



Gay and Transgender Discrimination in the Public Sector

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

Crosby Burns, Kate Childs Graham, and Sam Menefee-Libey

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ON THE COVER: Pictured is the Ohio state capital. Ohio is one of the majority of states that has failed to pass a law prohibiting employment discrimination against public and private workers on the basis of sexual orientation and gender identity. A majority of public-sector workers lack these kinds of legal protections in the United States today.

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Foreword

In today's economy, gay and transgender workers are not getting the fair shake they deserve.

At a time when all families struggle to stay afloat, far too many gay and transgender Americans are being fired from their jobs or being denied employment and forced into the ranks of the unemployed based simply on their sexual orientation or gender identity. As a consequence, these workers experience staggeringly high rates of discrimination and harassment on the job and all too often lack access to essential workplace benefits such as health care for themselves and their families.

Discrimination is still a harmful reality for far too many gay and transgender workers in the United States, and it is a reality that imposes significant emotional and financial pain on them and their families. But discrimination is not only problematic for gay and transgender victims of discrimination. It also creates obstacles to running an efficient and effective government.

How? Discrimination introduces harmful inefficiencies and unnecessary costs that ultimately weaken the government's ability to do its job. When government employers discriminate, they have a harder time recruiting and retaining the best workers; they suffer from depressed workplace productivity and job performance; and they often expose themselves to costly litigation. Discrimination simply does not make good sense for governments or for taxpayers, who ultimately end up paying the costs associated with workplace discrimination in the public sector.

In an economy that is struggling to make its way back on top, with cities, counties, and states facing severe budget shortfalls, we cannot afford bad business practices that cause inefficient use of precious taxpayer dollars. In a country that is rooted in the values of fairness and hard work, we must end practices that do not give every worker—regardless of sexual orientation and gender identity—a fair shot.

While discrimination hurts many workers across the country, we are seeing more and more efforts at the local, state, and federal level to promote protections and basic fairness for gay and transgender workers. If there was ever a place and time for the gay and transgender movement to come together with the labor movement, this is it.

Knowing this, the American Federation of State, County and Municipal Employees, AFL-CIO has joined together with the Center for American Progress to take an in-depth look at the cost of gay and transgender discrimination in the public sector. The following report shows clear evidence of widespread discrimination in state and local governments and how that discrimination is costly to victims of discrimination, taxpayers, and to state and local governments themselves. It then outlines commonsense steps that lawmakers and unions should fully embrace and aggressively implement to make the workplace better for every worker and every taxpayer.

We must pull together to combat workplace discrimination head on. We must pull together to get our economy back on track. And we must pull together to ensure all workers have a fair shot, gay or straight, transgender or not.



Neera Tanden
President
Center for American Progress



Lee Saunders
President
AFSCME

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.

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.

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.

Gay and transgender public-sector workers face high rates of employment discrimination

According to the U.S. Bureau of Labor Statistics, as of September 2009 state and local governments employed approximately 19.7 million workers. This includes roughly 5.2 million state government employees and 14.5 million local government employees. Gay and transgender employees comprise a significant portion of our public-sector workforce with recent estimates suggesting that slightly more than 4 percent of municipal employees (585,000 workers) and slightly more than 8 percent of state employees (418,000 workers) are gay or transgender. By comparison, approximately 7 million private-sector workers—roughly 6.5 percent—are gay or transgender.³

Gay and transgender employment by sector⁴

	Number of gay or transgender employees (estimated)	Total number of employees	Percent of workforce that is gay or transgender
Local	585,000	14,516,000	4.03%
State	418,000	5,155,000	8.12%
Federal	200,000	2,829,000	7.07%
Total public	1,203,000	22,500,000	5.35%
Total private	7,000,000	107,234,000	6.53%
Total public + private	8,203,000	129,734,000	6.32%

Source: The Williams Institute. U.S. Bureau of Labor Statistics.

With approximately 1 million gay and transgender individuals working in state and local governments, gay and transgender workers comprise around 5.4 percent of the public-sector workforce in the United States today. These individuals work in legislative chambers, executive offices, and judicial courtrooms throughout the nation. They are our nation’s police officers, firefighters, librarians, nurses, sanitation workers, teachers, and more—men and women who daily make vital contributions as public servants to our state and local communities.

Despite these contributions, however, recent research and data reveal that this population consistently faces high rates of workplace discrimination. Gay and transgender individuals are all too often denied government employment, and those who do land a public-sector job find themselves subject to being fired, verbally and physically harassed, paid unequal wages, and denied promotions all because of their sexual orientation or gender identity. As a consequence, far too many gay and transgender public-sector employees work in unfriendly and hostile environments. In the worst cases, this discrimination forces them into or to remain among the ranks of the unemployed, without a job to make ends meet for themselves and their families.

Workplace discrimination

Thanks in large measure to research and analysis from the Williams Institute—a public policy think tank associated with the University of California, Los Angeles, School of Law—a significant body of evidence shows that discrimination is a pervasive and persistent problem for gay and transgender workers in public employment in the United States today. Specifically, a host of surveys, court findings, and complaints from administrative agencies show that discrimination against gay and transgender public workers is a rampant problem that requires an immediate solution.

Surveys of gay and transgender employees

Four surveys conducted within the past seven years have examined the rates of discrimination facing the gay and transgender workforce. These surveys took a representative sample—three were national samplings and one was California-centered—of the gay and transgender population, and included a number of public-sector workers. Each survey confirms that discrimination is a widespread problem for gay and transgender public-sector employees.

General Social Survey (2010)

The biennial General Social Survey is one of the most highly respected sociological surveys in the United States. In 2008 it found that approximately one in five gay public-sector workers at the local, state, or federal level had experienced some form of discrimination based on their sexual orientation at some point during their career. According to the Williams Institute, who analyzed the General Social

Survey data, “17 percent reported being fired because of their sexual orientation, 13 percent reported being denied a promotion or receiving a negative job evaluation, and 20 percent reported being harassed verbally or in writing on the job because they are gay, lesbian, or bisexual.”⁵

National Lambda Legal and Deloitte Financial Advisory Services survey

According to a 2005 survey conducted by Lambda Legal and Deloitte Financial Advisory Services, which included public-sector employees, 39 percent of gay workers experienced some form of discrimination or harassment in the workplace related to their sexual orientation within the past five years. This includes 11 percent who reported that discrimination and harassment was a “frequent” problem, and 19 percent who reported that they had experienced barriers to promotion because of their sexual orientation.⁶

Injustice at Every Turn report

In 2011 the National Gay and Lesbian Task Force and the National Center for Transgender Equality released a report with the results from what many consider the most comprehensive survey to date on transgender Americans. This report, *Injustice at Every Turn*, reveals that transgender workers face extraordinarily high rates of discrimination on the job, even higher than gay workers. Fully 90 percent of transgender individuals reported experiencing harassment or mistreatment on the job, or took actions such as hiding who they are to avoid it. Further, 47 percent experienced some sort of adverse job outcome, including 26 percent who lost a job due to being transgender.⁷

Transgender Law Center survey (2009)

According to a Transgender Law Center 2009 survey assessing the health and wellness of transgender Californians, 70 percent of respondents had experienced workplace discrimination because of their gender identity, with more than 11 percent of respondents being public workers.⁸

Surveys of gay and transgender workers in specific sectors of public employment

In addition to national surveys of gay and transgender workers, numerous studies have looked into discrimination within specific sectors of public employment. The Williams Institute notes the following sector findings:

Approximately one in five gay public-sector workers at the local, state, or federal level had experienced some form of discrimination based on their sexual orientation at some point during their career.

- **K-12 education:** In 2008 more than half of gay or transgender K–12 teachers reported feeling unsafe at work because of their sexual orientation or gender identity. Thirty-five percent feared losing their job, and 27 percent reported being harassed within the prior year.⁹
- **Higher education:** In 2009, 19 percent of gay or transgender faculty and employees at state public colleges and universities from across the country experienced discrimination and harassment in the workplace, which “interfered with their ability to work or learn on campus.”¹⁰
- **Law enforcement:** In 2009, 22 percent of gay or transgender public-safety officers reported that they did not receive an otherwise-deserved promotion due to their sexual orientation or gender identity. Thirteen percent reported that they experienced discrimination in hiring.¹¹
- **Lawyers:** In 2002–2003, 37 percent of gay or transgender state and local public workers with law degrees said they had been verbally harassed in the workplace. More than one in four reported experiencing some other form of discrimination on the job.¹²

Gay and transgender equality in federal employment

While this report examines discrimination in state and local governments, it is important to note that gay and transgender workers also make vital contributions as federal government employees. Similar to their counterparts in state and local government, gay and transgender federal employees have experienced a history of discrimination and unequal treatment on the job, some of which continues today. Gay rights pioneer Frank Kameny, for example, was fired from his job as an astronomer working for the federal government based solely on his sexual orientation.

Progress, however, has been made in the past two decades with respect to discrimination and equal benefits on the job for gay federal employees. In 1998 then-President Bill Clinton signed an executive order adding “sexual orientation” to the federal government’s Equal Employment Opportunity policy.¹⁷ Under the Obama administration, the federal government added “gender identity” to

the government’s Equal Employment Opportunity policy in 2010.¹⁸ And in 2009 and 2010 President Barack Obama issued memoranda requesting all federal departments and agencies to extend whatever workplace benefits they can under federal law to gay employees and their same-sex partners.¹⁹

Antigay laws, however, such as the misleadingly titled Defense of Marriage Act, prevent the federal government from giving employees’ same-sex partners access to some of the most important partner benefits, including health insurance, retirement and pension plans, and other benefits. Until the Defense of Marriage Act is struck down, gay employees in the federal government will continue to experience unequal access to benefits and unfair treatment on the job. Additionally, federal health plans (known as Federal Employees Health Benefits) contain harmful exclusions that prevent transgender federal employees from receiving medically necessary care.

These survey findings indicate that discrimination in state and local government is not limited to any particular sector but is instead a consistent and widespread problem for all gay and transgender public-sector workers.

More evidence of discrimination against gay and transgender public-sector workers

Numerous other sources point to significant discrimination and harassment against state and local gay and transgender workers.

First, courts and legal experts have consistently found evidence of a history of discrimination against gay and transgender workers, including those in the public sector. U.S. Attorney General Eric Holder, for example, noted the history of government discrimination against gay individuals in his letter to House Speaker Rep. John Boehner (R-OH) describing the Obama administration's decision to no longer defend the antigay Defense of Marriage Act. In the letter, he wrote that, "First and most importantly, there is, regrettably, a significant history of purposeful discrimination against gay and lesbian people, *by governmental* as well as private entities, based on prejudice and stereotypes that continue to have ramifications today."¹³ (*emphasis added*)

Second, the number of complaints filed with state and local administrative agencies charged with enforcing existing nondiscrimination laws and policies further suggests high rates of workplace discrimination facing state and local government workers. In a study looking at administrative agencies' data, the Williams Institute found that overall discrimination complaints based on sexual orientation were comparable with discrimination complaints based on sex and gender. Specifically, this study found that out of every 10,000 gay workers, an average of four file discrimination complaints with state agencies. That number is 3.9 for workers filing discrimination complaints based on race, and 5.2 for workers filing discrimination complaints based on their gender.¹⁴

Lastly, gay and transgender public-sector workers are also paid less than their straight, nontransgender counterparts, even when performing equal work. There is evidence to show that gay males in particular suffer from a significant gap in earnings compared to their straight counterparts in the public sector. According to the Williams Institute, gay men in the public sector earn an estimated 8 percent to 29 percent less than straight men in the public sector, even when controlling for race,

education, years of experience, and other factors. The data is less clear for lesbian women who tend to earn the same if not more than their straight counterparts. But that's not to say that lesbian workers do not experience gaps in pay. Research indicates that lesbian workers still earn less than both heterosexual and gay men.¹⁵

Likewise, transgender individuals face wage disparities. This is especially true for transgender women. One study found that the earnings of female transgender workers fell by nearly one-third following their gender transitions. Interestingly, that same study found that the earnings of male transgender workers slightly increased following their transition. As such, transgender men may actually experience a wage advantage rather than a wage penalty.¹⁶

Gay and transgender public-sector workers do not have equal access to benefits

Not only do gay and transgender workers face high rates of discrimination on the job, but unfair and discriminatory laws and policies also create an uneven playing field for gay and transgender workers in terms of the range of workplace benefits offered to public-sector employees. Outdated laws prevent workers with same-sex partners from obtaining employer-sponsored health insurance for their family members. This leaves many families without sufficient health insurance coverage and others without health insurance coverage at all.

In addition to health insurance, city and state employees with same-sex partners often do not have equal access to a host of other workplace benefits, including retirement and pension benefits, paid family leave, life insurance benefits, and more. For transgender city and state employees, other laws and policies create discriminatory exclusions in health insurance that obstruct access to medically necessary care.

Let us take a look at each of these issues in turn.

Unequal access to workplace benefits

Health insurance benefits are a critical component of worker compensation. A majority of nonelderly insured adults obtain health benefits today through employer-sponsored insurance plans. According to a June 2012 U.S. Department of Labor report, benefits packages comprise 30.7 percent of total compensation for workers in the state and local government and health insurance benefits comprise 27.7 percent of those packages.²⁰ In this way, health insurance benefits for workers and their family members are arguably the most important benefits an employer can offer his or her workers.

What's more, employer-sponsored health plans cost less than comparable health insurance plans purchased in the private market. A middle-income family with coverage in the individual market spends on average 22 percent of their household

income on health care. A similar middle-income family with employer-sponsored health coverage spends 8 percent of their income on health care costs.²¹ Further, employer-sponsored insurance and privately purchased health insurance rarely offer comparable coverage.

Benefits packages are clearly important for all workers, but they are especially important for public-sector workers. Whereas only 51 percent of private-sector employers offer health insurance benefits to workers, nearly all full-time state employees—97 percent—are eligible for coverage, and 91 percent of public-sector workers actually enroll in those benefits.²²

Unequal access to health care benefits

In sum, employer-sponsored health insurance benefits are significant, both relative to a worker's total compensation package and relative to plans available in the private market. Many employers, however, including state and local governments, discriminate against gay workers by making health insurance benefits available to straight workers' spouses but denying those same benefits to their gay employees' same-sex partners. This denial of coverage translates to unequal pay for equal work for gay public-sector workers.

Sometimes this discrimination occurs by choice. Some state or government entities may simply elect not to offer equal partner benefits to their workers' same-sex partners, even if they offer comparable benefits to workers' different-sex partners and even when there are regulatory or administrative reforms that would allow them to equalize those benefits. In other instances, however, state law actually prevents government entities from treating gay workers and their partners equally, even if they would like to.

In addition, denying equal health benefits to workers' same-sex partners can also restrict their children's access to health insurance. Unfortunately, many states have outdated and discriminatory laws that prohibit recognizing two adoptive parents of the same-sex.²³ As a result, children raised by same-sex couples often only have one legally recognized parent. If working parents do not have a legal relationship with their children, they are often unable to obtain health care benefits from their employer (including state and local governments) for their children.

This denial of coverage translates to unequal pay for equal work for gay public-sector workers.

Unequal taxation

Even when state and local employers offer equal health insurance benefits to gay workers and their same-sex partners, the federal government imposes an extra tax on both the worker and the employer. This is because the discriminatory Defense of Marriage Act only allows the federal government to recognize relationships between one man and one woman. Where typically health care benefits are not normally taxed for opposite-sex married couples, the federal government does not recognize same-sex married couples and, as a consequence, taxes those benefits as imputed income. Moreover, this tax is not only imposed on gay workers but on their employers, as well.²⁴

The economic harm of this unequal taxation on benefits is significant. Economist Lee Badgett estimates that in 2007 workers with same-sex partners paid on average \$1,069 per year more in taxes than workers with opposite-sex partners who had the same coverage. As Badgett notes in her report on these taxes, for same-sex couples, it's “taxed if you do, uninsured if you don't.”

Similarly, the tax burden on employers, including state and local governments, that offer same-sex domestic partner benefits is significant since these employers must pay payroll taxes on the value of the benefits if the federal government counts them as income. In terms of the taxes imposed on the employer, Badgett estimates that in 2007 employers (many of which include municipal and state governments) were taxed an extra \$57 million for offering equal partner benefits to same-sex partners.²⁵

Other workplace benefits

In addition to health benefits, public-sector workers with same-sex partners also experience unequal access to a range of other workplace benefits. These benefits include retirement and pension plans, paid family leave, life insurance, and relocation assistance. All of these benefits are in one way or another a form of worker compensation, meaning that many gay public-sector workers are once again performing equal work for unequal pay.

The union difference

In 2011, according to the Bureau of Labor Statistics, 36.2 percent of public-sector workers were union members, compared to 6.9 percent of private-sector workers. At 42 percent, union membership was highest among local government workers, followed by 31 percent of state employees and 26.8 percent of federal workers.²⁹

Union membership gives gay and transgender public workers the edge in bargaining for equal benefits and protections that are necessary to shield themselves from discrimination on the job.

When they are members of a union, same-sex domestic partners have better access to benefits such as health care and retirement security. Fifty-three percent of state and local workers with union representation had access to health care coverage for same-sex domestic partners, compared to only 17 percent of nonunion state and local workers and 29 percent of private-sector workers (union and nonunion).

Similarly, 57 percent of state and local union workers had access to survivor benefits in retirement for same-sex domestic partners, as compared to 47 percent of nonunion public-sector workers and just 7 percent of workers in the private sector (union and nonunion).³⁰

Just as importantly, union membership enhances job security. Union workers can be fired only with just cause and often have access to grievance procedures and arbitration. Additionally, many union contracts do what the law does not: protect workers against discrimination based on sexual orientation or gender identity.

Within the American Federation of State, County and Municipal Employees, the largest union of public-sector workers, more than 1,000 union contracts include sexual orientation within a nondiscrimination clause, and many include gender identity language.³¹

Transgender exclusions in health plans

Transgender workers need health insurance just the same as anybody else. Unfortunately, insurance carriers routinely employ a range of discriminatory practices that hurt transgender individuals. These practices include refusing to issue coverage to transgender individuals, charging higher premiums without justification, and refusing to cover medically necessary treatments even when these same treatments are covered for nontransgender people. This type of discrimination is equally true for transgender workers in both the private and public sectors.²⁶

Insurance discrimination against transgender people is captured most clearly in “transgender exclusions.” Despite statements confirming the importance of health insurance coverage for transgender people and the medical necessity of transition-related care from expert bodies—including the American Medical Association, the American Psychological Association, and the World Professional Association

for Transgender Health—many health insurance plans specifically single out the transgender population for denials of coverage for medically necessary services solely on the basis of gender identity.

In some instances these exclusions apply only to surgical treatments while permitting coverage of mental health services and hormone therapy. In the majority of cases, however, the exclusions are sweeping—excluding, for example, the coverage of any “services, drugs, or supplies related to sex transformations.”²⁷ Most alarmingly, many insurers stretch the definition of procedures related to “sex transformations” to include essentially any medical care a transgender person might require, including treatment for common medical conditions, from back pain to the flu to kidney cysts and even cancer.²⁸

Discrimination harms gay and transgender workers, the government, and taxpayers

Discrimination is still a pernicious problem for gay and transgender workers employed by state and local governments. Far too many of these public servants go to work in hostile environments where they are discriminated against and harassed based on their sexual orientation or gender identity. This is certainly a problem for gay and transgender public workers, who all too often are forced out of a job and into the ranks of the unemployed due to discrimination. But it's also an obstacle to running an efficient and effective government, and it is a problem for the American taxpayer.

It's a problem for gay and transgender workers

Unfortunately, discrimination imposes tangible economic harm on gay and transgender individuals and their families. In fact, research and data indicate that gay and transgender individuals and their families are among some of the most economically vulnerable populations in the United States, due in large part to workplace discrimination.

Contrary to commonly held stereotypes, families headed by same-sex couples make on average \$15,500 less per year than families headed by opposite-sex couples. Similarly, children being raised by same-sex parents are twice as likely to live in poverty as children being raised by married opposite-sex parents.³² Whereas 9 percent of children living with heterosexual married parents are living in poverty, 21 percent of children being raised by male same-sex couples and 20 percent of children being raised by female same-sex couples live in poverty.³³ What's more, transgender people also face significant economic challenges. Fifteen percent of transgender people report making less than \$10,000 per year, a rate of poverty that is nearly four times that of the general population.³⁴

These socioeconomic disparities are often the direct result of workplace discrimination. When gay and transgender workers are forced out of a job or treated

unfairly in the workplace, they have less money to pay the mortgage, buy groceries, and otherwise make ends meet.

Additionally, unequal access to health insurance further imposes harm on gay and transgender workers and their families. Workers' partners and children who do not have access to health insurance through their own employer are left with the costly decision of either purchasing insurance in the private market or precariously remaining among the ranks of the uninsured. Similarly, the lack of available health insurance programs for gay and transgender workers can have serious consequences for their own and their families' health and wellness.

It's a problem for state and local governments

Workplace discrimination and unequal treatment is not only a problem for gay and transgender workers. It is a problem for running an efficient and effective government.

In this upcoming fiscal year, 31 states have projected or have addressed budget shortfalls totaling \$55 billion. In the remaining states, state lawmakers are still pinching pennies, as the nation continues to recover from the Great Recession.³⁵ Many municipal and county governments are also facing significant fiscal troubles.³⁶ Given the tough financial situation public institutions face, it is especially important for state and local governments to use tax dollars as efficiently and effectively as possible.

Discrimination in the workplace, however, reduces government's ability to meet the needs of the public in a cost-efficient and responsible way. Workplace discrimination imposes significant economic harm by introducing numerous inefficiencies to government and passing on substantial costs to taxpayers.³⁷

Let's turn now to the specific ways in which discrimination makes no financial sense for state and local governments.

Recruitment and retention

First and perhaps foremost, discriminating against workers based on their sexual orientation and gender identity hampers local and state governments' ability to recruit

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and retain the best and the brightest employees in the labor force. In terms of recruitment, public entities that discriminate against potential gay or transgender employees needlessly limit the pool of candidates from which they can hire. Shrinking the size of the workforce pool unnecessarily excludes top talent, thereby diminishing governments' ability to most effectively deliver needed goods and services to the public.

Similarly, discrimination dampens governments' ability to retain capable and qualified employees. As detailed earlier in this report, far too many gay or transgender workers are fired solely based on their sexual orientation or gender identity. Others choose to leave under the duress of a hostile and negative workplace environment. In both instances, the failure to retain qualified employees introduces significant costs, not the least of which are the costs associated with replacing the departing employees. It costs anywhere between \$5,000 and \$10,000 to replace a departing hourly worker and between an estimated \$75,000 and \$211,000 to replace an executive-level employee.³⁸

It is therefore vital for efficient and effective government bodies to recruit and retain individuals based on their skills, qualifications, and capacity to contribute. Evaluating workers based on their sexual orientation or gender identity—factors that are completely irrelevant to job performance—compromises their ability to excel. As a result, governments are saddled with a less-than-ideal public-sector workforce when they discriminate.

Productivity and job performance

Hostile and discriminatory environments needlessly compromise the productivity and job performance of public-sector workers. Discrimination and hostility in the workplace prevent employees from focusing on the core functions of their jobs. This is especially true for gay and transgender workers, many of whom work in constant fear of discrimination and harassment, or simply remain in the closet to avoid putting themselves in a vulnerable situation. Studies have shown that these types of work environments result in significant unnecessary costs since they increase absenteeism, lower productivity, and foster a less motivated, less entrepreneurial, and less committed workforce.

Serving the public

For government entities to work effectively, they must serve all members of the public. But when public entities discriminate on the basis of sexual orientation and gender identity they needlessly push away qualified gay and transgender workers. What results is a workforce that is less-than-representative of the public, hampering the government's ability to serve all populations. If a social service agency, for instance, is a hostile work environment for gay and transgender workers, it is much less likely that that agency will be able to provide adequate or even basic services to gay and transgender clients, a significant portion of the public.

Litigation

A confusing patchwork of laws exists in the United States that outlaw employment discrimination on the basis of sexual orientation and gender identity. While some states legally prohibit such discrimination, others do not.³⁹ Regardless, it is financially unwise from a legal standpoint for governments in both sets of states to fail to prohibit discrimination in state and municipal employment on the basis of both sexual orientation and gender identity.

In states with gay and transgender-inclusive nondiscrimination laws, municipal and state governments should take steps to prohibit discrimination within government employment since doing so is complying with the law. Not doing so means they may be subject to legal penalties, just as they would be if they fired an employee because he or she is black.

In states without such laws on the books, municipal and state governments should also prohibit discrimination against gay and transgender workers. Not only is it the right thing to do, there is also significant uncertainty as to what, under federal law, could be considered discrimination. A recent Equal Employment Opportunity Commission decision, for example, said that transgender workplace discrimination is included under Title VII of the Civil Rights Act.⁴⁰ So even though no state law is in place, discriminating against transgender employees may still be in violation of federal law. Given this uncertainty, it is far better to prohibit discrimination than risk potentially expensive litigation.

It's a problem for taxpayers

Discrimination in the public sector is a problem for gay and transgender people. It is a problem for efficient and effective government. And, relatedly, it is a serious problem for the American taxpayer.

Americans deserve an efficient and effective government that acts as a responsible steward of taxpayer dollars. But, as outlined earlier, allowing discrimination to go unchecked has costly consequences such as minimizing productivity, introducing turnover-related costs, and incurring potentially costly litigation. It is financially irresponsible to judge employees based on any characteristics that are not directly relevant to their performance on the job, especially at a time when state and local budgets are in the red.

Additionally, discrimination is anathema to our values as Americans. American tax dollars should never be used to finance discrimination. This is true for discrimination based on a host of characteristics that are completely irrelevant to job performance, including race, ethnicity, sex, national origin, religion, disability, and, yes, sexual orientation and gender identity.

Fully 8 in 10 adults believe that “how an employee does his or her job should be the standard for judging an employee, not their sexual orientation.”⁴¹ Yet despite near-universal support for equal treatment on the job, we continue to use tax dollars in ways that allow discrimination against gay and transgender workers to go unchecked in state and local governments. Despite this widespread public support for equal treatment, a majority of states still lack comprehensive laws shielding gay and transgender public-sector workers from discrimination, a situation that we shall turn to next.

It is financially irresponsible to judge employees based on any characteristics that are not directly relevant to their performance on the job, especially at a time when state and local budgets are in the red.

The landscape of existing protections for gay and transgender public-sector employees

As we have already demonstrated, gay and transgender public-sector workers experience significant discrimination and unequal access to benefits on the job. Fortunately, many state and local governments and executive agencies have enacted laws and policies that level the playing field for gay and transgender public-sector workers. But in other states and cities, these laws and policies are sorely lacking, leaving gay and transgender workers vulnerable to discrimination and unequal treatment on the job. Let's examine the laws and policies in state and municipal employment that level the playing field for gay and transgender public-sector workers.

Nondiscrimination laws and policies

Discrimination remains a significant problem for all gay and transgender workers. On one hand, state lawmakers and governors have stepped in over the past couple of decades to pass laws and policies that protect gay and transgender workers from workplace discrimination. On the other hand, still too many state lawmakers and governors have failed to put in place similar nondiscrimination protections, resulting in a set of state laws and policies that leave some workers particularly vulnerable to discrimination.

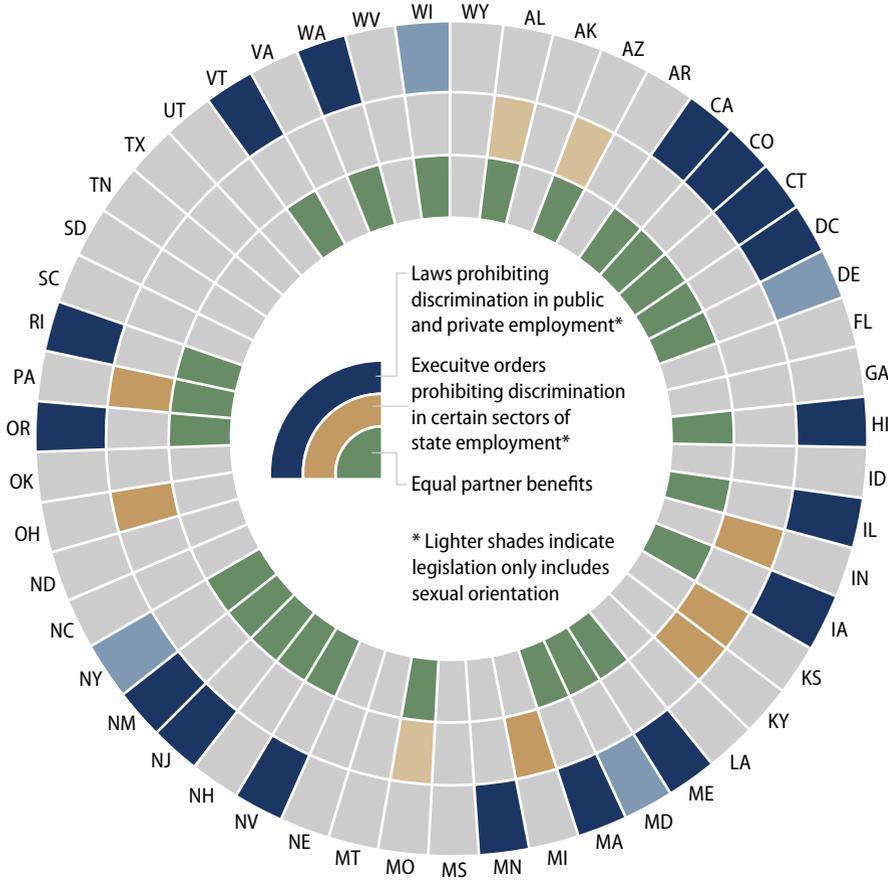
State laws that prohibit discrimination

Currently 21 states and the District of Columbia prohibit discrimination in both private and public employment on the basis of sexual orientation. Of those 21 states, 16 states and the District of Columbia also prohibit discrimination on the basis of gender identity.⁴² (see Figure 1) These laws provide substantive protections to the gay and transgender workforce, and they are the most effective way to combat discrimination on the job. They do this by giving employees, for example, a private right of action to sue their employer when that employer allows sexual-orientation and gender-identity discrimination to go unchecked in the workplace.

Still, a majority of states have failed to pass comprehensive nondiscrimination laws that include sexual orientation and gender identity.⁴³

FIGURE 1
State-by-state

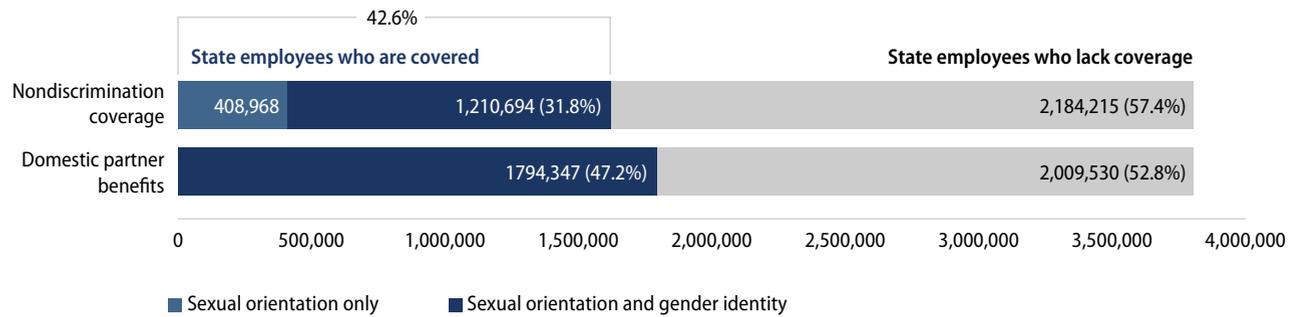
Legislation that prohibits discrimination against gay and transgender workers and allows for equal partner benefits



Source: Center for American Progress analysis

FIGURE 2

State laws, nondiscrimination coverage, and domestic partner benefits among state workers



Source: 2010 U.S. Census

Looking at state employment data, just more than 4 in 10 (42.6 percent) state employees work in a state with a law prohibiting discrimination based on sexual orientation. Three in 10 (31.8 percent) state employees work in a state with a law also prohibiting discrimination based on gender identity.⁴⁴ This also means that the majority of Americans (57.4 percent) working for state governments do not have protections against discrimination based on sexual orientation and gender identity. (see Figure 2)

Executive actions prohibiting discrimination

In addition to statutes, some state governors have stepped in where state lawmakers have failed to take action against discrimination. Several governors have issued executive orders prohibiting discrimination based on sexual orientation (and often gender identity, as well) within all state agencies under their jurisdiction.⁴⁵

In addition to the 21 states that have outlawed all workplace discrimination on the basis of sexual orientation, an additional nine states currently have executive orders that likewise prohibit discrimination against some gay state employees. Six of these executive orders also cover gender identity.

This means that a total of 30 states and the District of Columbia have laws or administrative policies shielding gay state workers from employment discrimination, and a total of 22 states and the District of Columbia have laws or administrative policies that shield transgender workers from employment discrimination.⁴⁶

Legislation is preferable to executive action

It is worth mentioning that while executive orders significantly help combat discrimination against gay and transgender workers, statutes outlawing discrimination on the basis of sexual orientation and gender identity are a far preferable solution.

First, protections established by nondiscrimination statutes cover all workers—public and private—while protections granted by executive order only cover workers employed at the level of government that enacts the protections. In addition to the fact that these protections do not cover private-sector workers, executive orders are also more easily revoked than nondiscrimination statutes. Future governors can rescind executive orders, as happened in Virginia in 2010, and the repeal of an executive order by administrative action is not subject to legislative or judicial review. Lastly, statutes give workers the ability to take legal action against discriminatory employers and the ability to pursue damages. Executive orders do not.⁴⁷

Still, executive orders provide some protections to gay and transgender public-sector workers where there would otherwise be none. Gay and transgender public-sector workers who encounter discrimination can seek recourse through human resource departments or can go to their supervisors, who can intervene in instances of discrimination. In addition, executive orders provide a foundation for workforce inclusivity, allow for cultural competency training and diversity training inclusive of gay and transgender issues, and recognize the struggles that many gay and transgender individuals face in the workplace.⁴⁸

Nondiscrimination laws and policies for gay and transgender workers in municipal employment

Similar to the way many states have taken action to combat discrimination, many cities and counties are also enacting policies aimed at ensuring a discrimination-free workplace for gay and transgender municipal employees. Specifically, at least 175 cities and counties have laws or policies prohibiting employment discrimination on the basis of sexual orientation, and at least 135 cities and counties do so on the basis of gender identity.⁴⁹ This means, for example, that while the state of Texas does not have a law that protects gay and transgender Texans from discrimination on the job, gay and transgender Texans in cities such as Houston do have employment protections since Houston has outlawed both private- and public-sector discrimination based on sexual orientation and gender identity.

Access to equal benefits

A number of state governments offer equal health care benefits to workers and their same-sex partners. Currently, 24 state governments and the District of Columbia offer equal partner benefits to workers with same-sex partners or spouses, leaving 26 state governments that fail to provide equal benefits to these workers and their family members. (see Figure 1) In terms of coverage, this means that 47 percent of state government employees work for a state that offers equal partner health care insurance. Fifty-three percent do not live in a state that offers equal coverage. (see Figure 2)

States have extended equal partner benefits to same-sex couples through one of four ways. (see Figure 3) Twelve states and the District of Columbia began offering equal partner benefits upon passing relationship recognition legislation such as marriage equality, civil unions, and domestic partnerships (or, in certain cases, when courts ruled that states must recognize same-sex relationships).

In four states the courts ruled that failing to provide equal partner health insurance benefits to state workers' same-sex partners violated the equal protection clauses of their state constitutions. As a result, the court compelled state governments to begin offering equal benefits to their gay workers.⁵⁰

Governors can also take administrative action to offer equal partner benefits to their workers, and governors in two states—New Mexico and Illinois—have done just that by issuing executive orders mandating state agencies to offer equal benefits to employees with same-sex partners.⁵¹

Lastly, in many states nongovernmental oversight boards or unions retain full control over extending public benefits to state workers. In six states public workers with same-sex partners secured equal partner benefits through an administrative board (such as an insurance committee) or through a union contract.⁵²

Transgender inclusive health care

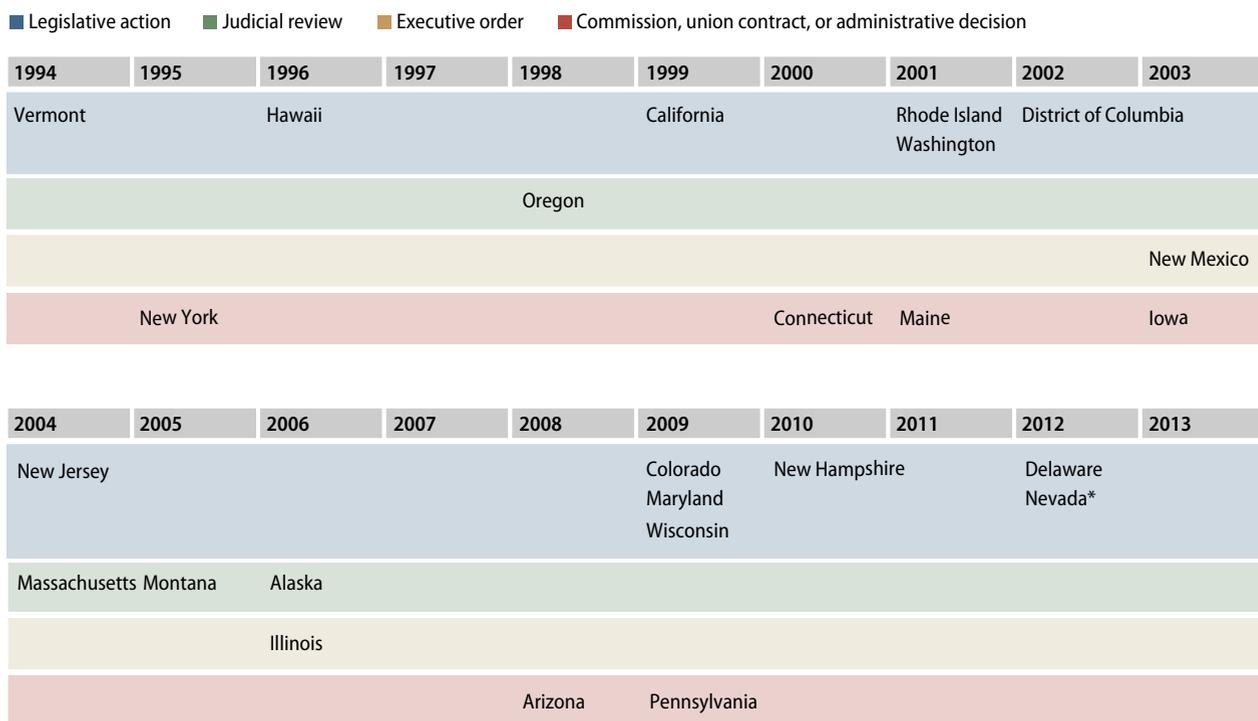
As mentioned earlier, most insurance plans contain discriminatory exclusions that prevent transgender individuals from accessing medically necessary care. Some municipal governments have helped to end this discriminatory practice for their employees by offering at least one insurance plan that does not contain these

harmful exclusions. These municipalities include San Francisco, Seattle, Portland (Oregon), and Multnomah County (Oregon).

The public sector catching up with the private sector

Our analysis of the landscape of laws and policies that level the playing field for gay state and local employees shows that many governments are taking critical steps make the workplace a more fair and inclusive environment for gay transgender employees, which is, in part, thanks to the fact that many public-sector workers are unionized. State and municipal policymakers who have put these laws and policies into place have realized what many in the private sector have realized for some time—policies that make the workplace more inclusive and equal for all are better for the bottom line. State and local governments with these policies in place have discovered that the benefits of having antidiscrimination rules (recruiting and retaining the best and the brightest, increasing job productivity, ensuring against litigation, etc.) far outweigh the minimal costs, if any at all.

FIGURE 3
How states have extended benefits to same-sex partners



* Effective in 2013

Source: Center for American Progress analysis

This is why the vast majority of Fortune 100 companies have gay- and transgender-friendly workplace policies in place. Ninety-four percent of Fortune 100 companies include sexual orientation in their nondiscrimination or equal employment opportunity policies, and 75 percent also include gender identity. Moreover, 85 percent offer equal benefits to employees' same-sex partners, including health care benefits. Nearly half offer transgender-inclusive health care benefits to their employees.⁵³

Best practices

We will now take a deeper look at the types of steps that municipalities and state governments are taking to level the playing field for gay and transgender workers. Cambridge, Massachusetts, San Francisco, California, and Portland, Oregon, in particular have enacted policies that ensure no taxpayer dollars are used to fund discrimination and unequal treatment in public-sector employment.

At the other end of the spectrum, we also profile Michigan's House Bill 4770—recently passed legislation that undercuts workers and taxpayers alike by banning public institutions from offering benefits to domestic partners. This gives us clear evidence that gay and transgender public-sector workers are still at risk of losing existing benefits and offers a clear example of what not to do.

Cambridge, Massachusetts

Following the lead of many private corporations, the city of Cambridge, Massachusetts, became the first municipality to equalize the cost of health benefits for its workers with same-sex partners in 2011.⁵⁴

As a result of the Defense of Marriage Act, workers who enroll to receive domestic partner health coverage must pay income taxes on the value of that coverage. Employees with opposite-sex spouses, on the other hand, do not have to pay a tax on their health benefits.⁵⁵

To ensure equal pay for equal work, the city of Cambridge took action to reimburse workers for the extra cost this tax imposes on same-sex couples. Cambridge Mayor David Maher said in a statement that, "The tax implication for same-sex married couples working for the city created an unfair situation that the City Council chose to address. This action is the right and fair thing to do until the federal government addresses this issue."⁵⁶

When the practice, known as "grossing up," went into effect, 22 school and city workers had same-sex domestic partners enrolled in health insurance coverage. The city estimated a total expenditure of \$33,000 to offset the tax burden for these couples. In the long run,

this cost is negligible and is offset by the numerous benefits that cities such as Cambridge experience when they gross up, including more effective recruitment and retention practices, as well as a more productive workforce.⁵⁷

In the private sector, grossing up has become a litmus test for inclusivity and is widely considered a best practice in corporate America. With the implementation of the practice at the municipal level, the city of Cambridge is now poised to compete for the best employees with neighboring private companies such as Boston Consulting Group, which also offers the benefit to its staff.⁵⁸

San Francisco, California, and Portland, Oregon

In 2001 the city and county of San Francisco became the first municipality to remove transgender access exclusions in its employee health plans.⁵⁹ These exclusions are extremely harmful to transgender workers: Among other negative consequences, they decrease morale, require time-intensive appeals and negotiations regarding reimbursement even for routine health care services, and prevent transgender employees from accessing care that could increase their safety, comfort, and work performance.⁶⁰

According to a memo from the San Francisco Human Rights Commission, "Despite actuarial fears of over-utilization and a potentially expensive benefit, the Transgender Health Benefit Program has proven to be appropriately accessed and undeniably more affordable than other, often routinely covered, procedures."⁶¹

Recently, the gay and transgender community together with the labor community fought for similar coverage in Portland, Oregon. The American Federation of State, County, and Municipal Employees' Council 75 submitted testimony to the city council, which said:

Currently, City health insurance plans specifically exclude transgender-related health care services ...

Continued on following page

This means that transgender City employees, including AFSCME members, are denied coverage for basic, medically-necessary care solely because of their gender identity. This situation lowers employee morale and makes for an unwelcoming work environment.

The Portland City Council voted unanimously to pass transgender health coverage for city workers on June 8, 2011.⁶²

Offering these benefits has proven to be cost effective for municipalities seeking to ensure a welcoming and hospitable workplace that attracts the best and brightest individuals. In San Francisco, total health insurance claims averaged less than \$77,000 per year between 2001 and 2006, a tiny fraction of the city's initial projection of \$1.75 million per year.

Echoing the experience of San Francisco, in 2012 the California Department of Insurance conducted an economic impact assessment comparing the costs and benefits of a California law expressly prohibiting discrimination in coverage for transgender people. Based on a research review and actuarial study, the department concluded that, "The benefits of eliminating discrimination far exceed the insignificant costs." The assessment found an "immaterial" impact on premium costs, coupled with improved outcomes for some of the most significant health disparities facing the transgender population, including reduced suicide risk and other improved mental health outcomes.

Michigan

Where some municipalities and states have taken significant steps toward greater workplace equality, others have chosen to move backward. In fact, some states are turning back the clock entirely by passing legislation targeted directly at gay and transgender workers. One of the more onerous examples is Michigan's House Bill 4770.

Signed into law in December 2011, this bill bans public institutions from offering benefits to domestic partners.⁶³ Prior to this bill, three local school districts and five city and county governments—including the City of Detroit—provided domestic partner benefits for public employees. With this bill's passage, however, state law trumps city law, and these municipalities can no longer offer these benefits.

In January 2012, the American Civil Liberties Union of Michigan filed a lawsuit asking a federal court to strike down H.B. 4770. Doak Bloss, the health equity and social justice coordinator for the Ingham County Health Department, and his partner, Gerardo Ascheri, are one of the four plaintiff couples named in the lawsuit.⁶⁴

At a press conference Bloss said that, "This legislation blatantly and explicitly targets us for discrimination. It says that my employer can't treat our family equally with other families even if it wants to. It is essentially a message to all gay and lesbian people that Michigan doesn't want us here."⁶⁵

Continuing, he said that, "[I]f this law is not overturned, for financial and emotional reasons, we will have to leave."⁶⁶

Policy recommendations

Gay and transgender public-sector workers are thankfully afforded some laws and policies that shield them from discrimination on the job and extend equal workplace benefits to them and their partners. Still, a majority of Americans live in a state that has yet to pass a law outlawing discrimination against gay and transgender workers. Fifty-seven percent of state employees still work in a state where no legal protections are afforded to gay individuals. Sixty-nine percent live in state where no legal protections are afforded to transgender individuals.

At the federal level, the Employment Non-Discrimination Act and other key legislation would provide the most sweeping and permanent protection for gay and transgender workers. A host of policy solutions at the state and local level can help fill the gaps where laws and policies currently do not exist for these workers. Unions, through contracts and advocacy, can also help encourage policies that ensure equal and fair treatment of gay and transgender individuals working in state and local governments.

Let us take a look at the laws and policies that should be enacted by lawmakers and adopted as part of union contracts that would level the playing field for gay and transgender employees in state and local government.

Policies at the federal level

The Employment Non-Discrimination Act

Congress should pass the Employment Non-Discrimination Act, which, if enacted, would make discriminating against a worker based on their sexual orientation or gender identity a crime in all 50 states and the District of Columbia. The act would outlaw discrimination in both public and private employment, giving most gay and transgender state and local workers comprehensive employment protections under federal law.⁶⁷

The Respect for Marriage Act

If passed, the Respect for Marriage Act would repeal the Defense of Marriage Act—the antigay law, which, for the purposes of the federal government, defines marriages as being between one man and one woman.⁶⁸ This law negatively impacts same-sex couples in numerous ways, one of which is an extra tax on health benefits when an employer offers those benefits to its employees' same-sex partner. Repealing the Defense of Marriage Act would remove this unnecessary tax burden on both the employee (state and municipal employees) and employer (the state or municipal governments).

The Tax Parity for Health Plan Beneficiaries Act

Even without repealing the Defense of Marriage Act, Congress could end the unnecessary tax on domestic partnership health benefits by passing the Tax Parity for Health Plan Beneficiaries Act.⁶⁹ Doing so would treat same-sex partners the same as different-sex spouses by exempting health insurance coverage from payroll taxes.

Policies at the state level

State laws outlawing discrimination on the basis of sexual orientation and gender identity

States should pass laws prohibiting discrimination in public and private employment on the basis of sexual orientation and gender identity. While some states have already enacted these laws, a majority of state legislatures have failed to take action to outlaw discrimination against gay and transgender workers. Doing so would help fill the gap, as current federal legislation fails to exist and extend sorely needed nondiscrimination protections to the gay and transgender workforce.

Executive orders prohibiting discrimination on the basis of sexual orientation and gender identity

Where state lawmakers fail to enact legislation barring discrimination against gay and transgender workers, governors can and have stepped in to prohibit discrimi-

nation against gay and transgender workers in certain sectors of state employment. As the chief executive of the state, governors retain the right to craft a personnel policy that produces the best results for the taxpayer. This should certainly include taking the necessary steps (such as issuing an executive order) to prohibit discrimination on the basis of sexual orientation and gender identity.

Additionally, authorities within higher education governing boards, state supreme courts, executive agencies, and statewide elected offices should issue their own nondiscrimination orders.

Marriage equality and other relationship-recognition legislation

One of many reasons that statehouses should enact relationship-recognition laws is that doing so will give state workers with same-sex partners equal access to health insurance benefits that are so critical to their health and livelihood. This includes legislation that extends the rights and responsibilities of marriage to same-sex couples but also includes legislation that offers other types of legal recognition of relationships between same-sex couples such as civil unions or domestic partnerships.

Extending equal benefits to gay state workers

Absent relationship recognition laws, state legislatures should affirmatively pass legislation that extends workplace benefits to gay state workers and their families. Alternatively, fair-minded governors should issue directives or other guidance to state agencies requiring them to offer equal partner benefits to their employees with same-sex partners.

Repealing state Defense of Marriage acts and antigay constitutional amendments

Unfortunately, many states have state-level Defense of Marriage acts that prevent the states from recognizing any marriage other than those between one man and one woman. This prevents gay public employees from accessing equal health benefits for their same-sex partners in many states. Similarly, many states have gone one step further by amending their state constitution with so-called marriage amendments that define marriage as the union between one man and one

woman.⁷⁰ These amendments erect even higher barriers for gay public-sector workers to access equal benefits on the job. State legislators, governors, and the voters themselves should act to repeal these antigay discriminatory laws and constitutional amendments.

Equalizing the tax burden on health benefits

Because of the federal Defense of Marriage Act, equal partner health benefits are taxed as imputed income for employees with same-sex partners. Until the Defense of Marriage Act falls, states should pass laws that “gross up” and compensate their gay employees for this unfair tax burden to ensure that all workers receive equal pay for equal work.

Health care plans that are transgender-inclusive

Governors and agency heads should work with insurance companies to ensure that they offer at least one transgender-inclusive health care plan to their state workers. This means eliminating exclusionary language in state health insurance plans that are harmful to the health and wellness of their transgender workers.

Policies at the local level

Municipal nondiscrimination ordinances

In addition to state laws prohibiting discrimination, individual localities can pass ordinances that similarly make discriminating against someone based on his or her sexual orientation or gender identity a crime. Hundreds of cities currently outlaw discrimination against gay workers—many of which also do so based on gender identity. These local ordinances are crucial to providing protections to gay and transgender public-sector workers in states that have failed to pass larger, more comprehensive laws against discrimination.

Extending equal benefits to gay municipal employees

Local lawmakers should do all that is in their power to ensure equal access to workplace benefits for municipal workers with same-sex partners. City councils should pass ordinances and mayors should take administrative action requiring municipal agencies to provide equal access to workplace benefits, including access to partner health insurance.

Establishing domestic partnership registries

While states regulate marriage, individual localities may establish domestic partnership registries that offer limited relationship-recognition rights to same-sex couples. Such registries give these couples equal access to city benefits, meaning that municipal workers with same-sex partners will be able to secure equal benefits for themselves, their partners, and their families.

Equalizing the tax burden on health benefits

Because of the federal Defense of Marriage Act, equal partner health benefits are taxed as imputed income for employees with same-sex partners. Municipalities should pass laws that compensate their gay employees for this unfair tax burden and ensure all workers receive equal pay for equal work.

Offering health care plans that are transgender-inclusive

City councils, administrative agencies, and mayors should work with insurance companies to ensure they offer at least one transgender-inclusive health care plan to their workers.

Union contracts

Where laws and policies are absent, unions can work with their members and with state and local employers to help fill gaps in protections and equal benefits. Union contracts can protect gay and transgender workers from discrimination

by including nondiscrimination clauses that cover both sexual orientation and gender identity. Language in the contract can also address harassment, bullying, and workplace violence.

Unions can also collectively bargain for equal health care and retirement benefits for same-sex domestic partners, transgender-inclusive health care coverage, and fair sick and bereavement leave. Similarly, the contract can have a comprehensive definition of family, which includes same-sex partners and their families, and gay and transgender union members can have no more burden of proof of relationship than their straight and nontransgender coworkers.

Policies leveling the playing field are a win-win for everyone

If enacted, these policy recommendations would significantly help combat discrimination based on sexual orientation and gender identity in state and local governments. They would also help ensure that all workers, gay or straight, transgender or not, have equal access to workplace benefits.

A critical component of this work is not only passing laws and policies but also implementing and enforcing them. Nondiscrimination laws should be vigorously enforced and coupled with thorough diversity trainings and cultural competency to ensure all employees understand that discrimination against gay and transgender public-sector employees will not be tolerated. Laws that extend benefits to same-sex couples should extend all benefits—not just some—and state agencies would do well to thoroughly ensure equal access for gay employees and their partners. Even when governments are able to offer at least one transgender-inclusive health insurance option, they should continue to work with other insurance providers to remove all harmful exclusions.

Conclusion

Discrimination is not an American value. Hard work and fairness are—these are the values at the core of public services and the workers who provide them. Yet for gay and transgender public workers, discrimination all too often prevails, and fairness remains out of reach.

Discrimination in the workplace is not only unfair and unjust to the gay and transgender workers, it is also unfair to taxpayers. In a time when our economy is just beginning to recover from the Great Recession and when state and local governments are in the red, taxpayer dollars should be used with the utmost diligence. By reinforcing discriminatory practices that cost the government extra money, tax dollars are going to waste.

State and local governments should put into place policies and practices that treat all workers the same, regardless of sexual orientation or gender identity. These policies are good for gay and transgender workers. They are good for efficient and effective government. And they are good for the American taxpayer.

The time to act is now.

About the authors

Crosby Burns is a Research Associate for the LGBT Research and Communications Project at the Center for American Progress. Crosby has helped develop CAP's strategic policy and communications agenda to advance equality and fairness for lesbian, gay, bisexual, and transgender Americans through congressional and administrative action. He has led CAP's efforts to combat discrimination based on sexual orientation and gender identity by advocating for laws and policies that extend legal workplace protections to the gay and transgender workforce. While at CAP, Crosby has also documented discrepancies in the higher education financial aid system that impact lesbian, gay, bisexual, and transgender applicants for financial aid, as well as applicants with same-sex parents. Additionally, Crosby monitored the Don't Ask, Don't Tell repeal process to ensure a swift and efficient implementation of repeal.

Prior to joining CAP, Crosby worked at the U.S. Department of Justice, where he helped investigate mergers and acquisitions in the telecommunications and media markets. Crosby holds a bachelor's degree in political science and psychology from the University of California, Berkeley. His work has been covered in *The New York Times*, *The Hill*, *The Chronicle of Higher Education*, and *Inside Higher Education*, and has been published in the Harvard Kennedy School's *LGBTQ Policy Journal*.

Kate Childs Graham is a senior speechwriter at the American Federation for State, County and Municipal Employees, AFL-CIO. Kate develops messaging and creates effective presentations for union leaders and members to advance the fight for fairness for all working families. As a point person for AFSCME Pride, Kate works with gay, transgender, and allied AFSCME members to advocate for equal rights of gay and transgender public-sector workers through inclusive union contracts and activism at the local, state, and federal levels.

Prior to joining AFSCME, Kate worked at Choice USA and Catholics for Choice, where she helped develop and implement comprehensive communications strategies to advance reproductive justice. Kate holds a bachelor's degree in history from the Catholic University of America and a master's degree in gender and peace-building from the United Nations-mandated University for Peace. Kate writes a monthly column for the *National Catholic Reporter*, and her work has been covered in *The Washington Post*, *The Hill*, *Politico*, *The New York Times*, and *Newsweek*.

Sam Menefee-Libey is an Advocacy Associate for Campus Progress at the Center for American Progress. Sam trains and provides support to young organizers engaged in political campaigns, fights for public policies that benefit young people, and develops programs and campaigns to advance youth power.

Prior to joining Campus Progress, Sam spent time fighting poverty as an AmeriCorps member with City Year New York and fundraising in Los Angeles, California, with the Fund for Public Interest Research. He helped to empower lesbian, gay, bisexual, and transgender people as an intern with the Gay and Lesbian Leadership Institute and an organizing fellow at the National Gay and Lesbian Task Force in Washington, D.C. He helped to build power for young people as a New Leader with the Center for Progressive Leadership and as a grassroots organizing trainer with the United States Students Association. Sam has contributed research as a student and social researcher in Nicaragua with the School for International Training, and in Salem, Oregon, with Willamette University, where he graduated with a bachelor's degree in critical theory and social justice. Sam has experience working on a broad spectrum of economic and social justice issues, including antioppression, education, and environmental justice.

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Endnotes

- 1 In this report, “gay” is used as an umbrella term to describe people who identify as gay, lesbian, or bisexual; Crosby Burns, Kimberly Barton, and Sophia Kerby, “The State of Diversity in Today’s Workforce: As Our Nation Becomes More Diverse So Too Does Our Workforce” (Washington: Center for American Progress, 2012), available at http://www.americanprogress.org/issues/2012/07/diversity_brief.html.
- 2 Brad Sears, Nan D. Hunter, and Christy Mallory, “Chapter 1: Estimates of LGBT Public Employees.” In *Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment* (Los Angeles: The Williams Institute, 2009), available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/1_LGBTWorkforce1.pdf.
- 3 Ibid. While numbers for June 2012 exist, we used numbers from September 2009 since that was the time that Williams made their estimates of the gay and transgender population.
- 4 Ibid.
- 5 Brad Sears, Nan D. Hunter, and Christy Mallory, “Chapter 9: Surveys of LGBT Public Employees and their Co-Workers.” In *Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment* (Los Angeles: The Williams Institute, 2009), available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/9_Surveys.pdf.
- 6 Lambda Legal & Deloitte Financial Advisory Services LLP, “2005 Workplace Fairness Survey” (2006), available at <http://data.lambdalegal.org/pdf/641.pdf>.
- 7 Jamie M. Grant and others, “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), available at http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.
- 8 The Transgender Law Center, “The State of Transgender California Report: Results from the 2008 Transgender Economic Health Survey” (2009), available at http://transgenderlawcenter.org/pdf/StateTransCA_report_2009Print.pdf.
- 9 This survey sample “consisted of 5143 teachers from all disciplines and instructional levels, counselors, and librarians from public, charter, private, parochial, and technical schools throughout all fifty states and Washington DC”; Sears, Hunter, and Mallory, “Chapter 9: Surveys of LGBT Public Employees and their Co-Workers.”
- 10 Ibid.
- 11 Ibid.
- 12 Ibid.
- 13 Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act, February 23, 2011, available at <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>.
- 14 Christy Mallory and Brad Sears, “Evidence of Employment Discrimination on the Basis of Sexual Orientation in State and Local Government: Complaints Filed with State Enforcement Agencies 2003-2007” (Los Angeles: The Williams Institute, 2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-DiscriminationComplaintsReport-July-2011.pdf>.
- 15 Brad Sears, Nan D. Hunter, and Christy Mallory, “Chapter 10: Analysis of Wage Gap between LGB Public Employees and their Co-Workers.” In *Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment* (Los Angeles: The Williams Institute, 2009), available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/10_WageGap.pdf.
- 16 While this study was not specific to public-sector transgender employees, it is likely that the wage gaps transgender women experience occur in all sectors of the economy, public or private.
- 17 Executive Order no. 13,087, *Federal Register*, Vol. 63, No. 105 (1998), available at <http://www.gpo.gov/fdsys/pkg/FR-1998-06-02/pdf/98-14689.pdf>.
- 18 Brian Knowlton, “U.S. Job Site Bans Bias Over Gender Identity,” *The New York Times*, January 5, 2010, available at http://www.nytimes.com/2010/01/06/us/06gender.html?_r=1.
- 19 Office of the Press Secretary, *Memorandum for the Heads of Executive Departments and Agencies* (White House, 2009), available at http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-on-Federal-Benefits-and-Non-Discrimination-6-17-09/; Office of the Press Secretary, *Presidential Memorandum: Extension of Benefits to Same-Sex Domestic Partners of Federal Employee* (White House, 2010), available at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-extension-benefits-same-sex-domestic-partners-federal-emplo>.
- 20 This is the month for which we have the most recently updated data; Bureau of Labor Statistics, “Employer Costs for Employee Compensation news release text,” Press release, June 7, 2012, available at <http://www.bls.gov/news.release/ecec.nr0.htm>.
- 21 Michael Halle and Meena Seshamani, “Hidden Costs of Health Care: Why Americans are Paying More but Getting Less” (Washington: U.S. Department of Health and Human Services, 2009), available at <http://www.healthreform.gov/reports/hiddeencosts/hiddeencosts.pdf>.
- 22 “Percent of Private Sector Establishments That Offer Health Insurance to Employees, 2011,” available at <http://www.statehealthfacts.org/comparemaptable.jsp?cat=3&ind=175> (last accessed August 2012); Richard Cauchi and Tyler Marsh, “State Employee Health Benefits” (Washington: National Conference of State Legislatures, 2012), available at <http://www.ncsl.org/issues-research/health/state-employee-health-benefits-ncsl.aspx>.
- 23 Center for American Progress, Family Equality Council, and Movement Advancement Project, “Securing Legal Ties for Children Living in LGBT Families” (2012), available at <http://www.lgbtmap.org/file/securing-legal-ties.pdf>.
- 24 M.V. Lee Badgett, “Unequal Taxes on Equal Benefits: The Taxation of Domestic Partner Benefits” (Washington and Los Angeles: Center for American Progress and the Williams Institute, 2007), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-UnequalTaxesOnEqualBenefits-Dec-2007.pdf>.
- 25 Ibid.

- 26 Kari E. Hong, "Categorical Exclusions: Exploring Legal Responses to Health Care Discrimination Against Transsexuals," *Columbia Journal of Gender & Law*, 11 (2002): 88–126, available at http://www.trans-health.com/wp-content/uploads/hong_categorical_exclusion.pdf.
- 27 Government Employees Health Association, Inc., "Benefit Plan" (2012), available at <http://wwdoptw.opm.gov/insure/health/planinfo/2012/brochures/71-006.pdf>.
- 28 Hong, "Categorical Exclusions"; "Plans & Services for Federal Employees: Benefits at a Glance," available at http://www.globalhealth.com/plans_fed.aspx (last accessed July 2012).
- 29 Bureau of Labor Statistics, "Union Members – 2011," Press release, January 27, 2012, available at <http://www.bls.gov/news.release/pdf/union2.pdf>.
- 30 AFSCME and CAP calculations from Bureau of Labor Statistics, National Compensation Survey (U.S. Department of Labor), available at <http://www.bls.gov/ncs/>.
- 31 AFSCME, "Online Contract Database," available at <http://www.afscme-research.org/>.
- 32 Center for American Progress, Family Equality Council and Movement Advancement Project, "All Children Matter: How Legal and Social Inequalities Hurt LGBT Families (Full Report)" (2011), available at <http://action.familyequality.org/site/DocServer/AllChildrenMatter-FullFinal10212011.pdf?docID=2401>.
- 33 Ibid.
- 34 Grant and others, "Injustice at Every Turn."
- 35 Phil Oliff, Chris Mai, and Vincent Palacios, "States Continue to Feel Recession's Impact" (Washington: Center on Budget and Policy Priorities, 2012), available at <http://www.cbpp.org/cms/?fa=view&id=711>.
- 36 William Selway, "Cities Across U.S. Grapple With Tax Revenue Drop as Costs Rise, Aid Falls," *Bloomberg*, September 27, 2011, available at <http://www.bloomberg.com/news/2011-09-27/cities-across-u-s-grapple-with-tax-revenue-drop-as-costs-rise-aid-falls.html>.
- 37 Crosby Burns, "The Costly Business of Discrimination: The Economic Costs of Discrimination and the Financial Benefits of Gay and Transgender Equality in the Workplace" (Washington: Center for American Progress, 2012), available at http://www.americanprogress.org/issues/2012/03/pdf/lgbt_biz_discrimination.pdf.
- 38 Center for American Progress, "Discrimination and dollars: Gay and transgender employment discrimination imposes significant financial harm on businesses, introducing inefficiencies and costs that cut into profits and undermine business' bottom lines" (2012), available at http://www.americanprogress.org/issues/2012/03/pdf/lgbt_biz_discrimination_infographic.pdf.
- 39 Movement Advancement Project, "Employment Non-Discrimination Laws" (2012), available at http://www.lgbtmap.org/equality-maps/employment_non_discrimination_laws.
- 40 Chris Geidner, "Transgender Breakthrough: EEOC ruling that gender-identity discrimination is covered by Title VII is a 'sea change' that opens the doors to employment protection for transgender Americans," *Metro Weekly*, April 23, 2012, available at <http://www.metroweekly.com/news/?ak=7288>.
- 41 Harris Interactive, Out & Equal, and Witeck-Combs Communications, "The Out & Equal Workplace Culture Report: Survey of Workplace Attitudes 2002-2008" (2008), available at <http://www.witeckcombs.com/pdf/out-equal-workplace-culture-report-2008.pdf>.
- 42 Movement Advancement Project, "Employment Non-Discrimination."
- 43 Jerome Hunt, "A State-by-State Examination of Nondiscrimination Laws and Policies: State Nondiscrimination Policies Fill the Void but Federal Protections Are Still Needed" (Washington: Center for American Progress Action Fund, 2012), available at http://www.americanprogress.org/issues/2012/06/pdf/state_nondiscrimination.pdf.
- 44 Author's calculations based on Census data and the populations of state employees in specific categories (not including the District of Columbia).
- 45 Two governors have issued directives—and not executive orders—prohibiting discrimination within the executive branch of state government. These directives do not apply to all state employees and only those that work within the executive branch. Missouri has a directive which prohibits discrimination in the executive branch on the basis of sexual orientation. Delaware has a directive which prohibits discrimination in the executive branch on the basis of gender identity (state law already prohibits discrimination on the basis of sexual orientation).
- 46 Hunt, "A State-by-State Examination."
- 47 Ibid.
- 48 Ibid.
- 49 Human Rights Campaign, "Employment Non-Discrimination Laws on Sexual Orientation and Gender Identity" available at http://preview.hrc.org/issues/workplace/equal_opportunity/4844.htm (last accessed August 2012).
- 50 Ibid.
- 51 Ibid.
- 52 Ibid.
- 53 Deena Fidas and Liz Cooper, "Corporate Equality Index 2012: Rating American Workplaces on Lesbian, Bisexual and Transgender Equality" (Washington: Human Rights Campaign Foundation, 2011), available at http://sites.hrc.org/documents/CorporateEqualityIndex_2012.pdf.
- 54 Tara Siegel Bernard, "Cambridge, Mass., Equalizes Cost of Health Insurance for Gay Workers," *Bucks: Making the Most of Your Money New York Times* blog, June 15, 2011, available at <http://bucks.blogs.nytimes.com/2011/06/15/cambridge-mass-equalizes-cost-of-health-insurance-for-gay-workers>.
- 55 Badgett, "Unequal Taxes."
- 56 Bernard, "Cambridge, Mass."
- 57 Ibid.
- 58 Tara Siegel Bernard, "A Progress Report on Gay Employee Health Benefits," *Bucks: Making the Most of Your Money New York Times* blog, June 27, 2012, available at <http://bucks.blogs.nytimes.com/2010/12/14/a-progress-report-on-gay-employee-health-benefits>.

- 59 City and County of San Francisco and the Human Rights Commission, "San Francisco City and County Transgender Health Benefit" (2007), available at http://www.hrc.org/files/assets/resources/San_Francisco_City_and_County_Transgender_Health_Benefit_-_2007-08-10.pdf.
- 60 Hong, "Categorical Exclusions."
- 61 City and County of San Francisco and the Human Rights Commission, "San Francisco City and County Transgender Health Benefit."
- 62 Amanda Waldroupe, "Portland's Transgender Benefits Have Gone Unused: Last June the Portland City Council unanimously approved the new benefit joining Multnomah County and San Francisco" (Portland, Oregon: The Lund Report, 2012), available at http://www.the-lundreport.org/resource/portland%E2%80%99s_transgender_benefits_have_gone_unused.
- 63 Michigan Legislative Council, House Bill No. 4770 (2011), available at [http://www.legislature.mi.gov/\(S\(yu4uz3vsvkutae55ps2upe55\)\)/mileg.aspx?page=getobject&objectname=2011-HB-4770](http://www.legislature.mi.gov/(S(yu4uz3vsvkutae55ps2upe55))/mileg.aspx?page=getobject&objectname=2011-HB-4770).
- 64 American Civil Liberties Union, "Bassett et al. v. Snyder" (2012), available at <http://www.aclu.org/lgbt-rights/bassett-et-al-v-snyder>.
- 65 Kate Opalewski, "Couples standing up for justice: Plaintiffs' children at risk, challenge DP benefit restrictions," *Pride Source: Between the Lines*, February 2, 2012, available at <http://www.pridesource.com/article.html?article=51449>.
- 66 *Ibid.*
- 67 *Employment Non-Discrimination Act of 2011*, S. 8111, 112 Cong. 2 sess., available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1397ih/pdf/BILLS-112hr1397ih.pdf>. The act would only apply to employers with 15 or more employees and also has significant exemptions for religiously affiliated employers.
- 68 *Respect for Marriage Act of 2011*, S. 598, 112 Cong. 2 sess., available at <http://www.gpo.gov/fdsys/pkg/BILLS-112s598is/pdf/BILLS-112s598is.pdf>.
- 69 *Tax Parity for Health Plan Beneficiaries Act of 2011*, S. 1171, 112 Cong. 2 sess., available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr2088ih/pdf/BILLS-112hr2088ih.pdf>.
- 70 Movement Advancement Project, "Marriage & Relationship Recognition Laws" (2012), available at http://www.lgbtmap.org/equality-maps/marriage_relationship_laws.

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