



# A State-by-State Examination of Nondiscrimination Laws and Policies

State Nondiscrimination Policies Fill the Void  
but Federal Protections Are Still Needed

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# Introduction and summary

Every day gay and transgender employees face alarmingly high rates of discrimination in the workplace.<sup>1,2</sup> For instance, 15 percent to 43 percent of gay and transgender workers have experienced some form of discrimination on the job. According to the Williams Institute, a think tank out of UCLA School of Law, “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 or transgender.<sup>3</sup>

Transgender people in particular face extraordinarily high rates of employment discrimination. Ninety percent of transgender individuals in a 2011 survey reported encountering some form of harassment or mistreatment on the job, or took actions to avoid it.<sup>4</sup> Forty-seven percent of those individuals experienced some sort of adverse job outcome, including 26 percent who were fired and forced into the ranks of unemployment due to gender identity-discrimination.<sup>5</sup>

Eighty-nine percent of Americans mistakenly believe it is illegal under federal law to be fired because you are gay or transgender, but this type of discrimination is perfectly legal in a majority of states.<sup>6</sup> Unfortunately, Congress has yet to pass the Employment Non-Discrimination Act, or ENDA, which would provide the gay and transgender workforce crucial protections against workplace discrimination based on a person’s real or perceived sexual orientation or gender identity.

If passed, ENDA’s protections would extend to all federal, state, and local government agencies; employment agencies; unions; and private employers with 15 or more employees. Importantly, ENDA includes explicit exemptions for religious organizations and religiously affiliated entities, including all houses of worship, missions, or schools whose primary purpose is religious worship or teaching religious doctrines.<sup>7</sup>

Where Congress has failed to act, states have stepped in to provide employment protections to the gay and transgender workforce.<sup>8</sup> Sixteen states and Washington, D.C. have passed laws that prohibit discrimination on the basis of sexual orientation and gender identity. An additional five states have passed laws or enacted policies that prohibit discrimination on the basis of sexual orientation, but not gender identity.

Further, faced with inaction by state legislatures, some governors have leveraged their executive authority to extend nondiscrimination protections to their state's public employees—again sometimes including both sexual orientation and gender identity, and sometimes only including sexual orientation. In total, 32 states (including Washington, D.C.) have implemented at least one kind of workplace nondiscrimination law or administrative policy that protects gay and transgender workers from discrimination.

In this report we offer a state-by-state examination of these laws and policies, and divide them into three different groups—strong, good, and weak—with a brief explanation for each category. We also discuss the number of discrimination complaints that have been brought forward in these states (when data are available), look at the legal remedies available to those who have been discriminated against, and debunk common arguments against ENDA—including that there will be too many or too few legal complaints if it is passed—based on our state findings. Full profiles of states, including information on the laws and number of complaints brought where available, are included in the appendix.

Gay and transgender workers deserve federal legal protections to combat the high rates of discrimination they experience in the workplace. The existing state laws and policies provide protections against discrimination on the basis of sexual orientation and/or gender identity, and recourse for such discrimination. But not all states have these policies. The policies that do exist vary from state to state and can be confusing for workers who relocate from one state to another.

Passing ENDA would not only benefit the gay and transgender workforce. Doing so would be a boon to the business community as well. Right now, businesses must comply with a patchwork of state and local laws that prohibit discrimination. Filing in the patchwork and passing ENDA would bring uniformity and clarity to the legal employment landscape and would help make sure that otherwise qualified employers are not fired based on their sexual orientation and gender identity.

Simply, gay and transgender workers deserve a fair chance at earning an honest living that allows them to support themselves and their families. A majority of states have afforded their gay and transgender workers with the opportunity to do so. While these states fill a much-needed void, a number of states still do not protect gay and transgender workers from discrimination. The only way to ensure that gay and transgender workers are universally protected from employment discrimination is through the passage of ENDA.

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