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# LGBT Workplace Discrimination: A guide to State and Federal Protections for LGBT Employees

Lauren Tignor

*Georgia State University College of Law*

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## LGBT Workplace Discrimination: A guide to State and Federal Protections for LGBT Employees

### Guide Information

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#### About the Author

Lauren Nicole Tignor Graduated from [Georgia State University College of Law](#) in May 2010. While attending GSU Law, Ms. Tignor worked for the [Law Office of Adrienne Hobbs](#) as a Law Clerk. She also interned at the [Georgia Capital Defenders'](#) Office in the Summer of 2009. Ms. Tignor Served as the Vice President of the [GSU Association of Women Law Students](#) and the Secretary of the [GSU Business and Law Society](#). During law school, Ms. Tignor developed an interest in Family Law, Employment Law, and Sexual Orientation and the law issues. In 2010, Ms. Tignor recieved the Custer-Tuggle Excellence in Family Law Award from the [American Academy of Matrimonial Lawyers](#). Before attending law school, Ms. Tignor graduated from The [University of Georgia](#) with a Bachelor of Arts in Sociology and a minor in Psychology. For more information about this bibliography please contact [Associate Dean for Library and Information Services Nancy P. Johnson](#) via e-mail at [njohnson@gsu.edu](mailto:njohnson@gsu.edu).

#### Disclaimer

This research guide is a starting point for a law student or an attorney to research LGBT workplace discrimination protections. LGBT rights are currently an issue receiving significant attention in the United States, and as such there is considerable discussion regarding the need for workplace anti-discrimination statutes. This is a rapidly emerging area of the law. It is imperative that one Shepardize or KeyCite all cases and statutes before relying on them for it is highly likely that new information and precedent will be available. This guide should not be considered as legal advice or as legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law library or consult an attorney.

#### Topic Overview

Despite being a growing subsection of the American workforce, many openly Lesbian, Gay, Bisexual, and Transgender (LGBT) employees report experiencing regular discrimination and harassment in the workplace. Federal Law has been reluctant to respond to this issue. Title VII of the Civil Rights Act of 1964 is the main current Federal anti-workplace discrimination statute. Title VII makes it unlawful for a covered employer to discriminate on the basis of Race, Sex, National Origin, or Religion. Sexual Orientation and Gender Identity are not protected classes under Title VII. Many advocate that Title VII should be amended to include Sexual Orientation and Gender Identity as protected classes.

There are some limited protections currently in place for LGBT employees. Some courts have allowed LGBT plaintiffs to bring "sex stereotyping" claims under Title VII if they can show they were discriminated against for failure to conform to traditional notions of masculinity or femininity. However, other courts have held that LGBT plaintiffs should not be allowed to "bootstrap" protection for sexual orientation into Title VII.

In addition, a growing number of state and local governments have enacted legislation prohibiting discrimination on the basis of sexual orientation

and Gender Identity. There is also proposed Federal Legislation that would prohibit discrimination on the basis of Sexual Orientation and Gender Identity.

This guide gives a general overview of the "patchwork" of legal avenues currently available for LGBT plaintiffs who have suffered discrimination in the workplace and examines the differing approaches that Circuit and District Courts have taken on this issue.

### Scope of the Topic

This guide is limited to a discussion of Title VII and State Statutes prohibiting sexual orientation and gender identity discrimination in private employment. Discrimination by public employers is beyond the scope of this guide.

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## Primary Sources

### Federal Anti Discrimination Legislation

#### **Title VII of the Civil Rights Act of 1964: 42 USC § 2000e-2**

##### (a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

##### (b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin

The United States Code can be found, free of charge, online from the [Cornell Legal Information Institute](#).

### Proposed Federal Legislation

The Employment Non-Discrimination Act of 2009, H.R.3017, 11th Cong. (2009).

There is currently proposed legislation to protect LGBT individuals from employment discrimination. This legislation largely mirrors Title VII. H.R. 3017 was introduced by Rep. Barney Frank on June 24th, 2009. As of April 2010 (when this guide was published) the last major action was on 9/23/2009, when committee hearings on the bill were held.

A summary of this bill is as follows:

Employment Non-Discrimination Act of 2009 - Prohibits employment discrimination on the basis of actual or perceived sexual orientation or gender identity by covered entities (employers, employment agencies, labor organizations, or joint labor-management committees). Prohibits preferential treatment or quotas. Allows only disparate treatment claims.

Prohibits related retaliation.

Makes this Act inapplicable to: (1) religious organizations; and (2) the relationship between the United States and members of the Armed Forces. Declares that this Act does not repeal or modify any federal, state, territorial, or local law creating a special right or preference concerning employment for a veteran.

Provides for the construction of this Act regarding: (1) enforcement by employers of rules and policies; (2) sexual harassment; (3) certain shared facilities such as showers or dressing facilities; (4) construction of new or additional facilities; (5) dress and grooming standards; and (6) provision of employee benefits to married vs. unmarried couples. Declares that, in this Act, "married" refers to a legal union between one man and one woman.

Prohibits the Equal Employment Opportunity Commission (EEOC) from collecting statistics from covered entities on actual or perceived sexual orientation or gender identity or compelling the collection by covered entities of such statistics.

Provides for enforcement, including giving the EEOC, the Librarian of Congress, the Attorney General, and U.S. courts the same enforcement powers as they have under specified provisions of the Civil Rights Act of 1964, the Government Employee Rights Act of 1991, and other specified laws.

Allows actions and proceedings, subject to exception, against the United States and the states.

For more detailed information on H.R. 3017, visit the [Thomas Library of Congress](#) website.

### State Anti Discrimination Legislation

Recently, many states have enacted anti LGBT workplace discrimination statutes. As of April 2010, twenty one states and the District of Columbia prohibit discrimination on the basis of sexual orientation. Of these, thirteen states also prohibit discrimination on the basis of gender identity in addition to sexual orientation

**States that explicitly prohibit discrimination on the basis of Sexual Orientation only:** Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Nevada, New Hampshire, New York, and Wisconsin.

**Connecticut:**

Conn. Gen. Stat. § 46a-81c (sexual orientation)

**Delaware:**

19 Del. C. § 711 (sexual orientation)

**Hawaii:**

H.R.S. § 378-2 (sexual orientation)

**Maryland:**

Md. Ann. Code art. 49B, §§ 14, 1632 (sexual orientation)

**Massachusetts:**

5 M.R.S.A. § 4552, 5 M.R.S.A. § 4553(9-C) and (10), 5 M.R.S.A. § 4571, 5 M.R.S.A. § 4572 (sexual orientation and gender identity)

**Nevada:**

Nev. Rev. Stat. Ann. § 233.010, Nev. Rev. Stat. Ann. § 613.330 (sexual orientation)

**New Hampshire:**

N.H. Rev. Stat. Ann. § 354-A:6 (sexual orientation)

**New York:**

NY CLS Exec. § 296 (sexual orientation)

**Wisconsin:**

Wis. Stat. § 111.31 (sexual orientation)

**States that prohibit discrimination on the basis of Sexual Orientation and gender identity:** California, Colorado, the District of Columbia, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington.

**California:**

Cal. Gov. Code § 12940 (sexual orientation and gender identity), Cal. Gov. Code § 12926(p) (gender identity)

**Colorado:**

Colo. Rev. Stat. 24-34-402 (sexual orientation and gender identity), Colo. Rev. Stat. 24-34-401(7.5) (gender identity)

**District of Columbia:**

D.C. Code § 2-1402.11 (sexual orientation and gender identity)

**Illinois:**

§ 775 ILCS 5/1-102(A), § 775 ILCS 5/2-102(A), §775 ILCS 5/1-103(O-1) (sexual orientation and gender identity)

**Iowa:**

Iowa Code § 216.6 (sexual orientation and gender identity)

**Maine:**

M.G.L. c. 151B, § 4(1), (3) (sexual orientation)

**Minnesota:**

Minn. Stat. § 363A.02, Minn. Stat. § 363A.08, Minn. Stat. § 363A.03, Subd. 44 (sexual orientation and gender identity)

**New Jersey:**

N.J. Stat. § 10:2-1, N.J. Stat. § 10:5-3, N.J. Stat. § 10:5-4, N.J. Stat. § 10:5-12 (sexual orientation and gender identity)

**New Mexico:**

N.M. Stat. Ann. § 28-1-7 (sexual orientation and gender identity)

**Oregon:**

ORS § 659A.006, ORS § 659A.030 (sexual orientation and gender identity), ORS § 174.100 (gender identity) (as amended by 2007 Oregon Laws Ch. 100 (S.B. 2))

#### **Rhode Island:**

R.I. Gen. Laws § 28-5-3, R.I. Gen. Laws § 28-5-7 (sexual orientation and gender identity), R.I. Gen. Laws § 28-5-6(15) (sexual orientation), R.I. Gen. Laws § 28-5-6(10) (gender identity)

#### **Virginia:**

21 V.S.A. § 495 (sexual orientation and gender identity)

#### **Washington:**

Rev. Code Wash. Ann. § 49.60.030 and § 49.60.180 (sexual orientation and gender identity)

### Supreme Court Cases

#### **Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998).**

Supreme Court held that Plaintiffs who suffer same-sex sexual harassment can state a claim under Title VII, so long as they can prove that the harassment was "because of sex." Court stated that there are three ways to establish that the harassment was "because of sex": 1. The harasser is motivated by sexual desire, 2. The harasser is motivated by "general hostility" toward persons of the plaintiff's sex or 3. The plaintiff can show that members of the opposite sex were treated more favorably in the workplace.

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

Female Employee of Price Waterhouse alleged that she had been denied a promotion to Partner because her employer suggested that she was "too masculine." Employer informed her she should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." Plaintiff alleged that Title VII's prohibition against discrimination "because of sex" should extend to claims where an Employer takes adverse employment action due to the plaintiff's failure to conform to stereotypical notions of gender appropriate behavior. Court held that an employee can state a cognizable claim under Title VII where such "gender stereotyping" occurs.

Some courts have extended this reasoning to allow claims by LGBT employees who suffer adverse employment action because of their failure to conform to gender stereotypes. Other courts have denied such claims, reasoning that Title VII's "because of sex" provision was not intended to protect employees who are harassed because of their status as gay, lesbian, or transgender.

### Circuit Court Cases

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

Plaintiff was demoted because of his dressing as a woman and his "ambiguous sexuality" and "insufficient masculinity" in the workplace. Court applied "gender stereotyping" theory and stated that transgendered plaintiff may state a claim under Title VII for his failure to conform to stereotypical "gender appropriate" behavior.

#### **Bibby v. Philadelphia Coca Cola Bottling Co., 260 F.3d 257 (3d Cir. 2001).**

Homosexual plaintiff brought Title VII claim after he was subjected to verbal assaults, anti-gay slurs, and name calling by coworkers. Court recognized that "gender stereotyping" claims are valid claims under Title VII. Nonetheless, the court dismissed Plaintiff's claim because the evidence showed that harassment was based on the Plaintiff's "sexual orientation" rather than "gender". Court denied Plaintiffs argument that gay and lesbian plaintiffs would suffer an extra burden in proving that their harassment was not due to their sexual orientation.

#### **Dawson v. Bumble and Bumble, 398 F.3d 211 (2d Cir. 2005).**

Lesbian plaintiff alleged that she suffered adverse employment action because she appeared "more like a man than a woman" and because she was gay. Court held that she failed to state a claim for gender stereotyping under Title VII because her claim was intertwined with sexual orientation. Court Stressed that a gender stereotyping claim should not be used to "bootstrap protection for sexual orientation into Title VII."

#### **Doe v. Belleville, 119 F.3d 563 (7th Cir. 1997).**

Court noted that "a man who is harassed because his voice is soft, his physique is slight, his hair long, or because in some other respect he exhibits his masculinity in a way that does not meet his coworkers' idea of how men are to appear and behave is harassed 'because of his sex'".

#### **Nichols v. Azteca Restaurant Enterprises, 256 F.3d 864 (9th Cir. 2001).**

Plaintiff brought Title VII gender stereotyping claim because his coworkers referred to him as "she", berated him for not having sex with a female friend, and called him vulgar names including "faggot". The court held that same sex harassment based upon notions that a man is not "masculine enough" is prohibited under Title VII.

**Kiley v. American Society for the Prevention of Cruelty to Animals, 2008 WL 442468.**

Plaintiff brought Title VII claims alleging she was discriminated based upon her sexual orientation and her failure to conform to gender stereotypes. Court held that plaintiff had no cognizable claim, noting that sexual orientation is not a protected class under Title VII.

**Prowel v. Wise Business Forms, 579 F.3d 285 (3d Cir. 2009).**

Homosexual plaintiff brought gender stereotyping claim, alleging that coworkers called him "princess" and "rosebud", mocked him because of his effeminate mannerisms and sexual orientation, and placed inappropriate "gifts" of a tiara and lubricant in his workspace. Court held that plaintiff's claim, though at least based partially on his sexual orientation, must be allowed to proceed under Title VII. The Court noted: "There is no basis in the statutory or case law to support the notion that an effeminate *heterosexual* man can bring a gender stereotyping claim while an effeminate *homosexual* man may not. As long as the employee-regardless of his or her sexual orientation-marshals sufficient evidence such that a reasonable jury could conclude that harassment or discrimination occurred 'because of sex,' the case is not appropriate for summary judgment."

**Rene v. MGM Grand Hotel, Inc., 305 F.3d 1061 (9th Cir. 2002) (en banc) (Pregerson, J. concurring)**

Homosexual plaintiff brought Title VII claim alleging that coworkers harassed him based mainly on his sexual orientation. Coworkers blew him kisses, called him names, and physically assaulted him, grabbing his crotch and buttocks. Concurring judge noted that :the repeated testimony that his co-workers treated Rene, in a variety of ways, like a woman constitutes ample evidence of gender stereotyping."

**Simonton v. Runyon, 232 F.3d 33 (2d Cir. 2000).**

Homosexual plaintiff brought Title VII claim after he suffered particularly egregious abuse by coworkers. Coworkers called him vulgar names, posted pornographic pictures in his workspace, posted notes with his name and the names of celebrities who had died of HIV in the office bathroom, and sent pornographic magazines to his home. Court held that while coworkers' conduct was "morally reprehensible", plaintiff had no cause of action because Title VII does not prohibit harassment based on sexual orientation.

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

Transgendered police lieutenant brought Title VII claim, alleging that he was suspended from employment based upon his employer's belief that his mannerisms and appearance were not masculine enough. The Court specifically addressed the argument that the plaintiff's claim should be barred because he was "transexual." The court stated that "[s]ex stereotyping based on a person's gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior; a label, such as 'transsexual,' is not fatal to a sex discrimination claim where the victim has suffered discrimination because of his or her gender non-conformity."

**Vickers v. Fairfield Med. Ctr., 453 F.3d 757 (6th Cir. 2006).**

Male homosexual plaintiff brought Title VII claim after his coworkers made various demeaning and vulgar comments toward him, physically assaulted him, and took photographs while a coworker forcibly simulated sex acts on him. Court held that he failed to state a claim under Title VII, since the coworker's actions were based upon his sexual orientation rather than his sex. The court noted that "[u]ltimately, recognition of Vickers' claim would have the effect of de facto amending Title VII to encompass sexual orientation as a prohibited basis for discrimination. In all likelihood, any discrimination based on sexual orientation would be actionable under a sex stereotyping theory if this claim is allowed to stand, as all homosexuals, by definition, fail to conform to traditional gender norms in their sexual practices."

## District Court Cases

**Creed v. Family Express Corp., 2007 WL 2265630 (N.D. Ind. 2007).**

Male transgender employee was told by employer that he could no longer dress or present as a female in the workplace. Plaintiff brought suit when employer eventually fired him for presenting as a woman. Court held that Title VII gender stereotyping claim was valid because the employer's action was based on the plaintiff's failure to conform to male stereotypes.

**EEOC v. Family Dollar Store, Inc., 2008 WL 4098723 (N.D. Ga. 2008).**

Homosexual plaintiff brought Title VII claim, alleging that coworkers made vulgar comments toward him, called him names such as "half female" and taunted him by asking him whether he "use[d] tampons". Court held plaintiff had no cognizable claim under Title VII, since the comments were directed primarily at his sexual orientation rather than based on gender stereotypes.

**Lopez v. River Oaks Imaging and Diagnostic Group, Inc., 542 F.Supp.2d 653 (S.D. Tex. 2008).**

Transgendered plaintiff argued that employer rescinded her offer upon learning of her Transgender status. The Court held that plaintiff stated a cognizable claim under Title VII. The Court noted that Title VII and the Price Waterhouse gender stereotyping theory "do not make any distinction between a transgendered litigant who fails to conform to traditional gender stereotypes and an 'effeminate' male or 'macho' female."

**Love v. Motiva Enterprises, LLC, 2008 WL 4286662 (E.D. La. 2008).**

Plaintiff alleged that coworker physically assaulted her by placing her hands under plaintiff's bra and panties, rubbing her breasts and crotch on plaintiff, trying to kiss, hug and massage plaintiff. Plaintiff also alleged that coworker called her several names, including a "sorry excuse for a woman" and a "failure as a woman." Court held that plaintiff did not state a gender stereotyping claim under Title VII, though plaintiff argued that

this harassment was due to her failure to conform to the stereotype of a "liberated, physically fit woman."

**McMullen v. Southern California Edison, 2008 WL 4948664 (C.D. Cal. 2008).**

Plaintiff was harassed by coworkers because of his effeminate appearance, told he was going to hell because of his sexual orientation, and forced to view sexually explicit materials. Defendants argued that Title VII did not apply because the plaintiff was harassed not based on sex, but "because he was gay" and "because of his lifestyle." Court rejected this argument, stating: that the plaintiff "certainly allege[d] harassment based on being effeminate and not conforming to male stereotypes. This is sufficient to state a claim under Title VII."

**Taylor v. H.B. Fuller Co., 2008 WL 4647690 (S.D. Ohio 2008).**

Plaintiff, a homosexual man, was physically assaulted on numerous occasions, including one incident where a coworker grabbed his genitals, and another where a coworker came up behind him and simulated a sex act by "humping" plaintiff. Coworkers also forced him to view pornographic images and called him names, including anti-gay slurs. Court held that although such behavior was "deplorable," plaintiff failed to state a claim because the harassment was based on his perceived sexual orientation rather than his gender.

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## Secondary Sources

### Law Reviews and Other Periodical Sources

**Keith J. Hilzendeger, *Walking Title VII's Tightrope: Advice for Gay and Lesbian Title VII Plaintiffs*, 13 LSEX 705 (2004).**

This article discusses the lessons that LGBT plaintiffs can learn from the 9th Circuit's 2002 decision, *Rene v. MGM Grand Hotel*. The author discusses the three theories relied upon by the en banc court in this case. He further offers tips for LGBT employees seeking to bring a Title VII "sex stereotyping" claim.

**Todd Brower, *Social Cognition "At Work": Schema Theory and Gay Identity in Title VII*, 18 LSEX 1 (2009).**

This interesting article analyzes LGBT Title VII cases from the perspective of psychology's "schema theory." The schema theory is a theory developed by psychologists that purports that all people have schemas, or sets of ideas about particular people or situations that allow for more efficient cognitive processing. The author of this article discusses how what he calls "inappropriate schema-matching" in legal decisions have led to incongruent and erroneous legal precedent in Title VII LGBT sex discrimination cases.

**Zachary A. Kramer, *Heterosexuality and Title VII*, 103 Nw. U. L. Rev. 205 (2009).**

This article takes a novel perspective, analyzing Title VII jurisprudence from the perspective of heterosexuality, rather than homosexuality. The author examines the 2005 2nd Circuit decision in *Dawson v. Bumble and Bumble*, where the court held that plaintiffs should not be able to use the "sex stereotyping" theory to "bootstrap" protection for sexual orientation into Title VII. He points out that heterosexuals also have a sexual orientation, although this fact is largely ignored in society and in court opinions. He uses the Supreme Court's decision in *Meritor Savings Bank v. Vinson* to illustrate that heterosexual plaintiffs are allowed to proceed with a Title VII claim even when the harassment they suffered was due in part to their sexual orientation. He then argues that sexual orientation should be irrelevant for purposes of Title VII claims.

**L. Camille Hebert, *Transforming Transsexual and Transgender Rights*, 15 Wm. & Mary J. Women & L. 535 (2009).**

In this article, the author argues that "sex" under Title VII already offers the appropriate framework to successfully litigate a claim on behalf of a transgendered employee. Specifically, the author suggests that "sex" for purposes of Title VII should be defined "more broadly than courts have seen fit to do with respect to sexual minorities, because the term has been defined quite broadly, in other contexts, to extend protection not only based on biological characteristics but also on the basis of gender-linked traits."

**Kevin Schwin, *Toward a Plain Meaning Approach to Analyzing Title VII: Employment Discrimination Protection of Transsexuals*, 57 Clev. St. L. Rev. 645 (2009).**

In this article, the author argues that Transsexualism, the belief that a person's "true" gender is different than their biological sex, is an immutable characteristic, which the law should protect. His "plain meaning approach" suggests that "courts should operate on the premise that transsexuals are of the sex that they believe themselves to be, and then seek to determine whether they have been discriminated against because of sex."

### Practice Materials

**PLI: Nine Tips for representing LGBT employees in Discrimination Cases, *Litigation and Administrative Practice Course Handbook Series*, PLI Order No. 10836 (2007).**

This informative article discusses nine practical tips for getting a LGBT plaintiff's case in front of a jury. This is a very helpful guide that discusses the relevant case law and how to effectively use it to your LGBT client's advantage.

**PLI: Litigating Sexual Orientation and Gender Identity Issues: Developments from Coast to Coast, Litigation and Administrative Practice Course Handbook Series, PLI Order No. 10836 (2007).**

This article gives a short synopsis of recent relevant changes in the law regarding sexual orientation and gender identity issues. The focus is both state law and Title VII. The author also addresses practical issues, such as handling community prejudice and addressing the use of restrooms for transgender employees.

**PLI: Creating an Environment Conducive to Diversity: A Guide for Legal Employers on Eliminating Sexual Orientation Discrimination, Corporate Law and Practice Course Handbook Series, PLI Order No. 14119 (2008).**

This guide was written for the use of San Francisco legal employers in response to a request by the San Francisco Bar Association to adopt LGBT friendly employment practices. However, it could be useful to any employer wishing to eliminate discriminatory practices in the workplace. It provides suggestions for hiring policies, recruitment, retention, and provision of benefits to LGBT employees.

### **63 Am. Jur. Trials 127**

While not specifically focused on LGBT employment issues, this article provides a good overview of employment discrimination in general. One particularly helpful aspect of this article is that it gives tips and checklists for employment law practitioners.

## Legal Encyclopedias

### **53 Am. Jur. Trials 299**

This very informative article outlines the Title VII "sex stereotyping" theory articulated in the Supreme Court Case, Price Water House v. Cooper and gives tips on how to bring a claim under this theory. The "sex stereotyping" theory has been successfully employed by LGBT plaintiffs in some circuits to articulate a claim based upon employer's adverse actions due to the plaintiff's failure to conform to traditional notions of gender appropriate behavior.

### **45A Am. Jur. 2d Job Discrimination § 139**

This legal encyclopedia article provides a general overview of sexual orientation as a basis for protection from "sex" discrimination under Title VII.

### **45B Am. Jur. 2d Job Discrimination § 825**

This legal encyclopedia article provides a general overview of same sex sexual harassment under Title VII.

## ALR

**Robin C. Miller, Annotation, Federal and State Constitutional Provisions as Prohibiting Discrimination in Employment on Basis of Gay, Lesbian, or Bisexual Sexual Orientation or Conduct, 96 A.L.R. 5th 391 (2002).**

This annotation collects and analyzes the state and federal cases discussing whether employment discrimination on the basis of gay, lesbian, or bisexual sexual orientation or conduct violates a federal or state constitutional provision. This ALR was originally published in 2002, but has been updated on a weekly basis to include relevant recent case law.

**Robin C. Miller, Annotation, Validity, Construction, and application of state enactment, order, or regulation expressly prohibiting sexual orientation discrimination, 82 A.L.R. 5th 1 (2000).**

This annotation collects and analyzes the state and federal cases discussing the validity, construction, and application of state measures taken to prohibit discrimination on the basis of sexual orientation. These measures include state statutes, administrative regulations, and executive orders that expressly prohibit sexual orientation discrimination. This ALR was originally published in 2000, but has been updated on a weekly basis to include relevant recent case law.

## Books/Looseleaves/Treatises

The following publications are great resources for general information on LGBT rights and Title VII. These sources are all available with a subscription to Westlaw (login and password required).

**2 Susan M. Omilian and Jean P. Kamp, Sex-Based Employment Discrimination § 27:4 (West Group) (2009).**

This book is actually part of a 2 Volume set. In Volume 2, Chapter 27 the authors discuss the lack of Federal protection for LGBT employees. This chapter provides a great overview of the applicability of the "sex stereotyping" Title VII theory to LGBT employees. It also provides a



discussion of relevant case law under Title VII.

### **5 Emp. Coord. Employment Practices § 6:2, Sexual or Affectual Orientation Discrimination (2010).**

Employment Coordinator is a binder/looseleaf that contains key information on employment law, organized by topic. This section discusses sexual orientation as a basis for protection under Title VII and lists relevant case law.

### **L. Camille Hébert, 2 Empl. Privacy Law § 9:5, Discrimination Based on Sexual Orientation, (Revised Chapter in Employee Privacy Law) (West Group) (2004).**

This chapter of Employee Privacy Law provides an excellent overview of LGBT employment discrimination, including the causes, effects, and applicable legal theories for relief.

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## Interest Groups and Associations

### Interest Groups

#### [ACLU](#)

The ACLU's mission is "to wor[k] daily in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. The ACLU has several "projects" including the [LGBT Project](#). This project focuses on five key issue areas: Relationships, Youth and Schools, Parenting, Gender Identity, and [Discrimination in Employment and housing](#).

#### [National Gay and Lesbian Task Force:](#)

The mission of the National Gay and Lesbian Task Force is to "build the grassroots power of the lesbian, gay, bisexual and transgender (LGBT) community". The NGLTF has conducted a good deal of research on workplace discrimination issues for LGBT persons. The [Policy Institute](#) is the movement's premier think tank dedicated to "advancing equality for lesbian, gay, bisexual and transgender people." Of particular relevance, the NGLTF has compiled an ["issue map,"](#) a printable color map detailing the state statutes currently in place to protect LGBT employees.

For a searchable database of NGLTF's other research studies, click [here](#).

#### [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." Click [here](#) for the Center's positions on transgender discrimination issues.

#### [The Williams Institute: UCLA College of Law](#)

The Williams Institute is a national think tank, dedicated to researching and advancing sexual orientation and the law issues. Experts at the Williams Institute have authored dozens of public policy studies and law review articles, filed *amicus* briefs in key court cases, provided expert testimony at legislative hearings, been widely cited in the national media, and trained thousands of lawyers, judges and members of the public.

Each year, the Williams Institute sponsors programs to support its core objectives, including an annual speakers series, symposia, CLE classes for lawyers, and judicial trainings.

The Institute's annual speakers series brings leading academics, practitioners and scholars from across the country to UCLA to give presentations to the campus and Los Angeles communities. The Institute hosts an annual training for members of the bench and bar to increase the legal community's knowledge of sexual orientation law. It also organizes an interdisciplinary, roundtable conference to explore in-depth a current topic in sexual orientation law.

Each summer, the Institute funds at least one UCLA School of Law student to work for a nonprofit organization in the area of sexual orientation law.

The Williams Institute has conducted a large number of studies on workplace discrimination issues. For a searchable database of the Williams Institute's database of publications, click [here](#).

#### [Transgender Law and Policy Institute](#)

The Transgender Law and Policy Institute is a non-profit organization dedicated to engaging in effective advocacy for transgender people. The TLPI brings experts and advocates together to work on law and policy initiatives designed to advance transgender equality. The TLPI tracks current developments in legal and public policy issues affecting transgender people and their families, and writes summaries of these trends for activists, policymakers, and the media. The TLPI also provides legal, medical, and social science resources to attorneys and others advocating on behalf of transgender individuals. The TLPI has a good deal of free litigation, legislative, and education advocacy materials for use by other advocates for transgender people.

The TPLI has compiled a list of all U.S. jurisdictions (states, cities, and counties) that have enacted laws prohibiting discrimination against transgender individuals. To access this report, click [here](#).

## Research studies

A number of research studies show that LGBT employees experience significant workplace discrimination. These studies illustrate that LGBT employees report adverse employment action including harassment by coworkers and supervisors, demotions and lower wages and higher rates of unemployment than heterosexual persons.

The following are a list of pertinent studies:

**M. Lee Badgett, Brad Sears, Holning Lau, *Bias in the Workplace: Consistent evidence of sexual orientation and gender identity discrimination 1998-2008*, 84 Chi.-Kent L. Rev. 559 (2009).**

The Williams Institute compiled ten years worth of statistically significant research studies on the LGBT workplace experience. This article details the results of those studies. The authors conclude that LGBT workplace discrimination is a significant issue in today's society.

**Brad Sears, Mallory Christy, Nan Hunter, *Specific Examples of Employment Discrimination by State and Local Governments, 1980-Present* (2009).**

This Williams Institute study compiles specific examples of LGBT employment discrimination dating back to 1980. These examples were collected from court opinions, administrative complaints, academic journals, books, newspapers, and complaints made to community based organizations.

**Brad Sears, M. Lee Badgett, Christopher Ramos, *Evidence of Employment Discrimination on the Basis of Sexual Orientation and Gender Identity: Complaints Filed with State Enforcement Agencies 1999-2007* (2008).**

In this study, Williams Institute researchers contacted the state agencies responsible for investigating employment discrimination claims in the twenty-one states that offer protection against sexual orientation and/or gender identity discrimination. The authors then compiled statistics of the average numbers of complaints filed in seventeen of these states and compared them to other types of discrimination claims filed. The results show that sexual orientation discrimination claims are filed at similar rates to race or sex discrimination claims.

**National Transgender Discrimination Survey: Preliminary Findings: (2009).**

The National Center for Transgender Equality and the National Gay and Lesbian Task Force conducted a comprehensive, fifty state survey of Transgender Employees. The preliminary results of this study show "near universal" reports of employment discrimination by transgender respondents and significantly lower wages and higher rates of unemployment among the transgender community. Though the study has not yet been published, the [preliminary results](#) can be found on the Gay and Lesbian Task Force website.

## Blogs

The following are selected blogs addressing LGBT employment discrimination and other LGBT rights issues:

[Advancing Transgender Equality](#): the blog of the National Center for Transgender Equality

[Blog of Rights](#): Official Blog of the American Civil Liberties Union

[365gay](#): Gay, Lesbian, Bisexual & Transgender news

[Change.org blog](#): News about Employment Nondiscrimination Act (ENDA)

[Sexual Orientation and the law blog](#): A Member of the Law Professor Blogs Network

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