per month through the death of the worker. Calculations using University of California Retirement Human Resources and Benefits. "UC Retirement Plan Benefit Estimator." <http://atyourservice.ucop.edu/applications/ucrpalc/estimator.html>.

## Kelly Glossip's Story: Denied Pension of State Trooper Who Was Partner for 15 Years

Copyright: photos and captions from St. Louis Post-Dispatch



Kelly Glossip, seated, and Dennis Engelhard pose for a portrait together. Engelhard, who worked as a Missouri State Highway Patrolman, was killed in the line of duty. Glossip, who had been Engelhard's partner for nearly 15 years, was ineligible to receive death benefits that an opposite-sex spouse would have received.

On Christmas Day in 2009, Missouri Highway Patrol Cpl. Dennis Engelhard was helping a motorist on an icy highway when he was fatally hit by a passing car. Engelhard was survived by his partner of 15 years, Kelly Glossip.

Together, Glossip and Engelhard were raising Glossip's son, owned a home together, and had combined finances. However, Engelhard's family was not entitled to death benefits from the Missouri Department of Transportation and Highway Patrol Employees' Retirement System. The reason? Under Missouri law, such benefits are limited to surviving opposite-sex married spouses.

In February 2013, the Missouri Supreme Court heard arguments in the case that could allow same-sex partners of state employees to receive death benefits from the state pension system.

Source: Original story ran on February 27, 2013: [http://www.stltoday.com/news/local/govt-and-politics/political-fix/gay-partner-of-fallen-trooper-seeks-benefits-in-case-before/article\\_2df96b5b-f03c-5368-8d11-0f071ab3ea14.html](http://www.stltoday.com/news/local/govt-and-politics/political-fix/gay-partner-of-fallen-trooper-seeks-benefits-in-case-before/article_2df96b5b-f03c-5368-8d11-0f071ab3ea14.html).



### Retirement Plans for Government Employees

**Federal Government.** Retirement benefits for federal employees are complex. However, when it comes to family-related retirement benefits, the federal government uses a narrow definition of spouse that recognizes only opposite-sex spouses. Same-sex spouses or partners of federal employees are therefore not eligible for spousal benefits under the federal retirement system.<sup>xxx</sup>

**State and Local Government.** State and local governments that provide pension plans to public employees are governed by their own states' laws. This means they are free to make survivor benefits available to the same-sex spouses or partners of retired workers if they choose to do so. Unlike private-sector workers, the majority (58%) of state employees and 46% of local government employees with pension plans have access to survivor benefits for a same-sex spouse or partner.<sup>254</sup>

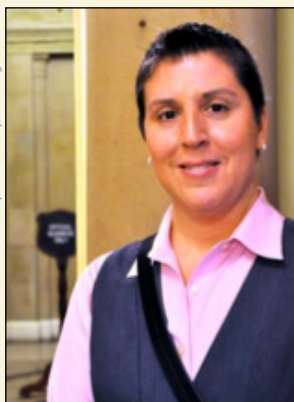
The key factor in how a state or local government pension plan treats employees with same-sex spouses or partners is whether the state recognizes the relationships of same-sex couples. In states with marriage equality or comprehensive relationship recognition, state law mandates that state and local government employers that offer pension benefits also offer automatic access to survivor benefits for same-sex spouses/partners.

In states without marriage equality or comprehensive relationship recognition, governments are not required by state law to extend survivor options to an employee's same-sex partner. However, public employers can still *choose* to extend retirement benefits to same-sex partners, and may do so through state law, local ordinance, or executive orders. In addition, some states allow state and local government employees to designate any person as a beneficiary for some or all of their pension benefits—including, but not limited to, a same-sex spouse or partner—but these benefits are not equivalent to spousal benefits.<sup>255</sup>

Still, for many LGBT state and local employees, access to pension benefits for a surviving same-sex spouse or partner is unavailable. This means that the same-sex spouse of an LGBT state or local government worker faces a severe financial risk that the spouse of a heterosexual colleague does not have to face.

<sup>xxx</sup> Although it is not the same as a spousal survivor benefit, an employee may be able to elect an Insurable Interest Annuity (as opposed to a single life annuity or an annuity with provisions for a spouse), as long as the employee can prove that the individual named as the beneficiary is someone who is financially dependent on the employee and the individual would suffer loss of financial support as a result of the employee's death. This option can result in a reduction of payment by 10-40%, however, depending on the age of the beneficiary. Additionally, employees may opt for a lump sum refund of retirement contributions (again at a reduced level) at the time of retirement and name any person as beneficiary of that amount.

#### Charlie Morgan's Story: Battling Breast Cancer, She Fights for Benefits for Her Wife, Karen



Chief Warrant Officer Charlie Morgan of the New Hampshire National Guard was first diagnosed with breast cancer in 2008, but after surgery and chemotherapy, she won the battle against the disease and was deployed to Kuwait. Three years later, her cancer returned and Morgan was diagnosed with stage-four terminal breast cancer in 2011. She was married to Karen Morgan, and together they had a daughter, Casey Elena.

As passionate about LGBT equality as she was about defending her country, Morgan was a plaintiff in a landmark legal case challenging the Defense of Marriage Act (DOMA). When meeting with the staff of U.S. House Speaker John Boehner (R-Ohio), she said she wasn't afraid to die, but she wanted DOMA stricken from the books so her wife would receive pension benefits. DOMA prohibits same-sex spouses of troops from receiving pensions and Social Security death benefits.

In an interview with the *Washington Blade*, Morgan said, "I'm very worried about the military survivor benefits for Karen if I don't survive this bout with cancer. I am worried that Karen would not receive the same spousal survivor benefits as our heterosexual counterparts."

Morgan died on February 10, 2013. Under DOMA, her wife is not entitled to spousal benefits and Social Security.

Source: Adapted from Johnson, Chris. "Lesbian guardsman who fought DOMA dies of cancer," *Washington Blade*. February 10, 2013. <http://www.washingtonblade.com/2013/02/10/lesbian-guardsman-who-fought-doma-dies-of-cancer/> (accessed March 24, 2013).

### 401(k)s, IRAs and Other Defined-Contribution Plans

Defined-contribution plans, such as 401(k)s, Simple IRAs, or stock or profit-sharing plans, are the most common form of employer-sponsored retirement plans for employees in the private sector. Forty-one percent of private industry workers and 15% of state and local government workers with access to these types of plans chose to participate in such plans in 2012.<sup>256</sup> In these plans, employees contribute to a retirement account, with employers sometimes supplementing employee contributions. The amount of money that is available to the worker during retirement depends on what the employee and the employer contributed over time, as well as how the contributions were invested.

The major advantage of most of these plans is that they are “tax-deferred.” This means that employees do not pay taxes on their contributions until the funds are taken out—usually during retirement when the retired employees will be taxed at a much lower income-tax rate. In the most common of these plans—401(k)s—both employees and employers can contribute to an account, and employers usually do so by “matching” a percentage of the contributions made by an employee.

Defined-contribution plans broadly define whom an employee can name as a beneficiary. An employee can name anyone he or she wishes, including a spouse, partner, child, or even a friend.<sup>257</sup> However, only spouses are granted significant tax advantages under the law governing these types of plans. Since most same-sex couples cannot marry and the federal government does not recognize married same-sex couples under DOMA, same-sex couples are not granted these tax advantages.

If a worker with an opposite-sex spouse dies, the funds in the worker’s retirement account may be rolled over to his or her spouse tax-free—and the inherited and “rolled over” assets are then treated as the spouse’s own. This means opposite-sex spouses can leave inherited retirement accounts to grow tax-free until they reach age of 70½ years; in addition, opposite-sex spouses only pay taxes on the funds at the time that they take them out.

By contrast, a same-sex spouse or partner (who can only be designated as a “non-spousal” beneficiary) is required to immediately start drawing down and paying taxes on the funds. The minimum required annual withdrawals are dictated by the IRS and vary based on the amount in the account and the life expectancy of

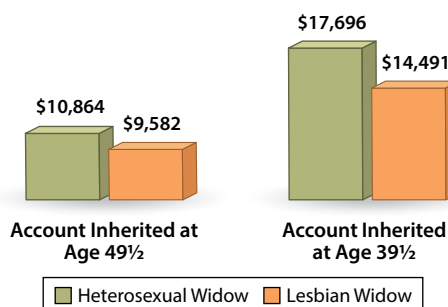
the “non-spouse.”<sup>258</sup> Some employer plans require the “non-spouse” to withdraw the entire amount within five years. In these instances, a “non-spouse” can roll the funds into an “inherited IRA,” which again allows the beneficiary to make withdrawals over his or her expected lifetime. However, some financial institutions do not make “non-spouse” beneficiaries aware of the need to convert the IRA to an “inherited IRA,” creating a substantial tax burden for some same-sex partners and spouses.

When an employee’s surviving same-sex spouse/partner is singled out for unequal treatment and is required to begin taking distributions immediately and continue doing so over the course of his or her lifetime, that spouse or partner will likely end up paying more in taxes than an opposite-sex spouse who can wait until age 70½ before taking distributions—a time when the spouse is likely at a much lower income-tax rate. Over time, this disparate treatment can have a significant impact on retirement savings and income, especially for those who inherit an account earlier in life.<sup>258</sup>

Consider the example of two widows who inherit a \$50,000 IRA at age 49½ and invest this amount for a 5% return (see *Figure 49*). The heterosexual widow simply allows her IRA to grow tax-free; at age 70½, she has enough savings to draw down \$10,864 per year in after-tax income for 15 years. By contrast, the lesbian widow must start drawing down the IRA immediately. She pays taxes on the mandatory withdrawals and puts the after-tax amount in a savings account, where she must also

**Figure 49: Difference in Annual Retirement Income from \$50,000 Inherited IRA**

Annual Income from Inheritance Drawn Down from Age 65-80



Sources: Movement Advancement Project Analysis; U.S. Department of the Treasury, Internal Revenue Service. “Publication 590: Individual Retirement Arrangements (IRAs),” 2012. <http://www.irs.gov/pub/irs-pdf/p590.pdf>

<sup>257</sup> A married employee must obtain a spouse’s written consent if naming another beneficiary.

<sup>258</sup> The “non-spouse” beneficiary withdraws funds regularly in amounts based on the beneficiary’s life expectancy as dictated by the IRS life expectancy table—so a 50-year-old beneficiary must withdraw 1/34th of the funds at age 50, 1/33rd of the funds at age 51, etc.

pay taxes on earned interest. When the lesbian widow reaches age 70½, she only has enough funds between her savings account and remaining IRA account to draw down \$9,582 in after-tax income for 15 years—a difference of \$1,282 per year—solely due to the different tax treatment of the IRA. If the IRA is inherited at 39½ years old, the heterosexual widow could draw down \$17,696 per year in after-tax income, compared to \$14,491 for the lesbian widow, a difference of \$3,205 per year.<sup>aaaa</sup>

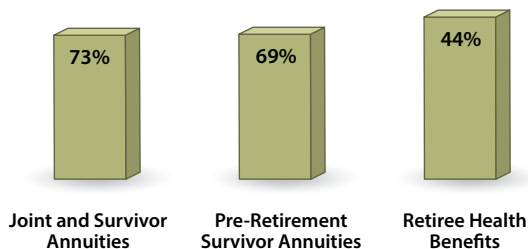
### What Can Employers Do?

While some employers can and do take steps to make up for the fact that LGBT workers do not have equal access to other family-related benefits, making up for inequitable Social Security retirement benefits is beyond the scope of employer-based remedies. Nor can employers do anything on their own to resolve the federal tax inequities associated with defined-contribution plans.

However, employers *can* help ensure that their pension plans protect the same-sex spouses and partners of LGBT workers. The most important step employers can take is to amend plan documents to allow LGBT workers to opt for retiree and survivor benefits for their same-sex partners and spouses.

According to the U.S. Department of Labor, some employers offer survivor options to same-sex spouses and partners, but the numbers remain low: only 35% of all private-sector workers with access to a pension plan had a plan providing retirement survivor benefits for same-sex spouses or partners.<sup>259</sup> LGBT workers at large companies fare better (see *Figure 50*). The Human Rights Campaign's Corporate Equality Index shows that in 2013, 74% of surveyed large employers with pension plans

**Figure 50: Percent of Large Employers with Pension Plans Extending Retiree and Survivor Benefits to Same-Sex Spouses/Partners**



Source: Human Rights Campaign Foundation. "Corporate Equality Index 2013: Rating American Workplaces on Lesbian, Gay, Bisexual and Transgender Equality." December 2012. [http://www.hrc.org/files/assets/resources/CorporateEqualityIndex\\_2013.pdf](http://www.hrc.org/files/assets/resources/CorporateEqualityIndex_2013.pdf)

offered a joint and survivor annuity option to employees with same-sex spouses or partners, while 71% offered a qualified pre-retirement annuity to these employees.<sup>260</sup>

Unfortunately, even if all same-sex couples were offered QJSAs tomorrow, these changes would likely come too late for workers who have already retired. This is because employees must select QJSA options before retirement so the payment amount can be adjusted accordingly. Once payments have begun, it is rare for an employer to retroactively modify payments.

## Barrier: Unequal Family Protections When a Worker Dies or Becomes Disabled

### Social Security Survivors and Disability Insurance Benefits

Social Security is not just a program designed to provide benefits to workers who retire. It also provides the equivalent of life or disability insurance for most families through the Old-Age, Survivors and Disability Insurance (OASDI) program. When a worker who is entitled to Social Security benefits becomes disabled or dies before retiring, the worker's surviving spouse and unmarried children under age 18 may be eligible for OASDI benefits.

This program provides more benefits to children than any other social program in the United States.<sup>bbbb, 261</sup> In 2011, Social Security benefits lifted more than 1.1 million children out of poverty.<sup>262</sup> OASDI benefits are particularly vital for families of color. For example, in 2009, 22% of all children receiving Social Security survivor benefits were African American, while African American children comprised only 15.3% of all U.S. children.<sup>263</sup> While no family member hopes to have to use Social Security's OASDI benefits, they are a crucial source of support for the families who receive them.

However, when it comes to OASDI benefits, LGBT workers are again hit with the 1-2-3 punch: 1) OASDI only recognizes legal spouses and children; 2) state marriage and parenting laws make it difficult or impossible for

<sup>aaaa</sup> Assumes both widows invest the inherited amount at a 5% compounding rate of return, and that their marginal tax rate is 25% until retirement at age 65, and 15% thereafter. The widow in an opposite-sex marriage invests the inherited amount till age 70½, then draws down the account in equal amounts over 15 years. The widow in a same-sex marriage or partnership must start withdrawing from (and paying taxes on) the account a year after she inherits the funds. She puts the withdrawals in a savings account, where interest earnings are also taxed. At age 70½, the widow in a same-sex marriage or partnership draws down the remaining IRA (and savings account) in equal amounts over 15 years. The income differences between the two widows solely reflect the cumulative effect of different tax treatment of their inherited plans.

<sup>bbbb</sup> In December 2011, 3.2 million children received TANF benefits compared to 3.4 million children receiving OASDI benefits.

most LGBT workers to meet this narrow family definition; and 3) the federal government refuses to recognize married same-sex spouses under DOMA.

Therefore, should an LGBT worker die or become disabled, a worker's same-sex spouse, and, in some cases, his or her children, will be denied equivalent Social Security disability and survivor benefits.<sup>cccc,264</sup>

**Social Security Disability Benefits.** OASDI benefits are available to individuals who have worked and earned a wage for a set amount of time, but who are now prevented from working for a year or more due to a medical disability. The monthly benefit amount is based on an individual's age and past earnings. OASDI treats single workers equally regardless of whether they are heterosexual or LGBT. But differences arise in cases when OASDI provides benefits meant to protect a worker's family.

When a worker is disabled, her legally recognized children under age 18 can also receive benefits through OASDI, as can the worker's opposite-sex spouse if the spouse is caring for the worker's child and if the child is under age 16. The average monthly benefit for the opposite-sex spouse of a disabled worker was \$299 in 2011, while the average monthly benefit for a disabled worker's child was \$322.<sup>265</sup> Assuming a worker has a spouse and two children who all receive the average benefit amount, this equates to \$11,316 in annual household income.

An LGBT worker's family, however, will not receive the spousal disability benefits. In addition, if the worker is parenting the children but is not a legal or biological parent, the family will also be denied disability benefits meant to support children in times of crisis.<sup>dddd,266</sup> This means that a disabled LGBT worker who has done the same job and contributed in the same way to Social Security as a disabled non-LGBT coworker could see his or her family slip into poverty. Meanwhile, the family of the other worker would receive monthly assistance from Social Security.

**Social Security Survivor Benefits.** When a worker with an opposite-sex spouse dies, his unmarried minor children and surviving spouse who cares for minor children under age 16 may be eligible for OASDI survivor benefits.<sup>eeee</sup> These benefits are designed to help families make up for the loss of income associated with the worker's death. Similar to disability benefits, survivor benefits are tied to the worker's years of work and past earnings.

## Family Plans for the Worst Because Social Security Benefits May Not Be Available

Reprinted with permission from GLAD.



Paul and Bob Ruseau with their two children, Matthew and Nev. The family worries about what would happen if Paul were to get sick or die unexpectedly.

Paul and Bob Ruseau adopted their sons, Matthew and Nev, from foster care. "We began parenting like most families—by jumping into the deep end of the pool," says Bob. "We wanted to have a stay-at-home parent, so the day that we got the call that we were matched with Matthew and Nev, I made the choice to leave my job... Having a parent at home makes the kids feel stable and secure, but it has been a big financial challenge to lose my income." Like most families, Paul and Bob worry about providing for their children, and about what would happen to their children if one of them were to get sick or die unexpectedly. Paul has taken out extra life insurance because Bob would not receive Social Security survivor benefits if something were to happen to Paul.

Source: Gay & Lesbian Advocates & Defenders. "DOMA Stories: Jumping in the Deep End of the Pool." <http://www.glad.org/doma/stories/jumping-in-the-deep-end-of-the-pool>

However, these survivor benefits also are subject to Social Security's restrictive definition of family that excludes same-sex spouses, and often the children of LGBT workers. In 2011, the average monthly benefit for the opposite-sex spouse of a deceased worker was \$884, while a minor child of a deceased working parent received an average of \$783 per month.<sup>267</sup> These benefits can be significantly higher depending on a worker's age at death.

<sup>cccc</sup> Many LGBT families face challenges in securing legal ties between parents and children because of the lack of relationship recognition and the unavailability of joint, step, or second-parent adoptions in many states. As a result, many children living with LGBT parents may lack a legal tie to a parent and are not considered a child for the purposes of receiving OASDI.

<sup>dddd</sup> Children of legally married same-sex couples cannot receive OASDI benefits through a stepparent. Children of married opposite-sex spouses are eligible for OASDI benefits through a stepparent if the child was receiving at least half of his or her support from the stepparent and has been a stepchild for at least one year before the stepparent becomes disabled (if applying for disability benefits), or for at least nine months before the death of the stepparent (if applying for survivor benefits). While the government generally relies on a state's determination of a parent-child relationship to establish a child's right to benefits, in December 2010 the Social Security Administration determined that, unlike children of opposite-sex couples, children in LGBT families are not eligible for benefits through a non-adoptive stepparent, even if the parents are legally married in their state.

<sup>eeee</sup> To qualify, the spouse or ex-spouse must have been married to the deceased worker for at least nine months and must be taking care of the deceased spouse's child.

Take, for example, a 35-year-old heterosexual worker with a spouse and two minor children who is earning \$40,000 each year. If this worker died in 2013, the worker's spouse and each surviving child would be eligible to receive \$1,018 per month in benefits. The total family eligibility is therefore \$3,054 monthly, but is reduced to the maximum family benefit of \$2,460 monthly or \$29,520 annually.<sup>268</sup> However, if an LGBT worker were in an identical situation, the family of the deceased worker would receive nothing.<sup>fff</sup>

### What Can Employers Do?

In the same way that employers can do little to make up for the denial of Social Security retirement benefits to LGBT workers' families, it is difficult to counter the unfair treatment of these families when it comes to OASDI benefits. One patchwork solution that can help: offering elective life and disability insurance to LGBT workers.

#### Family Left Destitute After Being Denied Social Security Survivor Benefits

In 1998, Nicolaj (Nic) Caracappa was born through donor insemination to New Jersey couple Eva Kadray and Camille Caracappa. Eva gave birth to Nic, who was given Camille's last name. Eva became a stay-at-home mom while Camille continued working as an oncology nurse. They consulted a lawyer about completing a second-parent adoption of Nic by Camille, but they wanted to wait until they had another child so they could adopt both children at the same time. Sadly, they never had a chance to bring another child home. When Nic was two years old, Camille left for work one day and never came home; she suffered a brain aneurysm and died the same day.

Eva applied for child Social Security survivor benefits for Nic. Those benefits—many thousands of dollars a year—are designed to compensate a child for the economic loss of a parent. The Social Security Administration denied Nic the benefits because Camille had not been Nic's legal parent. Had New Jersey recognized Camille as Nic's legal parent upon his birth, the two-year-old would not have been denied those benefits, and Nic's loss of a parent would not have been compounded by economic catastrophe—the loss of his family's entire income.

Source: Adapted from Polikoff, Nancy D. "A Mother Should Not Have to Adopt Her Own Child: Parentage Statutes for Children of Lesbian Couples in the Twenty-First Century." *Stanford Journal of Civil Rights and Civil Liberties* V, no. 2 (2009): 201-268.

Even though LGBT workers will have to pay out of their own pockets for this coverage, it can provide some peace of mind until the federal government begins treating and protecting all workers and their families fairly and equally.

### Barrier: A Higher Tax Burden for LGBT Families

The harm caused by unequal access to work-related benefits among LGBT workers is made even worse by a federal tax code that treats the families of LGBT workers differently than the families of other workers, often forcing LGBT workers to pay more in taxes. For LGBT workers with families, the problem is not just that they pay higher taxes on employer-offered family health benefits (see pages 71-73). They also have to pay more in income taxes because they do not have access to a variety of benefits created to provide tax relief for married couples and their children.

This unequal treatment only penalizes LGBT workers with families. While single LGBT workers pay taxes in the same manner as their single non-LGBT counterparts, the denial of family tax relief for LGBT workers with families can result in significant additional tax burdens that can place the family's economic stability in jeopardy. This can be an especially urgent problem for low-income same-sex couples raising children or for families where one spouse/partner is unable to work.

### Unequal Taxation for LGBT Families

As early as 1913, the federal government began incorporating important marriage and family-based incentives and tax credits into the federal income tax system. In addition to the tax code's exemptions for employer-provided health insurance for workers and spouses (see pages 71-73), these incentives and credits include:

- The ability of married couples to file a joint tax return, which can provide significant household tax relief.
- Special credits for families who are raising children and/or spending money on childcare; or who have expenses associated with adopting a child.

Unfortunately, this family tax relief is usually denied to LGBT workers because of the 1-2-3 punch: First, federal and most state income tax laws limit "spousal" and "qualifying child" tax relief to workers who are married and are the legal parents of their children. Second, state marriage and parenting laws often do not allow an LGBT worker to marry or to form legal parent-child relationships with

<sup>fff</sup> Assumes the worker is not a legally recognized parent.



their children. Third, under DOMA, federal tax law does not recognize the legal relationships of same-sex couples, even when they can and do marry, which means they are forced to file as “single” or “head of household” on their federal tax returns, even if they could file jointly under state law.

For many LGBT workers, lack of family recognition amplifies the tax burden on their families. They do the same jobs as their non-LGBT colleagues and counterparts, but take home less in after-tax income. Here are a few of the ways in which this happens:

- **Workers with same-sex spouses/partners are denied joint filing status and accompanying tax relief.** Workers with same-sex partners cannot receive the significant tax advantages of the “married filing jointly” tax status, which means they have less money to meet the financial needs of their families. A worker with a same-sex spouse or partner can only file as “single” or, at best, “head of household,” even when that worker is married or in a civil union or domestic partnership. The LGBT families hardest hit by this unequal treatment are those where one spouse/partner is the primary wage earner and the other spouse/partner is a stay-at-home parent or is unable to work. Consider an LGBT family with one working parent who has a taxable income of \$60,000 a year and a stay-at-home parent who has no income. Prior to other family-related deductions and credits, the working parent (when filing as single) would face a federal tax burden of approximately \$11,036.<sup>9999</sup> But if that worker were able to file jointly as part of a married couple, their federal tax burden would be only \$8,134. The inability to file a federal tax return as a married couple costs the LGBT family \$2,902 in additional taxes.<sup>hhhh</sup>
- **LGBT workers may lose important child-related deductions, exemptions and credits.** When working LGBT parents cannot form legal ties to their children, they also generally cannot claim important child-related deductions and credits, including: tax exemptions for dependents; the child tax credit; the child and dependent care expense credit; and multiple education-related deductions and credits. This is particularly harmful for families when the parent without legal ties to a child or children is the primary wage earner in the family but cannot claim child-related deductions and credits that would reduce the family’s overall tax burden.
- **LGBT workers with children must misrepresent and “carve up” their families.** U.S. tax law essentially forces same-sex couples to decide which parent

“claims” their children for exemptions. To gain any tax relief, some LGBT families must split their children between different tax returns. Other LGBT parents filing taxes treat their children as “qualifying relatives,” but this does not get them the same level of tax relief they could receive by claiming “qualifying children.” Still other LGBT families cannot claim their children at all, losing benefits that would otherwise be available.<sup>269</sup> By contrast, married opposite-sex couples can simply file jointly, account for all children on one form, and check the exemption boxes.

- **LGBT workers face heightened scrutiny, extra costs, and refund delays when filing their taxes.** Because of the problems highlighted above, LGBT workers are spending a considerable amount of added time and money dealing with tax issues, compared to other coworkers. Same-sex couples often must run multiple tax scenarios, create “dummy” federal returns, submit extra paperwork, and face audits and denials of legitimate tax credits.






### Calculating the Impact of an Unequal Tax Code

In order to see how the tax code’s unequal treatment of LGBT workers can affect economic security, the table starting on page 91 provides a side-by-side look at tax inequities for two couples raising children. The cumulative tax inequity faced by same-sex couples raising children is clear. In our example, the wage earner in each household does the same job and earns the same \$48,202 in annual income. Also, in each household, the spouse of the primary wage earner works part-time and earns \$7,250 per year. However, the married opposite-sex couple realizes all of the benefits of the family’s joint filing status and family-related exemptions, deductions and credits, and only owes \$786 in taxes. The same-sex couple owes \$6,624 in taxes, leaving them with \$5,838 less cash than the married opposite-sex couple to provide for their household. This means that the same-sex couple raising two children would have 11% less than the other family to meet their household’s present-day needs or to save for their family’s future, simply because the parents are gay.



The extra tax burden placed on LGBT workers with families will vary based on family configuration, total household income, and other factors. However, it can

<sup>9999</sup> The worker might also, depending on circumstances, be able to file as head of household, resulting in \$9,651 in a federal tax burden vs. \$8,134 in taxes were she able to file as married filing jointly—still creating a significant additional tax burden.

<sup>hhhh</sup> This example illustrates tax burden based only on filing status. Final tax burden would vary based on individual family tax situations.

<b>A Tale of Two Federal Tax Returns: Tax Inequities Multiplied</b>			
<p><b>Two Working American Families</b> Aidan and Charlie both work at Good Employer, Inc. and earn the same wages. Aidan is heterosexual and Charlie is gay. Both workers:</p> <ul style="list-style-type: none"> <li>• Are married (but Charlie is not recognized as such under federal law).</li> <li>• Have two children (though Charlie is prevented from becoming a legally recognized parent under state law).</li> </ul>	<p><b>Aidan &amp; Linda</b></p> 	<p><b>Charlie and Rick</b></p> 	
<p><b>Two Tax Filing Statuses</b> Aidan and Linda:</p> <ul style="list-style-type: none"> <li>• Can file as “married filing jointly” and combine their wages on one tax return.</li> <li>• Can also claim both children as “qualifying children.”<sup>iiii</sup></li> </ul> <p>Charlie and Rick:</p> <ul style="list-style-type: none"> <li>• Charlie must file as “single” and is unable to claim his children as dependents.</li> <li>• Rick must file as “single” and claims both children as “qualifying children.”</li> </ul>	<p><b>Aidan &amp; Linda File Jointly &amp; Jointly Claim Children</b></p> 	<p>Rick Files as “Single” and Claims Children</p> 	<p>Charlie Files as “Single” with No Dependents</p> 
<b>Income</b>			
<b>Initial salary of primary breadwinner<sup>jjjj</sup></b>	\$48,202		\$48,202
<b>Individual health benefits and employee premium</b> Both Aidan and Charlie receive individual health benefits valued at \$4,132 (received tax-free for both workers). Both workers pay \$1,090 in individual health premiums; both pay with pre-tax funds.	-\$1,090		-\$1,090
<b>Family health benefits</b> Both Aidan and Charlie receive family health benefits valued at \$6,928; however, only Charlie must add the value of these benefits to his income.	\$0		\$6,928
<b>Employee family health premium</b> Both Aidan and Charlie pay \$2,872 in family health premiums; however, Aidan is able to pay with pre-tax funds, while Charlie cannot.	-\$2,872		\$0
<b>Taxable salary after receiving family health benefits</b>	\$44,240		\$54,040
<b>Spouse’s salary</b> Both Linda and Rick work 20 hours per week making minimum wage (\$7.25 per hour) while their children are at school.	\$7,250	\$7,250	
<b>Adjusted Gross Income</b>	\$51,490	\$7,250	\$54,040
<b>Standard Deduction<sup>kkkk</sup></b>	-\$11,900	-\$5,950	-\$5,950
<b>Personal/Spousal Exemption<sup>llll</sup></b>	-\$7,600	-\$3,800	-\$3,800
<b>Dependency Exemptions<sup>mmmm</sup></b>	-\$7,600	-\$7,600	\$0
<b>Net Taxable Income</b>	\$24,390	\$0	\$44,290
<b>Tax Based on Taxable Income<sup>270</sup></b> Aidan and Linda file as “married filing jointly” and have lower marginal tax rate than Charlie, who files as “single.”	\$2,786	\$0	\$7,099
<b>Child Tax Credit (nonrefundable)</b> Reduces income tax due by \$1,000 for each child. Since Rick did not owe any tax, he was unable to access this credit.	-\$2,000	\$0	\$0
<b>Earned Income Credit (refundable)</b> Provides assistance to low-income filers. The credit is “refundable,” so it can also generate a refund when no tax is owed. Only Rick’s income was low enough to qualify since Aidan and Linda filed jointly.	\$0	-\$475	\$0

## A Tale of Two Federal Tax Returns: Tax Inequities Multiplied (continued)

	Aidan & Linda 	Charlie and Rick 						
<b>Tax Owed/Refund</b>	Household Owes \$786	<table border="1"> <tr> <td>Refund \$475</td> <td>Owes \$7,099</td> </tr> <tr> <td colspan="2" style="text-align: center;">↓ ↓</td> </tr> <tr> <td colspan="2" style="text-align: center;">Household Owes \$6,624</td> </tr> </table>	Refund \$475	Owes \$7,099	↓ ↓		Household Owes \$6,624	
Refund \$475	Owes \$7,099							
↓ ↓								
Household Owes \$6,624								
<b>The Bottom Line</b>	Ability to file as married and claim both children on one tax return reduces taxes to \$786.	Charlie and Rick are forced to file as single and carve up their family resulting in \$5,838 more taxes—just because they are gay. <b>\$5,838 in unfair additional tax burden.</b>						

<sup>iii</sup> Rick cannot file as “head of household” because he did not pay more than half the costs of keeping up a home in this tax year.

<sup>iiij</sup> Median earnings in 2011 for men working full-time, year round. Census Bureau, “Income, Poverty, and Health Insurance Coverage in the United States: 2011,” September 2012.

<sup>kkkk</sup> The 2012 standard deduction was \$11,900 for “married filing jointly” and \$5,950 for “single.”

<sup>llll</sup> In 2012, filers could deduct \$3,800 for each personal exemption claimed. “married filing jointly” filers can claim one exemption for themselves and one for their spouse. Single filers can claim just one personal exemption.

<sup>mmmm</sup> In 2012, filers could deduct \$3,800 for each dependent exemption claimed. Aidan and Linda were able to claim both children as “qualifying child” dependents for a total dependency exemption of \$7,600. Since Rick is the legal father of the couple’s two children, Rick can claim them as dependents using the “qualifying child” status. Because Charlie is not a legally recognized parent, he cannot claim the children as “qualifying children.” And, since the children are the “qualifying children” of another filing taxpayer (Rick), Charlie cannot claim them as dependents.

make the difference between renting an apartment or successfully saving for a starter home, and between saving for the kids' college education or struggling to put food on the table.

### What Can Employers Do?

Equal tax treatment for LGBT workers and their families must be achieved through changes in family and tax law. In the section about the health benefits above (see pages 60-74), we discussed how public and private employers across the country have stepped up to help counter the financial penalties that LGBT employees face when it comes to the taxation of family health benefits. However, the unequal tax treatment experienced by LGBT workers with families is not something that even the most fair-minded employers can address.

### Barrier: Inability to Sponsor Families for Immigration

For more than 250 years, people have been settling in the United States to start new lives for themselves and their families. The promise of the American Dream still draws people from throughout the world. U.S. immigration law has long granted U.S. citizens and lawful permanent residents with family members in another country the ability to sponsor those family members to immigrate to the United States. Likewise, lawmakers have enacted policies to encourage highly skilled foreign-born workers to immigrate, and to allow their families to join them. But family unity in the United States is currently an impossible dream for many binational LGBT couples and their children.

Once again, the 1-2-3 punch comes into play for LGBT workers: First, a worker can only sponsor his or her legal spouse or fiancé(e) (not a worker's unmarried partner) and legally recognized unmarried children under age 21. Second, as in most of the U.S. states, most countries internationally deny marriage to same-sex couples, meaning they cannot become legal spouses. Third, under DOMA, the federal government does not recognize married same-sex couples, regardless of whether they were married in the U.S. or in their country of origin.

The result? LGBT workers nationally and globally are currently unable to sponsor a same-sex partner for immigration into the U.S. This is true whether they are applying for an employment-based or a family-based visa.

*We have lost productivity* when those families are separated; we have borne the costs of transferring and retraining talented employees so they may live abroad with their loved ones; and we have missed opportunities to bring the best and the brightest to the United States when their sexual orientation means they cannot bring their family with them.

Business Coalition for the Uniting American Families Act. "Letter to Senators Flake, Graham, McCain, Rubio, Bennet, Durbin, Menendez, and Schumer." March 1, 2013.



### Employment-Based Visas for Foreign Workers

Every year, the U.S. makes available 140,000 employment-based visas to foreign applicants who are either seeking jobs or already have jobs with U.S. employers.<sup>271</sup> These visas are complex, have strict education requirements, and prioritize highly skilled or highly specialized workers. When a foreign employee is approved for an employment-based visa, the immigrating employee's spouse and unmarried children under 21 will qualify for related visas that allow them to immigrate alongside the worker, and also obtain work.<sup>272</sup> Because an LGBT worker's same-sex spouse does not meet the federal definition of legal spouse, this route to employment-based family immigration is not available to the spouse and children with whom the worker does not have federally recognized legal ties. At best, the immigrating LGBT worker may be able to obtain a temporary, visitor, or student visa for a same-sex partner or another family member. This visa will not be linked to the duration of the worker's stay, may be short-term, may not be renewable, and does not allow the partner or family member to work.

The denial of employment-based visas for family members of foreign LGBT workers puts them, and the employers who are recruiting them, in a very difficult position. For example, a company may offer a job to a foreign LGBT student who moved to the U.S. to study, is now graduating from a doctoral program, and wishes for his family to join him. Or, a company may want to recruit a highly skilled LGBT employee from another country who needs to relocate together with his or her family. In both of these cases, employment-based visas would

## LGBT Undocumented Immigrants Face Added Challenges

Immigrating to the U.S. is often a complicated, costly and lengthy process. As of 2011, there were more 11.1 million people living in the U.S. without immigration documentation. Some of them have stayed after a temporary visa or student visa has expired. Others have entered the U.S. outside of the immigration process with the intention to work.

The options for immigrants without work authorization are limited, as the law places significant penalties on employers who hire such workers. Still, many industries—including manufacturing, service, construction, restaurant, and agriculture—rely heavily on such labor. In 2010, undocumented workers constituted an estimated 5.2% of the nation's workforce.

For the estimated 267,000 LGBT adults who are undocumented, the challenges are immense. Many of these undocumented LGBT adults face the same challenges as other undocumented workers. Others could gain legal work authorization if the law would allow them to be sponsored by a same-sex partner or spouse. Regardless, not only do they risk being deported and torn away from their lives and families in the U.S., they may be required to go back to a country where they will experience persecution. They may also be unable to speak up about workplace discrimination out of fear of being deported.

Finally, like other undocumented workers, undocumented LGBT workers may face greater economic peril—they are often underpaid and unable to access important job-related benefits designed to protect workers, such as a minimum wage, family and medical leave, and Social Security disability benefits.

More information about the challenges facing undocumented LGBT people is available here: <http://www.americanprogress.org/wp-content/uploads/2013/03/LGBTUndocumentedReport-5.pdf>

allow the individual LGBT workers to live and work in the U.S., but they would not be able to apply for a related visa to bring their families with them. As a result, an LGBT employee with a same-sex partner or spouse may have no other option but to turn down the job, attempt to secure an independent visa for his partner or spouse (which can be challenging at best), or be forced to leave his partner or spouse (and his partner's children) behind.

### Family-Based Visas for U.S. Workers Sponsoring Family from Abroad

Not only is the immigration *status quo* bad for workers and business, it also flies in the face of U.S. immigration policy's goal of family unity. Every year, almost two-thirds of new legal permanent residents authorized to live and work in the United States are processed through general family petitions (as opposed to employer-sponsored visas).<sup>273</sup> In these instances, a U.S. citizen or permanent resident, regardless of whether or not she is working, can sponsor a foreign-born spouse, fiancé(e), child or parent for entry into the U.S.

But because of the 1-2-3 punch, LGBT workers cannot sponsor a same-sex partner or spouse using a family visa. For example, an LGBT worker may fall in love with and marry a foreign worker who came to the U.S. on a temporary work visa. In this case, the spouse of the

LGBT American worker may be forced to leave the U.S. despite being legally married in the United States.

The denial of family visas also affects LGBT Americans who have formed families with non-citizen partners while working abroad. These workers may also be forced to choose between leaving their families to return to the U.S., or staying abroad with a spouse or partner. Finally, it affects employers, who are impeded from hiring the best talent for their companies.

### What Can Employers Do?

Despite the fact that federal restrictions on work-related and family-related visas have a negative impact on the ability of employers to hire and retain highly skilled LGBT workers, there is very little that employers can do under current law to resolve the problems described above. However, businesses are coming together to advocate for legal change. More than 30 major global companies have joined the Business Coalition for the Uniting American Families Act (UAFA). Created by the Immigration Equality Action Fund, the coalition advocates for the passage of UAFA and educates Congress on why extending immigration eligibility to the same-sex foreign-born partners of U.S. citizens and lawful permanent resident partners makes good business sense. Among the members of

the coalition are companies from American Airlines and Bristol-Myers Squibb to Cisco Systems, Citi, Nike and Starwood Hotels.<sup>274</sup>

Leading businesses also made the case for changes in U.S. immigration laws in a February 2013 amicus brief urging the U.S. Supreme Court to strike down DOMA. The brief was signed by nearly 280 companies (including Amazon.com, Apple, Citigroup, Facebook, Google, Intel, Microsoft, Nike, Starbucks, Twitter, Viacom and the Walt Disney Company). It turned a spotlight on a range of immigration-related challenges and how they interfere with employers' ability to recruit and retain the best possible workforce.<sup>275</sup> The brief stated that current law:

- Impedes recruitment of “highly qualified scientists, business executives and scholars” by making it harder to “actively recruit foreign nationals, or transfer international employees domestically.”
- “Denies a foreign national’s same-sex spouse the shared visa status that a different-sex spouse would receive.”
- Creates “a considerable impediment to attracting foreign nationals.”

Despite the denial of permanent family visas, some LGBT workers may nevertheless be able to secure temporary or visitor visas for family members. In these instances, employers can consider housing and other expense subsidies designed to help make up for the loss of a second income for the family. In the case of student visas for spouses/partners, employers also can explore providing tuition reimbursements.

## Recommendations/Solutions

Achieving equal access to individual and family benefits for LGBT workers will require a comprehensive advocacy agenda that explicitly focuses on an issue-by-issue approach to solving the inequities outlined above. LGBT advocacy organizations do not need to advance this agenda on their own. Many of the access or equity gaps that affect LGBT workers also affect low-income workers broadly, workers with heterosexual domestic partners, workers of color, and workers who live with and support family members who are not a spouse or legal child, such as an uncle providing care for a nephew. They also affect employers. A diverse coalition of advocates should therefore work together to build an inclusive agenda that improves access to benefits for both LGBT and other disadvantaged workers.

*Federal law provides* to the working family many benefits and protections relating to health care, protected leave, and retirement. These protections provide security and support to an employee grappling with sickness, disability, childcare, family crisis, or retirement, allowing the employee to devote more focus and attention to his work.

DOMA thwarts these employee expectations, to the direct detriment of some married employees of [our businesses], and, by extension, of [our businesses themselves].

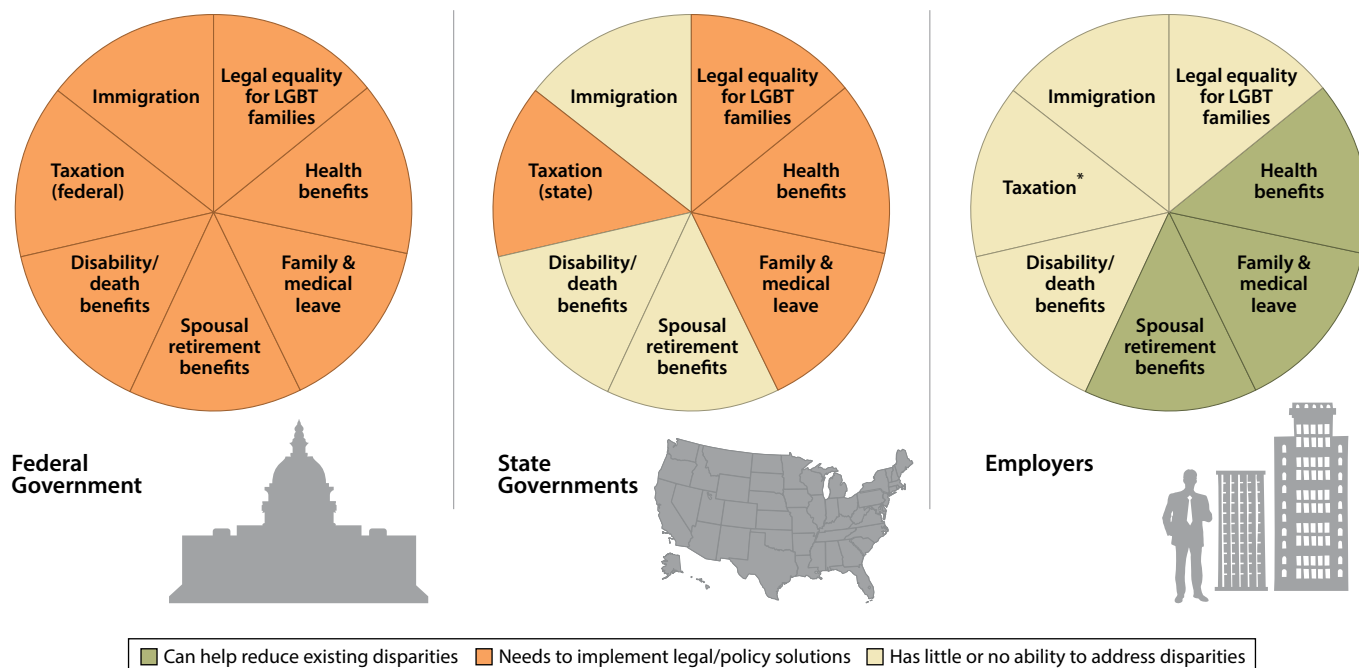
Business Coalition for the Uniting American Families Act. “Letter to Senators Flake, Graham, McCain, Rubio, Bennet, Durbin, Menendez, and Schumer.” March 1, 2013.



The recommendations outlined on the following pages call for action at both the federal and state levels—and offer suggestions for fair-minded employers who want to do what they can to treat all of their workers fairly and equally. As shown in *Figure 51* on the next page, the federal government, state government and employers all have distinct and important roles to play in helping LGBT workers receive equal benefits. However, it is federal law that drives most of the inequities; and therefore, the federal government has the greatest role to play in fixing the broken bargain for LGBT workers.

Because much of the benefits-related inequality faced by LGBT workers stems from a lack of family recognition, we consider efforts to secure relationship recognition and parenting rights, and to overturn the federal Defense of Marriage Act, to be a vital part of an LGBT workplace equality agenda. Legal recognition of the partners and children of LGBT workers would address many of the inequalities detailed in this section of the report. However, nationwide marriage equality and parenting rights are unlikely to be secured overnight, leaving millions of workers and their families without needed benefits in the meantime. This, coupled with the fact that focusing on marriage and parenting laws alone would not help LGBT workers who do not or cannot marry, makes it essential to also examine broader ways to ensure that all workers can secure equal benefits.

Figure 51: Who Can Help LGBT Workers Receive Equal Benefits?





\*Employers can gross up salaries to offset unfair taxation but cannot prevent workers from being taxed unequally.

Many inequities facing LGBT workers and their families could be addressed by amending laws and policies to more broadly define family. For example, lawmakers and employers could add and define a category of person who is not a spouse (such as a “permanent partner” or “other qualifying adult”) but who would equally qualify for the benefits and tax advantages that are currently limited to spouses. Other solutions include broadening definitions of children to extend beyond blood relationships and adoption papers and include all children for whom a worker acts as a parent.<sup>nnnn</sup> In addition, lawmakers could expand the definition of dependents beyond those whom a worker claims on her tax forms so that all members of her household are counted as family. These approaches could reduce or eliminate inequitable access to many benefits, not only for LGBT workers, but also for many other contemporary families.



The table that follows summarizes an advocacy agenda to help LGBT workers and other workers gain equal access to individual and family work-related benefits.

<sup>nnnn</sup> In some cases, a child receives care and support from someone other than a legal parent. This can be anyone who stands in the place of a parent (sometimes referred to as *in loco parentis* or *de facto* parenting), and can include same-sex parents, grandparents, stepparents, aunts, uncles or other loved ones.

Broad-Based Recommendations to Help LGBT Workers and Their Families Gain Equal Access to Work-Related Benefits		
Recognize the Families of LGBT Americans		
<p><b>Federal</b></p> 	<p>Congress should repeal the federal Defense of Marriage Act (DOMA).</p>	<p>DOMA prevents the federal government from recognizing same-sex couples under various laws and retirement programs—even couples who are legally married in their states.</p> <p>Combined with state-level marriage, repeal of DOMA would:</p> <ul style="list-style-type: none"> <li>• Create equal access for same-sex spouses and their children to employer-provided family health benefits from self-insured employers in all 50 states plus D.C.</li> <li>• Require that independent COBRA benefits be extended to same-sex spouses and their children nationwide.</li> <li>• Allow equal access to pre-tax health savings accounts (HSAs) to cover out-of-pocket healthcare expenses of same-sex spouses and their children; and (if needed) to pay COBRA premiums for same-sex spouses and their children.</li> <li>• Permit workers to take job-protected Family and Medical Leave Act (FMLA) leave to care for a same-sex spouse.</li> <li>• Eliminate unfair and inequitable federal taxation of married same-sex couples in all 50 states plus D.C.</li> <li>• Allow same-sex spouses equal access to Social Security spousal and retirement benefits.</li> <li>• Require employers to offer pension survivor benefits to same-sex spouses when they offer them to opposite-sex spouses.</li> <li>• Allow LGBT families to access Social Security Death and Disability benefits when an LGBT worker dies or becomes disabled.</li> <li>• Allow foreign-born LGBT workers to sponsor a spouse for immigration purposes, encouraging foreign-born workers to contribute their skills to the U.S. workforce.</li> </ul> <p>Repeal of DOMA is a critical step, but it would only help same-sex couples living in states where they can legally marry. In addition, some federal laws independently define spouses in gendered terms; consequently, DOMA's repeal, without further clarification, might not immediately result in equal treatment for LGBT workers and their families across all programs.</p>
<p><b>Federal</b></p> 	<p>Congress should pass the Respect for Marriage Act.</p>	<p>Should DOMA be repealed, there would no longer be a narrow federal definition of “marriage” or “spouse.” Although it is appropriate to assume that the federal government would return to its customary pre-1996 recognition of state-recognized marriages, the Respect for Marriage Act would unambiguously require that it do so, granting equal access to all federal programs to married same-sex couples by amending the federal law to read:</p> <p><i>For the purposes of any Federal law in which marital status is a factor, an individual shall be considered married if that individual's marriage is valid in the State where the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and the marriage could have been entered into in a State.</i></p> <p>Note: This law does not repeal or amend Section 2 of DOMA, which allows states to refuse to recognize the marriages of same-sex couples that were married in other states.</p>





## Broad-Based Recommendations to Help LGBT Workers and Their Families Gain Equal Access to Work-Related Benefits






<p><b>State</b></p> 	<p>State lawmakers should extend the freedom to marry to same-sex couples in all states.</p>	<p>State-level marriage for same-sex couples would help strengthen LGBT workers' legal ties to their partners and children, and expand access to some family-based benefits. Specifically, it would:</p> <ul style="list-style-type: none"> <li>• Create equal access for same-sex spouses and their children to employer-provided family health benefits from fully insured employers in all 50 states.</li> <li>• Eliminate unfair state taxation of family health benefits for married LGBT workers with same-sex spouses and children.</li> </ul>
<p><b>State</b></p> 	<p>State lawmakers should pass comprehensive parental recognition laws at the state level to help LGBT workers gain legal ties to their children.</p>	<ul style="list-style-type: none"> <li>• State parentage and adoption statutes should allow joint adoption by LGBT parents; recognize LGBT parents using assisted reproduction in the same manner as non-LGBT parents; and provide avenues such as second-parent adoption and <i>de facto</i> parenting<sup>0000</sup> to allow children to gain full legal ties to their parents.</li> <li>• In the case of the death or disablement of a parent, legal ties between workers and their children would also protect children's rights to federal Social Security survivor and disability benefits through the Old-Age, Survivors, and Disability Insurance (OASDI) program.</li> </ul>

### Individual and Family Health Benefits







#### Health Insurance

<p><b>State</b></p> 	<p>State lawmakers should revise state insurance laws to ensure that LGBT workers can obtain individual health insurance (whether purchased privately or provided through employers) that meets their healthcare needs.</p>	<ul style="list-style-type: none"> <li>• Pass or amend state insurance laws to ensure coverage parity and nondiscrimination protections for transgender health plan enrollees so that health insurance sold within the state is transgender-inclusive and minimizes exclusions for transition-related diagnoses or treatments.</li> <li>• Amend state government benefits plans to be transgender-inclusive and include coverage for transition-related care, such as hormone therapy or transition-related surgical procedures.</li> <li>• Pass state-based nondiscrimination laws that: (a) apply to insurance companies and healthcare providers; and (b) provide legal recourse for LGBT workers and their families should they experience discrimination when seeking reimbursement for medically necessary procedures or when seeking/receiving medical care.</li> </ul>
<p><b>Federal</b></p> 	<p>Congress should revise federal laws to ensure that self-insured employers provide equal access to family health benefits for all workers' partners and dependents, regardless of marital status or legal status of parent-child relationships.</p>	<ul style="list-style-type: none"> <li>• Amend the Employee Retirement Income Security Act (ERISA) to require that when self-insured employers elect to extend health benefits to employees' spouses and/or children, they must also extend such benefits to employees' same-sex spouses/partners, unmarried heterosexual partners, and/or any children for whom the employee functions as a parent.             <ul style="list-style-type: none"> <li>• Consider using the already-existing expanded FMLA definition of "son or daughter" to include children for whom the worker is acting <i>in loco parentis</i>.<sup>276</sup></li> <li>• Ideally, expand coverage beyond spouse/partner to include any two financially interdependent adults, such as two siblings who have formed a joint household.</li> </ul> </li> <li>• Repealing DOMA would likely ensure that self-insured employers, including the federal government, provide equal family benefits to the minority of same-sex couples who can marry.</li> </ul>






<sup>0000</sup> A *de facto* parent is someone other than a legal parent who, for reasons other than financial compensation, formed a child-parent relationship in which he or she shared (usually at least equally) in primary child care responsibilities. State laws can recognize a *de facto* parent to be a legal parent, conferring on him or her partial or full parenting rights based on the person having functioned as a parent in the child's life for a significant period of time.

Broad-Based Recommendations to Help LGBT Workers and Their Families Gain Equal Access to Work-Related Benefits		
<b>State</b> 	<p>State lawmakers should revise state laws to ensure that fully insured employers provide equal access to family health benefits for all workers' partners and dependents, regardless of marital status or legal status of parent-child relationships.</p>	<ul style="list-style-type: none"> <li>Expand state health insurance laws, policies and exchanges to include:               <ul style="list-style-type: none"> <li>Regulations supporting comprehensive nondiscrimination policies.</li> <li>A broad definition of family that includes same-sex spouses/partners, unmarried heterosexual partners, and any children for whom the worker functions as a parent.</li> <li>Certification requirements for qualified fully insured employer health plans that prohibit discrimination on the basis of sexual orientation, gender identity/expression, and marital status.</li> </ul> </li> <li>Expanding marriage and relationship recognition at the state level would ensure that fully insured employers must provide equal family benefits to same-sex couples within these states.</li> </ul>
<b>Federal</b> 	<p>Congress and the President should extend equal family health benefits to all federal government employees, including LGBT workers.</p>	<ul style="list-style-type: none"> <li>Pass federal legislation such as the Domestic Partnership Benefits and Obligations Act, which would extend health insurance benefits to same-sex partners of federal employees.</li> <li>Pass federal legislation to extend equal family health insurance benefits to the spouses and partners of LGBT military service members and the children of spouses or partners.</li> <li>Issue a federal executive order requiring all federal contractors to extend equal family health benefits to same-sex spouses/partners and their children. This order would affect a variety of employers, including construction, roadwork and military defense companies.</li> </ul>
<b>State, Local</b> 	<p>State and local lawmakers should extend equal family health benefits to all state and local government employees, including LGBT workers.</p>	<ul style="list-style-type: none"> <li>Where not already in existence, pass state and local legislation extending health insurance benefits to same-sex partners of state employees.</li> <li>Where needed and as other laws allow, pass state and local equal benefits laws, executive orders, or ordinances requiring private companies that contract with the state or local government to provide benefits to the same-sex spouses/partners of employees residing in the state, if they provide benefits to the opposite-sex spouses of employees.</li> </ul>
<b>Employer</b> 	<p>Employers should offer affordable health insurance benefits, including equal family coverage for the partners of all employees and their dependents, regardless of marital status or legal status of parent-child relationships.</p>	<ul style="list-style-type: none"> <li>Employers should ensure that coverage extends to:               <ul style="list-style-type: none"> <li>The spouses and unmarried partners of both LGBT and non-LGBT workers.</li> <li>Any children living in the employee's household, including foster children, the children of a same-sex spouse or partner, and other children for whom an employee is acting <i>in loco parentis</i>.</li> </ul> </li> </ul>
COBRA Health Insurance Continuation Benefits		
<b>Federal</b> 	<p>Congress should ensure equal access to COBRA health insurance continuation benefits for any child or adult who is eligible for coverage under an employer's health plan.</p>	<ul style="list-style-type: none"> <li>Amend federal COBRA and related ERISA regulations to make continuation coverage an independent right for any person (child or adult) covered by an employee's health plan prior to a qualifying event.</li> <li>Allow equal access to federal subsidies or tax credits (should they be made available) to help defray the costs of COBRA.</li> <li>Pass legislation such as the Equal Access to COBRA Act, which would extend COBRA coverage to anyone who is covered under an employer's health plan, including same-sex partners and spouses.</li> </ul>


## Broad-Based Recommendations to Help LGBT Workers and Their Families Gain Equal Access to Work-Related Benefits

<b>Employers</b> 	Employers should consider providing COBRA-equivalent coverage.	<ul style="list-style-type: none"> <li>• Employers can extend independent COBRA rights to all covered family members, even when the worker does not continue coverage under COBRA. This would protect families in the case of a worker's death or when a worker obtains other coverage that does not include family benefits.</li> </ul>
<b>Taxation of Health Benefits</b>		
<b>Federal</b> 	Congress should end unfair federal taxation of family health benefits for LGBT families.	<ul style="list-style-type: none"> <li>• End income and payroll taxation of family health benefits provided to same-sex and opposite-sex domestic partners, other "non-spouse" beneficiaries, and non-legally recognized children by taking the following steps:                         <ul style="list-style-type: none"> <li>• Passing federal legislation like the "Tax Parity for Health Plan Beneficiaries Act," which would allow any adult or child covered under an employee's health plan to receive health benefits without placing an extra tax burden on the employee.</li> <li>• Repealing DOMA, which would eliminate unfair taxation of family health benefits for married same-sex couples.</li> </ul> </li> </ul>
<b>State</b> 	State lawmakers should end unfair state taxation of family health benefits for LGBT workers.	<ul style="list-style-type: none"> <li>• States should also eliminate unfair state taxes on family benefits for LGBT workers. (Some states mimic federal tax guidelines and, by default, impose additional state taxes on domestic partner benefits.)</li> <li>• Expanding marriage and relationship recognition at the state level would eliminate state taxes for legally recognized same-sex couples in those states.</li> </ul>
<b>Employer</b> 	Employers should consider helping LGBT workers pay for the extra tax burden incurred when receiving family health benefits.	<ul style="list-style-type: none"> <li>• Employers can reduce the impact of federal and state taxation of some family benefits by "grossing up" salaries to help workers pay for their additional tax burden.</li> </ul>
<b>Pre-Tax Healthcare Savings Plans</b>		
<b>Federal</b> 	Congress should allow LGBT workers to pay for out-of-pocket medical expenses for family members with pre-tax dollars.	<ul style="list-style-type: none"> <li>• Amend existing federal regulations that currently limit access to pre-tax healthcare saving plans like health savings accounts (HSAs) and flexible spending accounts (FSAs).</li> <li>• Allow anyone who is covered by the worker's health insurance plan to pay out-of-pocket expenses with pre-tax dollars.</li> </ul>
<b>Family and Medical Leave</b>		
<b>Federal</b> 	Congress should revise the federal Family and Medical Leave Act (FMLA) to broaden the definition of covered caregivers.	<ul style="list-style-type: none"> <li>• Broaden the FMLA to include leave to care for a domestic partner, same-sex spouse, parent-in-law, adult child, sibling or grandparent.<sup>pppp,277</sup></li> <li>• Lawmakers should consider adopting language similar to the National Family Caregiver Support Program, which broadly recognizes "an adult family member, or another individual, who is an informal provider of in-home and community care to an older individual."</li> <li>• Alternatively, lawmakers should consider broader language, such as that found in the Family and Medical Leave Inclusion Act, which would also help heterosexual domestic partners, single adults, widows and widowers, and anyone who gives care to, or relies on care from, non-biological family members.</li> <li>• Repealing DOMA would ensure that same-sex couples who are able to marry could take leave to care for a same-sex spouse.</li> </ul>


<sup>pppp</sup> The Williams Institute estimates this would affect 215,000 families, giving about 430,000 individuals the ability to provide greater care for their same-sex partners.

Broad-Based Recommendations to Help LGBT Workers and Their Families Gain Equal Access to Work-Related Benefits		
<b>Federal</b> 	<p>The Department of Health and Human Services should clarify that the federal FMLA allows leave for transgender workers seeking transition-related care.</p>	<ul style="list-style-type: none"> <li>• Obtain clarification from the Department of Health and Human Services that the definition of “serious medical condition” includes leave for transition-related time off work that transgender workers need in order to seek medically and psychologically necessary care.</li> </ul>
<b>State</b> 	<p>State lawmakers should revise or pass state medical and family leave laws to:</p> <ul style="list-style-type: none"> <li>• Broaden the definition of covered caregivers;</li> <li>• Include any child for whom a worker acts as a parent; and</li> <li>• Explicitly include transgender workers.</li> </ul>	<ul style="list-style-type: none"> <li>• Broaden state family and medical leave laws to include leave to care for a same-sex spouse/partner or other loved one, as well as any child for whom a worker acts as a parent.</li> <li>• In the absence of broad federal medical and family leave law, states should pass or broaden their own laws. States with broader family leave laws that can serve as models for others include: California, Connecticut, Hawaii, Massachusetts, New Jersey, New Mexico, Oregon, Rhode Island and Vermont, plus D.C.</li> <li>• Ensure that state medical leave laws allow transgender workers to take leave for transition-related care.</li> </ul>
<b>Employer</b> 	<p>Employers should expand leave options beyond existing state and federal mandates.</p>	<ul style="list-style-type: none"> <li>• Employers that are exempt from federal and state leave laws (like small businesses and some religious organizations) should offer either FMLA-like leave or leave that is similar to that required of other employers under state law.</li> <li>• Employer-provided leave should broadly define family to include same-sex spouses/partners and their children, and should also allow transgender workers to take leave for transition-related care.</li> </ul>
<b>Retirement and Survivor Benefits</b>		
<b>Social Security Retirement Benefits</b>		
<b>Federal</b> 	<p>Congress should expand Social Security retirement benefits to include same-sex spouses and partners.</p>	<ul style="list-style-type: none"> <li>• Revise the Social Security Act to make same-sex spouses and partners eligible for spousal Social Security retirement benefits.</li> <li>• Update Social Security’s definitions of “wife,” “husband,” “widow” and “widower” so they no longer assume an opposite-sex marriage.</li> <li>• If DOMA is repealed, the Social Security Administration should immediately clarify eligibility for spousal benefits for same-sex spouses.</li> </ul>
<b>Pensions/Defined-Benefit Plans</b>		
<b>Federal</b> 	<p>Congress should expand mandates for survivor benefits for pensions/defined-benefit plans.</p>	<ul style="list-style-type: none"> <li>• Amend ERISA and the IRS Code to mandate that plan administrators offer a “non-spouse beneficiary” an option similar to a Qualified Joint and Survivor Annuity and a Qualified Pre-Retirement Survivor Annuity. This would allow any worker receiving a pension to electively choose any other individual for a joint survivor or pre-retirement annuity.</li> <li>• Repealing DOMA would secure equal treatment for those same-sex couples who can and do marry.</li> </ul>



## Broad-Based Recommendations to Help LGBT Workers and Their Families Gain Equal Access to Work-Related Benefits

<b>Employer</b> 	Employers should consider offering survivor benefits to the same-sex spouses and partners of LGBT workers.	<ul style="list-style-type: none"> <li>• Advocates should work with private employers, unions, state and local governments, and other pension plan providers to encourage them to offer joint and pre-retirement survivor benefits to same-sex spouses/partners and other financially interdependent individuals.</li> </ul>
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### 401(k)s, IRAs, and Other Defined-Contribution Plans

<b>Federal</b> 	Federal tax law should treat “non-spouse” beneficiaries of inherited IRAs in the same manner as spousal beneficiaries.	<ul style="list-style-type: none"> <li>• Lawmakers should amend ERISA to allow “non-spouse” beneficiaries to draw down inherited IRAs on the same schedule as spousal beneficiaries. This amendment would provide immediate relief for all same-sex couples (including those living in states where they cannot legally marry), and it would help a broad range of “non-spouse” beneficiaries, such as two siblings who are living together and are financially interdependent.</li> <li>• Repealing DOMA would secure equal treatment for married same-sex couples.</li> </ul>
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### Social Security Survivors and Disability Benefits

<b>Federal</b> 	Congress should ensure equal access to earned Social Security death and disability benefits for spouses/partners of LGBT workers and any children for whom the worker functions as a parent.	<ul style="list-style-type: none"> <li>• Revise federal Social Security Old-Age, Survivors, and Disability Insurance (OASDI) laws and policies to :             <ul style="list-style-type: none"> <li>• Allow a child to claim benefits upon the death or disability of an adult who acts as a parent in the child’s life, regardless of the legal relationship between the child and the parent.</li> <li>• Provide parental benefits to adults who will be taking care of the children (under age 16) of deceased workers, including surviving same-sex spouses, domestic partners or permanent partners of a child’s legal or <i>de facto</i> deceased parent.</li> </ul> </li> <li>• Expanding eligibility would not only permit the surviving partner (or former partner) of the worker to access important financial resources, but also recognize the variety of individuals who may care for a child in the event of a parent’s death, as well as the financial challenges that come with providing for such a child.</li> <li>• Repealing DOMA would secure equal treatment for married same-sex couples and their children.</li> </ul>
<b>Employer</b> 	Employers should offer alternative death and disability options, such as life and disability insurance to workers.	<ul style="list-style-type: none"> <li>• Employers should offer elective or employer-sponsored life and disability insurance to workers.</li> <li>• If employers also allow workers’ family members to participate, ensure equal access for same-sex spouses/partners and their children.</li> </ul>

## Broad-Based Recommendations to Help LGBT Workers and Their Families Gain Equal Access to Work-Related Benefits

### Federal Income Tax Inequities

#### Federal






Congress should provide equal access to federal tax relief for LGBT workers and their families.

Revise the IRS tax code to provide equitable treatment for LGBT families.

- **Expand the spousal credits and deductions to “permanent partners.”** The IRS should create a designation of a “permanent partner,” who would be treated as a spouse for the purposes of the tax code. Individuals in a committed relationship—whether legally recognized as a domestic partnership, civil union or marriage, or not legally recognized—would qualify if they meet certain criteria. This would allow LGBT families, whether parents are able to marry or not, to file joint tax returns and be eligible for tax-related exemptions, credits and deductions designed for families—including joint filing status, child and dependency-related exemptions and credits, and estate and gift tax exemptions.
- **Broaden the definition of “qualifying person.”** The IRS should broaden the “qualifying person” test for “head of household” status to include all “qualifying relatives.” The IRS should also broaden the “qualifying person” test for the credit for child and dependent care expenses to include all dependent “qualifying relatives” under the age of 13, so that any taxpayer who is providing the majority of support for child or dependent care can access these benefits designed to help families.
- **Broaden the definition of “qualifying child.”** The IRS should allow adults who are parenting, raising and providing for children to claim the children as a “qualifying child,” even if they are not a legal parent. This would allow LGBT families and other families where children are raised by someone other than a legal parent to more easily access the “head of household” filing status, dependency exemptions, the child tax credit, the credit for child and dependent care expenses, and the earned income tax credit.
- **Expand access to the credit for child and dependent care expenses.** To help families with the high costs of child care and dependent care for working families, the IRS should expand the credit for child and dependent care expenses so that any person who pays for the childcare or dependent care of another person can claim the credit. This would help LGBT families who cannot currently claim this credit for their non-legally related children or partners, and also help families where a grandparent or other person assists the family by paying child or dependent care expenses.
- **Expand access to education deductions and credits.** To encourage investment in higher education, the IRS should allow any individual who pays the tuition and fees of another person—regardless of the legal relationship to that person—to take these deductions and credits. This would help LGBT families with the cost of college tuition for their children. It also would make it easier for an LGBT partner/spouse to return to college, because his or her partner/spouse could use these deductions and credits to offset the cost of tuition.
- **End inequitable taxation of family health benefits.** Lawmakers should amend the tax code to end the inequitable federal taxation of benefits provided to same-sex partners and other “non-dependent” beneficiaries under employers’ health plans. Additionally, if a state currently mimics the federal tax guidelines and imposes an additional state tax on domestic partner benefits, it should eliminate that tax at the state level.

## Broad-Based Recommendations to Help LGBT Workers and Their Families Gain Equal Access to Work-Related Benefits

### Immigration and Citizenship for LGBT Workers and Their Families

<p><b>Federal</b></p> 	<p>Congress should pass legislation allowing U.S. citizens to sponsor a “permanent partner” for the purposes of immigration.</p>	<ul style="list-style-type: none"> <li>• Pass legislation such as the Uniting American Families Act (UAFAs), which would add the category “permanent partner” to the list of family members entitled to sponsor a foreign national for U.S. immigration. This would open up immigration avenues for all workers with a same-sex foreign national partner.</li> <li>• Repealing DOMA would allow the sponsorship of married same-sex spouses for immigration purposes.</li> </ul>
<p><b>Federal</b></p> 	<p>Congress should enact comprehensive immigration reform that includes avenues to legal status for undocumented workers already living in the U.S.</p>	<ul style="list-style-type: none"> <li>• Enact comprehensive immigration reform to provide legal paths to permanent residency and citizenship for LGBT and other immigrants.</li> <li>• Include UAFAs language in any comprehensive immigration reform to ensure that it comprehensively includes binational same-sex couples.</li> </ul>
<p><b>Federal</b></p> 	<p>All relevant agencies and departments should take immediate action to prevent unnecessary discrimination against LGBT immigrants.</p>	<ul style="list-style-type: none"> <li>• Call on the U.S. Citizenship and Immigration Services, the U.S. Department of Homeland Security, the U.S. Attorney General and the U.S. Department of State to extend more equal treatment to LGBT families and immigrants by:             <ul style="list-style-type: none"> <li>• Prohibiting discrimination in immigration decisions on the basis of sexual orientation or gender identity/expression, and conducting cultural competency training of all relevant immigration agencies.</li> <li>• Stopping deportation proceedings against same-sex spouses, especially while DOMA litigation is ongoing.</li> </ul> </li> </ul>

## PUTTING IT ALL TOGETHER

### Two Stories of American Workers

While this report has examined the specific individual inequities impacting LGBT workers, it is important not to lose sight of how these inequities add up and reinforce each other. The unfair laws and policies described in this report impose both small and substantial burdens on the millions of LGBT workers and their families across the country. The real-world impact of these burdens can be seen more clearly when we focus on their combined effects on the individuals and families who are put in harm's way by America's broken bargain.

Even when LGBT workers and non-LGBT workers are similarly situated and experience essentially the same set of life events, unequal laws and bias can have a significant and damaging impact. To illustrate the interplay of many of these issues, we look at two scenarios that compare the very different outcomes for LGBT workers and non-LGBT coworkers. The first scenario compares two single workers, one who is transgender and one who is not. The second scenario compares two married workers—one who is gay and the other who is heterosexual—and assesses the impact of the broken bargain on the workers and their spouses and children.

### Two Qualified and Capable Workers, Two Different Outcomes

Suzanne and Rachel are 25-year-old classmates about to graduate *magna cum laude* from the same business school; Suzanne is transgender and Rachel is not. They apply for a job with the same company and both are asked to interview.

During Suzanne's interview, the recruiter notices that Suzanne played hockey in high school and asks what it was like to play on a girls' hockey team. Suzanne answers truthfully—that she played on the boys' team. She transitioned from male to female in her early 20s. The interview ends early. In contrast, Rachel's entire interview goes well and she and the recruiter chat comfortably about Rachel's interests.

Suzanne is unfairly ranked as less qualified than Rachel and is considered for a lower-level job. During company background checks, Suzanne must file an application with her "old" name (Greg) and show a driver's license and Social Security card that don't match her current gender. Rachel sails through background checks.

Both candidates receive a job offer, but Suzanne is underemployed in an assistant sales position making \$30,000 a year while Rachel is appropriately hired as a junior sales representative making \$45,000 per year.

On her first day of work, Suzanne finds new business cards and her name plate awaiting her. The problem is that they both have the name "Greg" on them. Coworkers begin to gossip and Suzanne avoids personal conversations. Rachel, on the other hand, is invited to join her coworkers for a drink after work.

Both Rachel and Suzanne receive individual worker health benefits. However, while Rachel is fully covered, including for hormonal birth control, Suzanne must pay out-of-pocket for doctors' visits and hormone therapy, costing her \$1,000 per year.

At the start of their third year with the company, Rachel is promoted, while Suzanne is passed over.


After four years, Suzanne seeks treatment and medical leave related to depression and anxiety stemming from the negative work environment. The health insurance company refuses to cover any mental health treatment for Suzanne, citing blanket policy exclusions for mental health counseling for transgender workers. The company refuses to give Suzanne medical leave. Suzanne begins to pay \$90 per week out-of-pocket for counseling. By contrast, when Rachel's father and mother die in rapid succession, Rachel is granted a week of paid leave, and the health insurance company covers mental health counseling.

After four-and-a-half years, Suzanne feels that the stress is too much. She takes a week of leave to recuperate and the company fires her.

The net result? Suzanne faces an extra financial burden of over \$130,000 in just five years. And, instead of being able to use her considerable skills to contribute to the success of a company, she finds herself unemployed and without any savings.

This story provides just one illustration of how life is needlessly more difficult for LGBT workers. And this discrimination doesn't just harm Suzanne. Had her employer treated her fairly, the company would have had two rising stars, not just one.



Two Qualified and Capable Workers, Two Different Outcomes		
 Suzanne, who is transgender	 Rachel, who is not	Added financial burden for Suzanne
<b>At the interview...</b>		
<ul style="list-style-type: none"> <li>Recruiter is uncomfortable, interview ends early.</li> </ul>	<ul style="list-style-type: none"> <li>Recruiter and Rachel chat comfortably; entire interview goes well.</li> </ul>	
<b>During background checks...</b>		
<ul style="list-style-type: none"> <li>Must file an application with "old" name.</li> <li>Driver's license and Social Security card don't match gender expression.</li> </ul>	<ul style="list-style-type: none"> <li>Sails through application and background checks.</li> </ul>	
<b>On the job...</b>		
<ul style="list-style-type: none"> <li>Salary of \$30,000<sup>qqqq.278</sup></li> <li>Snide comments and jokes.</li> <li>Passed over for promotions.</li> </ul>	<ul style="list-style-type: none"> <li>Salary of \$45,000.</li> <li>Rising star in the company.</li> <li>Mentored by her supervisor.</li> <li>Is promoted at start of third year; salary bumped to \$55,000.</li> </ul>	<b>\$105,000 over five years<sup>rrrr</sup></b> (\$15,000 per year for years one and two; \$25,000 per year for years three through five)
<b>Receiving individual healthcare benefits ...</b>		
<ul style="list-style-type: none"> <li>Insurer refuses to pay for hormone treatment and lab tests for Suzanne.</li> </ul>	<ul style="list-style-type: none"> <li>Rachel is fully covered, including for birth control.</li> </ul>	<b>\$5,000 over five years</b> (Suzanne pays \$1,000 annually; \$250 for doctor and lab visits and \$750 for hormone therapy out-of-pocket) <sup>ssss</sup>
<b>Taking medical leave after four years...</b>		
<ul style="list-style-type: none"> <li>Job harassment and unequal treatment have taken a toll on Suzanne.</li> <li>She seeks medical leave for treatment for anxiety and depression, but her leave is refused because her condition isn't "serious enough."</li> <li>The insurance company refuses to pay for treatment, citing policy exclusions for "her condition."</li> </ul>	<ul style="list-style-type: none"> <li>Rachel experiences the death of both of her parents just a few months apart.</li> <li>She seeks family medical leave and mental health counseling.</li> <li>Both leave and counseling are granted and covered.</li> </ul>	<b>\$4,500</b> (for one year of counseling <sup>tttt</sup> )
<b>After four and a half years...</b>		
<ul style="list-style-type: none"> <li>When Suzanne takes a week of needed mental health leave, the company fires her.</li> </ul>	<ul style="list-style-type: none"> <li>Rachel is promoted to regional sales manager</li> </ul>	<b>\$18,077 in lost income</b> <ul style="list-style-type: none"> <li>\$577 in lost income because she is not covered for her one-week medical leave<sup>uuuu</sup></li> <li>\$17,500 in lost income because she is and remains unemployed for the next 6 months</li> </ul>
<b>BOTTOM LINE AT FIVE YEARS</b>		
<ul style="list-style-type: none"> <li>Unemployed.</li> <li>No savings.</li> </ul>	<ul style="list-style-type: none"> <li>Salary of \$65,000.</li> <li>Rising star in company.</li> <li>Healthy savings.</li> </ul>	<b>\$132,577 in just 5 years</b> Extra financial burden in lost income, out-of-pocket medical expenses, denied promotions, unfair firing

<sup>qqqq</sup> Research has found that transgender women may see their wages fall by nearly one-third after they transition from male to female.

<sup>rrrr</sup> For sake of simplicity, these numbers are pre-tax.

<sup>ssss</sup> Assumes a cost of \$40 per month for hormone therapy and \$500 per year for doctors' visits and lab tests. See "Transgender Health Benefits." <http://www.tgender.net/taw/tsins.html>

<sup>tttt</sup> Assumes 50 weeks of counseling at \$90 per week, paid out-of-pocket by Suzanne.

<sup>uuuu</sup> Assumes company offers paid leave; calculated at 1/52nd of her \$30,000 salary.

## Two Working Families, Two Different Outcomes

Next, we look at how unfair and discriminatory laws and policies hurt LGBT workers with families. Carlos and Blake both earn \$50,000 per year as industrial engineers for the same company.

Carlos is married to his wife, Sarah, who works part-time at the local library. The couple is raising two girls. Blake has a same-sex partner, Benjamin, who works part-time as an emergency medical technician. Together, they are also raising two girls, whom they adopted from foster care. However, because state law barred them from adopting jointly, only Benjamin is recognized as the children's legal parent. Additionally, the couple is barred in their state from legally marrying.

As shown in the table on the next page, the inequities facing Blake and his family add up quickly. Here's how:

**Health Insurance Coverage.** Carlos is able to cover his entire family through the work health plan. He can use tax-free dollars to pay the small monthly premium amount. Since the company doesn't offer domestic partner benefits, Blake cannot add Benjamin to his coverage. Since Blake is not a legal father of the girls, he is unable to add the girls either. Blake buys private health insurance for the family and spends \$4,743 more per year than Carlos to cover his family.

**Taxation.** Carlos and Sarah file a joint annual tax return and claim the full menu of child and family-related tax deductions and credits. The tax relief is a huge help to the family, and they are able to put away modest savings for future rainy days or college.



Blake and Benjamin must file separate returns as "single." Since Blake is not a legally recognized parent, he cannot benefit from many of the most important child-related tax credits and deductions. Benjamin can

claim the children, but since he earns only a minimal part-time income, the impact on the family taxes is negligible. In total, Blake and Benjamin pay almost \$900 more in taxes each year despite having the same wages as Carlos and Sarah. When added to the additional cost of private family health insurance, Blake and his family struggle just to make ends meet.

**Family and Medical Leave.** When Sarah requires a mastectomy, Carlos is granted two weeks of job-protected leave. When Benjamin has a heart attack, Blake is denied medical leave to care for him, forcing Blake to scrape up an extra \$2,100 to hire a home health aide.

**Death and Survivor Benefits.** A few years later, tragedy strikes both families. Carlos is hit by a driver running a red light and dies in the car crash. Sarah is the beneficiary of Carlos's pension, and she and the children also receive survivor benefits through Social Security. With \$3,766 in monthly Social Security and pension income totaling \$45,192 per year, Sarah is able to pay their modest mortgage and other family bills. When Blake unexpectedly dies of a brain aneurysm, Benjamin and the children are denied all Social Security and pension survivor benefits and receive nothing. Without savings, they are forced to leave their family home and move across the country to seek help from Benjamin's family.

The net result? Both Blake and Carlos worked hard at the same company for the same wages so they could take care of their families. However, Blake and his family struggled to take care of each other and to make ends meet—facing an extra financial burden of \$59,380 across 10 years just because Blake was gay. When Blake died, his partner and two children were denied \$45,192 of earned survivor benefits each year, and the grieving family was faced with loss of the family home on top of the death of a parent—once again, for no other reason than the fact that Blake was gay.

Two Working Families, Two Different Outcomes		
 <p>Blake and Benjamin, same-sex couple with two children, Lea and Elisa</p>	 <p>Carlos and Sarah, married opposite-sex couple with two children, Ella and Natalie</p>	Added financial burden for Blake and Benjamin's family
<b>Accessing family health benefits...</b>		
<ul style="list-style-type: none"> <li>Blake has individual health insurance coverage, but no family benefits are provided for Benjamin, Lea and Elisa. Instead the family must buy insurance on the private market.</li> </ul>	<ul style="list-style-type: none"> <li>Carlos's health insurance is covered and he pays only a small premium for Sarah and the children.</li> </ul>	\$4,743 annually <sup>vvvv</sup>
<b>Filing annual tax returns...</b>		
<ul style="list-style-type: none"> <li>Both Blake and Benjamin must file as "single" and forego the more tax-advantaged "married filing jointly" status.</li> <li>Blake cannot claim the children, and loses out on most child tax credits and deductions.</li> </ul>	<ul style="list-style-type: none"> <li>Carlos and Sarah file jointly, further reducing taxable income.</li> <li>Family receives full benefit of child and family-related tax credits and deductions.</li> </ul>	\$895, annually <sup>wvvvv</sup>
<b>Taking medical leave...</b>		
<ul style="list-style-type: none"> <li>Blake is denied leave to care for Benjamin while he recovers from heart surgery; has to hire a home health aide.</li> </ul>	<ul style="list-style-type: none"> <li>Carlos takes leave to care for Sarah and the children while Sarah recovers from a mastectomy.</li> </ul>	\$2,100, one-time <sup>xxxx</sup>
<b>Dealing with the deaths of primary wage earners...</b>		
<ul style="list-style-type: none"> <li>After Blake's death, Benjamin and the children receive no survivor benefits from Blake's Social Security contributions or pension.</li> </ul>	<ul style="list-style-type: none"> <li>After Carlos dies, Sarah and the children receive \$2,916<sup>yyyy</sup> in Social Security survivor benefits monthly and \$850 monthly from Carlos's modest pension.</li> </ul>	\$3,766 monthly ongoing moving forward, or \$45,192 per year
<b>BOTTOM LINE</b>		
<ul style="list-style-type: none"> <li>Lose their home.</li> <li>Forced to move out of state to live with family.</li> </ul>	<ul style="list-style-type: none"> <li>Keep home.</li> <li>Children graduate from local high school with friends.</li> </ul>	<p><b>\$59,380 in just 10 years<sup>zzzz</sup> plus lost survivors' benefits of \$45,192 each year moving forward.</b></p> <p>Extra financial burden of lost compensation, extra taxation, out-of-pocket medical expenses, denied leave, survivor benefits.</p>

<sup>vvvv</sup> This includes the net cost of health insurance for three people. Total cost of \$7,615 minus \$2,872, which Carlos pays out-of-pocket for his employer-provided family coverage (excluding his own coverage) (see Table X, footnote X).

<sup>wvvvv</sup> Assumes Blake files as single and does not claim the children, resulting in taxes owed of \$6,099. Assumes Benjamin earns \$7,250 in annual part-time income, files as single and claims the children, generating a refund of \$3,548 for a net owed by the household of \$2,551. Carlos and Sarah file jointly with the same incomes (\$50,000 and \$7,250 respectively) and owe \$1,656 for a difference of \$895. Computed using 2012 federal income tax forms.

<sup>xxxx</sup> On average, an employee taking FMLA leave is away from work for 10 days. If an employee cannot take these 10 days to care for a same-sex spouse or partner, we assume they will need 10 days of care from a home health aide. We assume 10 hours of care per day at the average hourly rate of \$21 yielding \$2,100 for 10 days.

<sup>yyyy</sup> Calculated using U.S. Social Security Administration. "Social Security Online Social Security Quick Calculator." <http://www.ssa.gov/OACT/quickcalc/index.html> (accessed March 1, 2013).

<sup>zzzz</sup> For the sake of simplicity, we took the annual cost and multiplied by 10, then added one-time costs for a total across the 10 years.

## CONCLUSION

These stories show the real costs of America's broken bargain with LGBT workers. The workers in the stories are not unique. LGBT workers live in every state in the country. They work for all types of employers and in all types of jobs. And yet they and their families continue to face discrimination, fewer benefits and higher taxation—making it harder for these workers to take care of their families, avoid poverty, and save money for education, retirement and other needs.

Fixing the broken bargain for LGBT workers will help ensure that they and their families are treated fairly no matter where they work, that they receive the same compensation for the same work, and that they can access important benefits aimed at keeping America's workers and families healthy and financially secure.

America has passed numerous laws and policies based on an understanding that protecting the interests of workers and their families is good for the economy and good for the country. It is time for those protections to extend to LGBT workers. It is time to send LGBT workers the message that they and their families matter, and to show that our nation and our economy are stronger when we treat all workers fairly.

*I think you'll find* that, historically, most companies ... don't want to get involved in social issues. To see this many businesses rallying behind this cause tells you that it's a real business issue.

P. Sabin Willett, Partner at Bingham McCutchen, as quoted in Stewart, James B. "Refusing to Be Late on Gay Marriage." *The New York Times*. March 1, 2013.



*She is not here tonight* [to testify about the need for nondiscrimination protections] because she is afraid. She is currently looking for work and in a couple of months will be looking for some place to live. And she is afraid that if she showed up tonight, she might run into somebody that she had just interviewed with.

—L. Hightower, Testimony from Jackson, Michigan.

Michigan Department of Civil Rights. "Report on LGBT Inclusion Under Michigan Law." January 28, 2013.



*Children are disadvantaged* by discrimination faced by their parents and same-sex parents are fearful that without recourse for discrimination, they may not be able to care for their children if they lose their jobs. Parents testified to the heartache they experience worrying that their LGBT children would encounter bullying, harassment, and discrimination. Others lamented the division their families faced when their [LGBT] children migrated to live somewhere they felt safer and more welcomed.

Michigan Department of Civil Rights. "Report on LGBT Inclusion Under Michigan Law." January 28, 2013.



# APPENDICES

## High-Level Recommendations by Actor

High-Level Recommendations for Federal Government, State Governments and Employers									
The Problem	Discrimination Without Legal Protection Makes it Harder to Find and Keep a Good Job			Fewer Benefits and More Taxes Put LGBT Workers and Their Families at Risk					
	Hiring Bias/ Discrimination	On-the-Job Inequality and Unfairness	Wage Gaps and Penalties	Unequal Access to Health Benefits	Denial of Family and Medical Leave	Denial of Spousal Retirement Benefits	Unequal Family Protections When Worker Dies or is Disabled	Higher Tax Burden for LGBT Families	Inability to Sponsor Families for Immigration
<b>FEDERAL SOLUTIONS</b>									
Congress should ban public and private employment discrimination nationwide on the basis of gender identity/expression and sexual orientation.	✓	✓							
The President should require that federal contractors prohibit discrimination on the basis of gender identity/expression and sexual orientation.	✓	✓							
The federal government and its agencies should clarify that existing executive orders that protect based on sex also include protections for transgender employees.	✓	✓	✓						
Congress should increase protections against wage discrimination nationwide.			✓						
The federal government and its agencies should ensure efficient case processing by the EEOC.									
The federal government and its agencies should expand research and data collection on LGBT workers.	✓	✓	✓						
Congress should repeal the federal Defense of Marriage Act (DOMA) and/or pass legislation like the Respect for Marriage Act.				✓	✓	✓	✓	✓	✓
Congress should revise federal laws to ensure that self-insured employers provide equal access to family health benefits for all workers' partners and dependents, regardless of marital status or legal status of parent-child relationship.				✓					
Congress and the President should extend equal family health benefits to all federal government employees, including LGBT workers.				✓					

High-Level Recommendations for Federal Government, State Governments and Employers									
The Problem	Discrimination Without Legal Protection Makes it Harder to Find and Keep a Good Job			Fewer Benefits and More Taxes Put LGBT Workers and Their Families at Risk					
	Hiring Bias/ Discrimination	On-the-Job Inequality and Unfairness	Wage Gaps and Penalties	Unequal Access to Health Benefits	Denial of Family and Medical Leave	Denial of Spousal Retirement Benefits	Unequal Family Protections When Worker Dies or is Disabled	Higher Tax Burden for LGBT Families	Inability to Sponsor Families for Immigration
FEDERAL SOLUTIONS (continued)									
Congress should ensure equal access to COBRA health insurance continuation benefits for any child or adult who is eligible for coverage under an employer's health plan.				✓					
Congress should end unfair federal taxation of family health benefits for LGBT families.				✓				✓	
Congress should allow LGBT workers to use pre-tax savings for out-of-pocket expenses for family members.				✓				✓	
Congress should revise the federal Family and Medical Leave Act (FMLA) to broaden the definition of covered caregivers.					✓				
The Department of Health and Human Services should clarify that the federal FMLA allows leave for transgender workers seeking transition-related care.					✓				
Congress should expand Social Security retirement benefits to include same-sex spouses and partners.						✓			
Congress should expand mandates for survivor benefits for pensions/defined-benefit plans.						✓			
Federal tax law should treat "non-spouse" beneficiaries of inherited IRAs in the same manner as spousal beneficiaries.						✓			
Congress should ensure equal access to earned Social Security death and disability benefits for permanent partners and any children for whom the worker functions as a parent.							✓		
Congress should provide equal access to federal tax relief for LGBT workers and their families.								✓	

High-Level Recommendations for Federal Government, State Governments and Employers									
The Problem	Discrimination Without Legal Protection Makes it Harder to Find and Keep a Good Job			Fewer Benefits and More Taxes Put LGBT Workers and Their Families at Risk					
	Hiring Bias/ Discrimination	On-the-Job Inequality and Unfairness	Wage Gaps and Penalties	Unequal Access to Health Benefits	Denial of Family and Medical Leave	Denial of Spousal Retirement Benefits	Unequal Family Protections When Worker Dies or is Disabled	Higher Tax Burden for LGBT Families	Inability to Sponsor Families for Immigration
<b>FEDERAL SOLUTIONS (continued)</b>									
Congress should pass legislation allowing U.S. citizens to sponsor a “permanent partner” for the purposes of immigration.									✔
Congress should enact comprehensive immigration reform that includes avenues to legal status for undocumented workers already living in the U.S.									✔
All relevant federal agencies and departments should take immediate action to prevent unnecessary discrimination against LGBT immigrants.									✔
<b>STATE AND LOCAL SOLUTIONS</b>									
State lawmakers should ban employment discrimination in states without current protections for gender identity/expression and/or sexual orientation.	✔	✔							
State governors should require that state and local government employers and contractors prohibit discrimination on the basis of gender identity/expression and sexual orientation.	✔	✔	✔						
In the absence of nationwide and state-level protections, local lawmakers should take local action to protect LGBT workers.	✔	✔							
State lawmakers should extend the freedom to marry to same-sex couples in all states.				✔	✔	✔	✔	✔	✔
State lawmakers should pass comprehensive parental recognition laws at the state level to help LGBT workers gain legal ties to their children.				✔			✔	✔	✔

High-Level Recommendations for Federal Government, State Governments and Employers									
The Problem	Discrimination Without Legal Protection Makes it Harder to Find and Keep a Good Job			Fewer Benefits and More Taxes Put LGBT Workers and Their Families at Risk					
The Barriers	Hiring Bias/ Discrimination	On-the-Job Inequality and Unfairness	Wage Gaps and Penalties	Unequal Access to Health Benefits	Denial of Family and Medical Leave	Denial of Spousal Retirement Benefits	Unequal Family Protections When Worker Dies or is Disabled	Higher Tax Burden for LGBT Families	Inability to Sponsor Families for Immigration
STATE AND LOCAL SOLUTIONS (continued)									
State lawmakers should revise state insurance laws to ensure that LGBT workers can obtain individual health insurance (whether purchased privately or provided through employers) that meets their healthcare needs.				✓					
State lawmakers should revise state laws to ensure that fully insured employers provide equal access to family health benefits for all workers' partners and dependents, regardless of marital status or legal status of parent-child relationship.				✓					
State and local lawmakers should extend equal family health benefits to all state and local government employees, including LGBT workers.				✓					
State lawmakers should end unfair state taxation of family health benefits for LGBT workers.				✓				✓	
State lawmakers should revise or pass state medical and family leave laws to broaden the definition of covered caregivers, include any child for whom a worker acts as a parent, and explicitly include transgender workers.					✓				



High-Level Recommendations for Federal Government, State Governments and Employers									
The Problem	Discrimination Without Legal Protection Makes it Harder to Find and Keep a Good Job			Fewer Benefits and More Taxes Put LGBT Workers and Their Families at Risk					
	Hiring Bias/ Discrimination	On-the-Job Inequality and Unfairness	Wage Gaps and Penalties	Unequal Access to Health Benefits	Denial of Family and Medical Leave	Denial of Spousal Retirement Benefits	Unequal Family Protections When Worker Dies or is Disabled	Higher Tax Burden for LGBT Families	Inability to Sponsor Families for Immigration
<b>EMPLOYER SOLUTIONS</b>									
Employers should send a clear message that all workplace discrimination is prohibited at their workplace.	✔	✔	✔						
Employers should dispel myths/ stereotypes and increase awareness through workforce diversity training.	✔	✔							
Employers should encourage employees to voice workplace issues, concerns, and opportunities.	✔	✔	✔						
Employers should expand their talent pool by targeting outreach to potential LGBT employees.	✔								
Employers should offer affordable health insurance benefits, including equal family coverage for the partners of all employees and their dependents, regardless of marital status or legal status of parent-child relationship.				✔					
Employers should consider providing COBRA-equivalent coverage.				✔					
Employers should consider helping LGBT workers pay for any extra tax burden incurred when receiving family health benefits.				✔				✔	
Employers should expand leave options beyond existing state and federal mandates.					✔				
Employers should consider offering survivor benefits to the same-sex spouses and partners of LGBT workers.						✔			
Employers should offer alternative death and disability options, such as life and disability insurance to workers.							✔		

## Interviewees

For this report, MAP interviewed more than 55 researchers, scholars, economists, attorneys, and organization leaders who provided thought leadership, issue perspectives, strategic input and directional counsel. We gratefully recognize their willingness to share their time and expertise.

- **Tico Almeida**, Founder and President, Freedom to Work
- **M.V. Lee Badgett**, Policy Director, The Williams Institute
- **Pat Baillee**, Director of Training, Out & Equal Workplace Advocates
- **Michael J. Brewer**, Programs and Policy Manager, National Black Justice Coalition
- **Crosby Burns**, Policy Analyst, LGBT Research and Communications Project, Center for American Progress
- **Rhett Buttle**, Vice President, External Affairs, Small Business Majority
- **Edward Carlson**, Policy Analyst, Civil Rights Project, National Council of La Raza
- **Brent Chamberlain**, Executive Director, Pride at Work Canada
- **Wendy Chun-Hoon**, District of Columbia Director, Family Values @ Work
- **Ryan Clayton**, Immigration Researcher
- **Judith M. Conti**, Federal Advocacy Coordinator, National Employment Law Center
- **Andrew Cray**, Research Associate for LGBT Progress, Center for American Progress
- **Clair Farley**, Manager of Employment Services, Director of Transgender Economic Empowerment Initiative, San Francisco LGBT Community Center
- **Deena Fidas**, Deputy Director, Workplace Project, Human Rights Campaign
- **Carrie Fox**, Family Support Organizer, Illinois Coalition for Immigrant and Refugee Rights
- **Kathryn Friedman**, Founding Partner, Pluribus Consulting
- **Gary J. Gates**, Williams Distinguished Scholar, The Williams Institute
- **Heidi Bruins Green**, Jamison Green and Associates; Out & Equal Bisexual Advisory Committee
- **Brad Hoffman**, Director of ABA Section of Labor & Employment Law, American Bar Association
- **Joshua Hoyt**, Chief Strategy Executive, Illinois Coalition for Immigrant and Refugee Rights
- **Lisalynn R. Jacobs**, Vice President for Government Relations, Legal Momentum
- **Michael R. Jarecki**, U.S. Immigration and Nationality Law, The Law Office of Michael R. Jarecki
- **Janelle Jones**, Research Assistant, Center for Economic and Policy Research
- **J. Kevin Jones, Jr.**, Chief Development Officer, Out & Equal Workplace Advocates
- **Jeff Krehely**, Chief Foundation Officer, Human Rights Campaign Foundation
- **Julie A. Kruse**, Policy Director, Immigration Equality
- **Sharon J. Lettman-Hicks**, Executive Director & Chief Executive Officer, National Black Justice Coalition
- **Louis Lopez**, Deputy Chief, Employment Litigation Section, Civil Rights Division, U.S. Department of Justice
- **Nancy Mace**, Director of Community Empowerment, Out & Equal Workplace Advocates
- **Jared Make**, Staff Attorney, A Better Balance
- **Lisbeth Melendez Rivera**, Executive Director, Unid@s
- **Matt Nosanchuk**, Senior Advisor to Assistant Attorney General for Civil Rights, U.S. Department of Justice
- **Judi O'Kelley**, Deputy Director of Development and Director of Law School Development, Lambda Legal
- **Ann O'Leary**, Senior Fellow, CAP and Director of Children and Families Program at Center for Next Generation, CAP/Center for the Next Generation
- **Darren Phelps**, Executive Director, Pride@Work
- **William Pritchett**, Organizational Equity Director and LGBT Program Director, Service Employees International Union

- **Rob Randhava**, Senior Counsel, Leadership Conference on Civil and Human Rights
- **Susan Rees**, Policy Director, Wider Opportunities for Women
- **Tiffany Richards**, LGBT Program Director, Service Employees International Union
- **Allyson Robinson**, Executive Director, Outserve-SLDN
- **Maya Rupert**, Federal Policy Director, National Center for Lesbian Rights
- **John Schmitt**, Senior Economist, Center for Economic and Policy Research
- **Rinku Sen**, President and Executive Director, publisher Colorlines, Applied Research Center
- **Vicki Shabo**, Director of Work and Family Programs, National Partnership for Women and Families
- **Christine Silva**, Senior Director of Research, Catalyst
- **Mike Steinberger**, Assistant Professor of Economics, Pomona College
- **Ronald J. Triche**, Director, Trucker Huss, APC
- **Matt Unrath**, National Program Director, Wider Opportunities for Women
- **Connie Utada**, State Legislative Director, National Center for Lesbian Rights
- **Daniel Vail**, Office of General Counsel/Appellate Services, U.S. Equal Employment Opportunity Commission
- **Reyna Wences**, Immigration Advocate
- **Joan C. Williams**, Founding Director, Center for WorkLife Law
- **Andre Wilson**, Senior Associate, Jamison Green and Associates
- **Janson Wu**, Staff Attorney, Gay & Lesbian Advocates & Defenders

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## The Broken Bargain: Fewer Benefits and More Taxes

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## Putting It All Together

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