



Gay and Transgender Discrimination in the Public Sector

Why It's a Problem for State and Local Governments,
Employees, and Taxpayers

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September 2012

Introduction and summary

There are approximately 1 million gay or transgender individuals in America today working in state, local, or municipal government.¹ They are firefighters, teachers, police officers, nurses, librarians, child-care providers, sanitation workers, and more. These public servants care for our children, protect our communities, clean our streets, and keep America functioning.

Unfortunately, far too many gay and transgender public-sector employees arrive at work each day fearing that they may lose their job due to discrimination. Moreover, these workers often have little or no legal recourse when discrimination occurs. Research and data reveal that gay and transgender employees experience rates of discrimination on the job comparable to other protected groups, but they lack the same legal protections afforded to those groups.

Rather than being evaluated on their skills, qualifications, and ability to contribute on the job, gay and transgender workers are all too often not hired, not promoted, or, in the worst cases, fired from their jobs based solely on their sexual orientation and gender identity—characteristics completely irrelevant to job performance. Sadly, for gay and transgender workers discrimination results in significant job insecurity and makes it more difficult for them to make ends meet and provide for their families.

In addition, unfair laws and policies leave many of these employees without the same access to workplace benefits that their straight and nontransgender counterparts currently enjoy. This includes employer-sponsored health insurance benefits, which protect them and their families during times of illness. Given that these benefits are a crucial component of employee compensation, the result is unequal pay for equal work for gay and transgender workers.

In short, discrimination and unequal treatment on the job inflicts significant economic harm on gay and transgender public-sector employees and their families. This is not, however, only a problem for gay and transgender workers themselves. It also presents problems for running an efficient and effective public sector.

Discrimination against gay and transgender workers introduces costly inefficiencies and thereby imposes significant financial harm on government entities. Discrimination forces out the best and the brightest employees, minimizes productivity, introduces turnover-related costs, and exposes governments to potentially costly litigation. At a time when states are facing severe budget shortfalls, discrimination simply does not make financial sense.

What's worse, these costs come at the direct expense of the taxpayer. Americans deserve an efficient and effective government that acts as a responsible administrator of taxpayer funds. In allowing discrimination to go unchecked, the public sector fails to meet that responsibility. Simply put, it is financially irresponsible to evaluate workers based on any characteristics that are not directly relevant to job performance, especially at a time when state and local budgets are in the red.

Moreover, state governments in particular have a responsibility as some of the nation's largest employers to ensure that all of their workers have protections against unfair treatment, including gay and transgender workers. On average, state governments employ six times as many workers than the next-largest employer in a given state and employ three times as many workers as the combined workforce of the next four largest employers in that state.² Given the size of the labor force working for state governments, state lawmakers have a responsibility to institute commonsense policies that level the playing field for gay and transgender public-sector workers.

The good news is that many states have done just that. Across the country, states and cities have passed laws to grant equal workplace protections and benefits to gay and transgender workers. This includes nondiscrimination laws that prohibit discrimination on the basis of sexual orientation and gender identity. It includes laws that extend equal workplace benefits to workers' same-sex partners and their family members. And it includes laws that ensure transgender employees are not denied basic coverage due to harmful and discriminatory exclusions built into health insurance plans.

Laws are not the only available option. Where local, state, and federal legislators have failed to pass these types of laws, many mayors and governors have taken administrative action to level the playing field for gay and transgender public-sector workers. Governors have issued executive orders requiring nondiscrimination in certain sectors of state employment on the basis of sexual orientation and gender identity. Others have taken similar administrative action to extend equal partner benefits to state employees with same-sex partners.

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Despite this progress, there is more work to be done. Only 43 percent of state employees work in a state with a law prohibiting discrimination based on sexual orientation. Only 31 percent work in a state with a law also prohibiting discrimination based on gender identity. This means that the majority of Americans working for state governments still do not have statutory protections against discrimination based on sexual orientation and gender identity. When it comes to benefits, a majority of state employees do not work for a state that offers equal partner health insurance. Only 47 percent of state employees with same-sex partners have access to equal workplace benefits, compared to 53 percent who do not.

All gay and transgender public-sector workers deserve to be treated fairly in the workplace, not just those who are fortunate enough to live in states or cities with gay- and transgender-inclusive policies. To protect these workers from discrimination, Congress should pass the Employment Non-Discrimination Act to ensure that gay and transgender workers in the public and private sector in all 50 states and the District of Columbia are afforded substantive legal protections from employment discrimination. For their part, states should continue to enact workplace nondiscrimination laws, as well as extend relationship recognition rights to same-sex couples (for example, pass marriage equality legislation) to ensure equal access to workplace benefits.

But until these and other steps are taken, gay and transgender workers in state and local governments will continue to experience discrimination and unequal treatment on the job and will remain unable to take legal action to protect themselves and their families.

In this report, we first examine the problem of discrimination and unequal treatment in benefits for gay and transgender public-sector workers. Secondly, we explain why discrimination and unequal treatment is a problem—not only for gay and transgender employees and their families, but also for taxpayers and for state and local governments. We then detail the landscape of existing laws and policies that level the playing field for gay and transgender public-sector workers. And lastly, we outline commonsense solutions that policymakers at the municipal, state, and federal level should take to combat discrimination and ensure the fair and equal treatment of all employees, gay or straight, transgender or not.

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