



Nondiscrimination: Legal Protection for LGBTQ+ Working People

At a glance:

- On June 15, 2020, the Supreme Court of the United States ruled that discrimination on the basis of sexual orientation or gender identity is the equivalent of sex discrimination and is therefore illegal under title VII of the Civil Rights Act of 1964.
- Pride at Work supports making these protections explicit in federal law through legislation, such as the Equality Act, which would include protections for LGBTQ+ people beyond just employment.
- Union contracts are legally enforceable in every state. An inclusive union contract (one that includes non-discrimination on the basis of sexual orientation and gender identity or expression) can serve as additional legal protection for LGBTQ+ working people.

It is illegal under federal law to discriminate against workers on the basis of sexual orientation or gender identity. Nearly every union contract contains a nondiscrimination clause either explicitly in the text, or by reference to adherence to local, state, and federal law. **These protections can prevent discrimination and lead to stability for lesbian, gay, bisexual, transgender, and queer (LGBTQ+) working people.** Even though discrimination against LGBTQ+ people is illegal, it is still important to update contract language to explicitly include appropriate language that prohibits discrimination on the basis of sexual orientation and gender identity or expression. **And unions must enforce these protections to create environments where LGBTQ+ members feel comfortable bringing reports of discrimination to union leaders.**

We know that LGBTQ+ people face various forms of discrimination in the workplace that can be addressed with good contract language:

- **Firing**
 - According to the General Social Survey (GSS), a nationally representative survey on American social trends done by the University of Chicago, 16 percent of lesbian, gay, and bisexual (LGB) respondents reported ever having lost a job because of their sexuality.¹
 - Meanwhile, 16% of transgender respondents to the National Center for Transgender Equality's 2015 US Transgender Survey (USTS) also reported having lost a job in their lifetime because of their gender identity or expression.²
 - During the COVID-19 pandemic in 2020, LGBTQ+ people were 36% more likely to have been laid off or had their hours reduced than the general population.³
- **Denying promotions or not hiring**
 - 18% percent of LGB respondents to the GSS had experienced employment discrimination in applying for and/or keeping a job because of their sexual orientation.

¹ GSS Numbers are reprinted from Jennifer C. Pizer, Brad Sears, Christy Mallory, and Nan D. Hunter, *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People: The Need for Federal Legislation Prohibiting Discrimination and Providing for Equal Employment Benefits*, 45 Loy. L.A. L. Rev. 715 (2012)

² 2015 US Transgender Survey found here: <http://www.ustranssurvey.org/>

³ Corona Virus Troubles Have Hit LGBTQ People Extra Hard: https://www.vice.com/en_us/article/y3myq5/coronavirus-finance-troubles-have-hit-lgbtq-folks-extra-hard

- 30% of transgender respondents to the USTS reported being fired, denied a promotion, or not hired for a job because of their gender identity or expression.
- **Verbal, physical, and sexual harassment**
 - 35% of LGB respondents to the GSS reported ever having been harassed at work. 58% reported hearing derogatory comments about sexual orientation and gender identity in their workplaces.
 - 15% of respondents to the USTS who held a job in that year were verbally harassed, physically attacked, or sexually assaulted.
- **Unsafe or inaccessible bathrooms**
 - 59% of respondents to US Transgender Survey avoided using a public restroom in the last year, and nearly one third (32%) limited the amount they ate and drank to do so.
- **Inadequate healthcare coverage**
 - LGBTQ+ people may have different healthcare needs from their straight coworkers. Union negotiated health plans must meet the needs of their LGBTQ+ members, from covering gender transition-related care to covering HIV prevention and treatment.
- **Benefit sharing based on outdated definitions of family**
 - Many union-negotiated employee benefits, such as healthcare and leave policies, are based on a legal definition of marriage and family. Even though same-sex marriage is legal, many LGBTQ+ families – among others – are not based around marriage for a variety of reasons. We must expand our definition of family to include the many variations that exist both through blood *and* affinity.
- **Fear of coming out**
 - According to the GSS, one third (33%) of LGB employees were not open about being LGB to anyone in the workplace. A staggering 53% of respondents to the USTS who had a job in the past year reported hiding their gender identity at work to avoid discrimination.
- **Delays in resolving conflicts**
 - An inclusive union contract is a legally enforceable document that provides an LGBTQ+ employee with explicit timelines to solve instances of discrimination through the grievance procedure.
- **Lack of representation**
 - Before the June 2020 ruling by the Supreme Court, any union contract that did not include explicit LGBTQ+ protections left LGBTQ+ workers without the representation of their union when facing discrimination.

What can labor do?

- **A collective bargaining agreement is enforceable in every state.** We can protect our members by ensuring federal nondiscrimination law is enforced and that our contracts have strong non-discrimination language that prohibits discrimination on the basis of sexual orientation or gender identity and expression.
- In many communities, labor's voice is powerful. When our leaders speak out publicly against the conditions their fellow members face at work, it can have a dramatic impact on the lives of their members. **We must stand up and speak out for our LGBTQ+ members.**
- Labor's legislative advocacy is powerful. **It is vital that we add LGBTQ+ non-discrimination to our legislative portfolios in every lawmaking body where we have a voice.** Labor has legislative advocates – both paid and volunteer – in every state and there are LGBTQ+ members in every union.
- **Pride at Work staff is always ready to provide support on this or other LGBTQ+-related topics.** We can help ensure your contract language is inclusive of LGBTQ+ working people and uses the most up to date language. We can also review talking points to help hone your message when talking to the media or lobbying state and local government. Other resources include: trainings for leadership, staff, or rank-and-file members; convention, conference, or meeting speakers and panelists; and much more.