



# 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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Jerome Hunt June 2012



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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.

## State non-discrimination laws and policies fact sheet

State	Sexual orientation	Gender identity	Religious exemption	Non-profit exemption	Employment Sector Coverage
Alabama	No	No	N/A	N/A	N/A
Alaska	Yes (2002)	No	N/A <sup>1</sup>	N/A	State employees
Arizona	Yes (2003)	No	N/A	N/A	State employees
Arkansas	No	No	N/A	N/A	N/A
California	Yes (1992)	Yes (2003)	Yes	No	All employees
Colorado	Yes (1990)	Yes (2007)	Yes	No	All employees
Connecticut	Yes (1991)	Yes (2011)	Yes	No	All employees
Delaware	Yes (2009)	Yes (2009)	Yes	No	SO - All employees, GI - executive branch employees
DC	Yes (1997)	Yes (2006)	Yes	No	All employees
Florida	No	No	N/A	N/A	N/A
Georgia	No	No	N/A	N/A	N/A
Hawaii	Yes (1991)	Yes (2011)	Yes	No	All employees
Idaho	No	No	N/A	N/A	N/A
Illinois	Yes (2006)	Yes (2006)	Yes	No	All employees
Indiana	Yes (2005)	Yes (2005)	N/A	N/A	State employees
Iowa	Yes (2007)	Yes (2007)	Yes	No	All employees
Kansas	Yes (2007)	Yes (2007)	N/A	N/A	State employees
Kentucky	Yes (2008)	Yes (2008)	N/A	N/A	State employees
Louisiana	No	No	N/A	N/A	N/A
Maine	Yes (2005)	Yes (2005)	Yes	No	All employees
Maryland	Yes (2001)	No	Yes	No	All employees
Massachusetts	Yes (1989)	Yes (2011)	Yes	Yes	All employees
Michigan	Yes (2003)	Yes (2007)	N/A	N/A	State employees
Minnesota	Yes (1993)	Yes (1993)	Yes	No	All employees
Mississippi	No	No	N/A	N/A	N/A
Missouri	Yes (2010)	No	N/A	N/A	Executive branch
Montana	Yes (2000)	No	N/A	N/A	State employees
Nebraska	No	No	N/A	N/A	N/A
Nevada	Yes (1999)	Yes (2011)	Yes	No	All employees
New Hampshire	Yes (1997)	No	Yes	No	All employees
New Jersey	Yes (1992)	Yes (2006)	Yes	No	All employees
New Mexico	Yes (2003)	Yes (2003)	Yes	No	All employees
New York	Yes (2002)	No	Yes	No	All employees

North Carolina	No	No	N/A	N/A	N/A
North Dakota	No	No	N/A	N/A	N/A
Ohio	Yes (2007)	Yes (2007)	N/A	N/A	State employees
Oklahoma	No	No	N/A	N/A	N/A
Oregon	Yes (2007)	Yes (2007)	Yes	No	All employees
Pennsylvania	Yes (1975)	Yes (2003)	N/A	N/A	State employees
Rhode Island	Yes (1995)	Yes (2001)	Yes	No	All employees
South Carolina	No	No	N/A	N/A	N/A
South Dakota	No	No	N/A	N/A	N/A
Tennessee	No	No	N/A	N/A	N/A
Texas	No	No	N/A	N/A	N/A
Utah	No	No	N/A	N/A	N/A
Vermont	Yes (1992)	Yes (2007)	Yes	No	All employees
Virginia	No	No	N/A	N/A	N/A
Washington	Yes (2006)	Yes (2006)	Yes	No	All employees
West Virginia	No	No	N/A	N/A	N/A
Wisconsin	Yes (1982)	No	Yes	No	All employees
Wyoming	No	No	N/A	N/A	N/A

1 N/A = Not Applicable

# Rankings of state protections

According to the Movement Advancement Project, 39 percent of the gay and transgender population lives in a state that prohibits discrimination on the basis of sexual orientation and gender identity.<sup>9</sup> In addition, 51 percent of gay and transgender workers live in a state that prohibits discrimination on the basis of sexual orientation. On the other hand, 49 percent of gay and transgender workers live in states that do not provide any protections on the basis of sexual orientation or gender identity.

The states that provide protections do so either through a law or an executive policy. Laws provide gay and transgender workers with the ability to seek legal recourse and other penalties if they are discriminated against, and they are hard to overturn. Executive policies do not provide gay and transgender workers with legal recourse and are subject to being rescinded. But they do provide gay and transgender workers with the ability to seek recourse within their agency or department such as filing a complaint with human resources.

As a result of this difference, there are states that provide strong, good, and weak protections for gay and transgender workers.

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## Strong states

Fifteen states and Washington, D.C. have passed laws that include protections against both sexual orientation and gender identity discrimination in the workplace. Some states first passed sexual orientation laws and then added gender identity language in subsequent legislation (e.g., California and Massachusetts).<sup>10</sup> Others passed a single law that included both types of protections (e.g., Iowa and Oregon). State laws in this category also apply to both the private and public sector. Beyond those mentioned already, these states include Colorado, Connecticut, Hawaii, Illinois, Maine, Nevada, New Jersey, New Mexico, Rhode Island, Vermont, and Washington.

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## Good states

Next we have six states whose workplace nondiscrimination policies are good but have room for improvement. Five states—Maryland, Minnesota, New Hampshire, New York, and Wisconsin—have passed laws that provide protections to both public and private employees, but only on the basis of sexual orientation. This category’s final state, Delaware, provides protection on the basis of sexual orientation for public and private employees. But gender identity and gender expression protections are only available for state employees. To move into the strong state category they will need to incorporate protections for both sexual orientation and gender identity for public and private employees.

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## Weak states

Ten states have executive policies in place that protect some gay and transgender employees from discrimination: Alaska, Arizona, Indiana, Kansas, Kentucky, Michigan, Missouri, Montana, Ohio, and Pennsylvania. Six of the states—Indiana, Kansas, Kentucky, Michigan, Ohio, and Pennsylvania—prohibit discrimination based on sexual orientation and gender identity for state employees. Three of the states—Alaska, Arizona, and Montana—prohibit discrimination based on sexual orientation for state employees. The last state, Missouri, prohibits discrimination based on sexual orientation for executive branch employees.

We consider these policies weak because they only apply to public employees and/or omit gender identity coverage. It is important to recognize the way in which these policies are weaker than laws—namely they can be rescinded by the governor (which means the protections are not necessarily permanent), and as we will see in the next section, offer no legal recourse. In the past four years, for example, Louisiana Gov. Bobby Jindal (R) and Virginia Gov. Bob McDonnell (R) have rescinded executive policies. (Technically, a state legislative body could also overturn a law, but that is much more difficult to do than rescinding an executive policy.)

Next we take a closer look at the legal recourse available to individuals in these states who face discrimination.

# Penalties and recourse for employees under state laws

Gay and transgender workers may be protected from discrimination in the workplace in 32 states, but only 21 of these states afford these workers recourse under the law. The 10 remaining states provide protection through executive policies that can be rescinded and do not provide any legal recourse for discrimination.

Of the 10 states, 9 protect some of their public employees from sexual orientation or gender identity discrimination—Alaska, Indiana, Kansas, Kentucky, Michigan, Missouri, Montana, Ohio, and Pennsylvania. In these states, governors have taken administrative action (usually through an executive order) to prohibit discrimination against state gay and transgender employees. But because these actions do not carry the weight of the law, they do not provide these employees with the ability to sue their employer when they are discriminated against.<sup>11</sup>

Still these policies significantly help combat sexual orientation and gender identity-discrimination in state employment. By including them in nondiscrimination and equal employment opportunity statements, as well as within diversity training regimens, state agencies and departments send a strong message to employees that discrimination against gay and transgender workers will not be tolerated. Similarly, when discrimination does, gay and transgender states employees in these states can seek recourse from their agency or department including the ability to file a complaint with their human department.

Let us now take a look at the states that provide employee recourses and employer penalties vary from state to state.

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## Arizona (executive policy: sexual orientation)

Arizona does not allow employees who have been discriminated against the right of private action. But the person who harasses a worker on the basis of their sexual orientation can face disciplinary action up to and including termination of employment.

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## California (law: sexual orientation and gender identity)

The Fair Employment and Housing Commission of California has the right to impose administrative fines up to \$150,000 against an employer who discriminates on the basis of sexual orientation or gender identity. The commission can also impose civil penalties up to \$25,000 against an employer that are to be paid to an employee who was denied freedom from violence or intimidation in the workplace. Lastly, an employee has the right to seek administrative remedies, file an action against the employer after they have sought administrative remedies, and recuperate attorney fees if they file an action.

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## Colorado (law: sexual orientation and gender identity)

An employer who discriminates on the basis of sexual orientation or gender identity or expression may be ordered to cease and desist discriminatory treatment and take any other appropriate action, including providing back pay; hiring, reinstating, or upgrading employees; and restoration in a labor organization. An employee is also eligible to pursue administrative remedies and file an action after exhausting the administrative remedies.

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## Connecticut (law: sexual orientation and gender identity)

All employees are protected against discrimination on the basis of sexual orientation or gender identity and expression. Private employees, however, are eligible to pursue administrative remedies and file an action if they sought administrative remedies first. Additionally, private employees are eligible for compensatory damages if they file an action. All employees are allowed to receive punitive damages if the court has the authority to award them and if they filed their action with the court instead of an administrative agency. Attorney fees may be recovered if the complaint is filed in court.

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## Delaware (law: sexual orientation)

The Delaware Department of Labor can award damages, provide injunctive relief, or force an employer to engage in reconciliation for discrimination on the basis of sexual orientation. In order to file an action, an employee must first exhaust any

administrative remedies that are available (such as being reinstated, given a promotion, given back pay) before they file an action against an employer. Once an employee has filed an action they can be awarded compensatory damages, punitive damages, injunctive relief, and attorney fees. Transgender executive branch employees, however, are prohibited from a private right of action in Delaware.

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### District of Columbia (law: sexual orientation and gender identity)

Employees have the right to seek action if they are discriminated against on the basis of sexual orientation or gender identity or expression and obtain compensatory damages and attorney fees. They may also seek a number of remedies including hiring, reinstatement, promotion, and back pay if they are able to successfully prove they have been discriminated against.

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### Hawaii (law: sexual orientation and gender identity)

Employees have the right to seek action if they are discriminated against on the basis of sexual orientation or gender identity or expression after they have exhausted any available administrative remedies. If an employee is successful, s/he may be able to receive declaratory relief and be eligible to recover costs, including attorney fees. The employer, on the other hand, may be ordered to cease and desist discriminatory treatment, to hire, to reinstate, and/or to promote the employee who has been discriminated against (with or without back pay), to implement compliance reporting, and to pay for the costs of the action.

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### Illinois (law: sexual orientation and gender identity)

Employees have the right to seek action if they are discriminated against on the basis of sexual orientation or gender identity after they have exhausted any available administrative remedies. If the employee is successful in their action they may receive actual damages; back pay; perquisites (e.g. incidental payment—a payment that is in addition to the regular or main amount, benefit, privilege, or advantage over and above regular income, salary, or wage); interest on damages; damages for emotional distress; reinstatement; a promotion; membership in an apprenticeship or labor organization; participation in job-training programs; an order against the employer for violating the Illinois Human Rights Act; and

attorney's fees and costs. In addition, the attorney general of Illinois has the right to bring an action on behalf of the people of the state in state court against the employer. If successful, equitable relief may be awarded to the employee and a fine of up to \$50,000 may be issued against the employer.

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#### Iowa (law: sexual orientation and gender identity)

Employees have the right to seek action if they are discriminated against on the basis of sexual orientation or gender identity after they have exhausted any available administrative remedies. If the employee is successful, s/he may be entitled to being hired, reinstated, or promoted with or without pay; being admitted or reinstated in a labor organization or work-training program; and damages caused by the unlawful discrimination, including court costs and reasonable attorney fees.

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#### Maine (law: sexual orientation and gender identity)

Employees have the right to seek action if they are discriminated against on the basis of sexual orientation or gender identity after they have exhausted any available administrative remedies. If the employee is successful, s/he may be entitled to being hired, reinstated, or promoted with or without pay; cease and desist orders; and/or damages caused by the unlawful discrimination, including court costs and attorneys' fees. Finally, private-sector employees may be entitled to compensatory damages if they file an action and can successfully prove they were discriminated against.

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#### Maryland (law: sexual orientation)

Employees have the right to seek action if they are discriminated against on the basis of sexual orientation after they have exhausted any available administrative remedies. If the employee is successful in their action, s/he is entitled to a range of remedies including cease and desist orders; affirmative action including (but not limited to) hiring, reinstatement, or upgrading employees with or without back pay; and any other equitable relief that is appropriate. On the other hand, if the employee wants to make an example out of the employer for their discriminatory treatment they can seek punitive damages. But punitive damages are only available if the employee files a complaint with the court instead of the corresponding agency.

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## Massachusetts (law: sexual orientation and gender identity)

Employees have the right to seek action if they are discriminated against on the basis of sexual orientation or gender identity after they have exhausted any available administrative remedies. Private employees may be entitled to compensatory damages if they file an action and are successful. On the other hand, if an employee wants to make an example out of the employer for their discriminatory treatment they can seek punitive damages. Punitive damages, however, are only available if the employee files a complaint with the court instead of the corresponding agency. Additionally, the Massachusetts Commission Against Discrimination will prosecute a case on behalf of the commission if an employee does not have an attorney. If the employee is successful, s/he may be entitled to reinstatement or upgrading of employment, back pay, restoration in a labor organization, and front pay (money awarded for lost compensation between judgment and reinstatement).

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## Minnesota (law: sexual orientation and gender identity)

If the employee proves that s/he has been discriminated against on the basis of sexual orientation or gender identity, s/he is entitled to treble damages and also may be entitled to damages for mental anguish or suffering, attorney's fees, and punitive damages (which are capped at \$8,500). Additionally, the employee may be entitled to being hired, reinstated, or upgraded at the place of employment, as well as receiving back pay.

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## Nevada (law: sexual orientation and gender identity)

Employees have the right to seek action if they are discriminated against on the basis of sexual orientation and gender identity or expression after they have exhausted any available administrative remedies. If attempts to settle a complaint fail, the Nevada Equal Rights Commission may order that an employer cease and desist from unlawful employment practices and restore certain benefits to the employee, including rehiring and back pay up to two years. Additionally, NERC may petition at the district court level for injunctive relief against employment practices NERC considers unlawful.

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### New Hampshire (law: sexual orientation and gender identity)

Employees have the right to seek action if they are discriminated against on the basis of sexual orientation after they have exhausted any available administrative remedies. But in order to receive punitive damages an employee must file their complaint in court instead of with the corresponding administrative agency.

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### New Mexico (law: sexual orientation and gender identity)

Employees have the right to seek action if they are discriminated against on the basis of sexual orientation or gender identity after they have exhausted any available administrative remedies. If an employee is successful, s/he may be entitled to compensatory damages and reasonable attorney fees.

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### New York (law: sexual orientation)

Employees have the right to seek action if they have been discriminated against on the basis of sexual orientation. If the employee is successful, s/he may be entitled to lost wages, benefits, and compensatory damages for pain and suffering.

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### Oregon (law: sexual orientation and gender identity)

Employees have the right to seek action or administrative remedies if they are discriminated against on the basis of sexual orientation or gender identity. If the employee is successful, s/he is entitled to recover actual damages and equitable relief. But in order to receive compensatory and punitive damages and attorneys' fees, an employee must file civil action in court instead of with the corresponding administrative agency.

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### Rhode Island (law: sexual orientation and gender identity)

Employees have the right to seek action if they are discriminated against on the basis of sexual orientation or gender identity or expression after they have exhausted any available administrative remedies. In cases where the Rhode Island Commission for Human Rights finds that unlawful discrimination occurred it

may order the employer to take affirmative action measures including but not limited to hiring, reinstatement, or the upgrading of employees with or without back pay. Attorneys' fees may also be awarded to the employee and, if the RICHR finds intentional discrimination, then it may award compensatory damages to the employee. But to receive punitive damages an employee must file their complaint in court instead of with the corresponding administrative agency.

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### Vermont (law: sexual orientation and gender identity)

Employees have the right to seek action or administrative remedies if they are discriminated against on the basis of sexual orientation or gender identity. Private employees are allowed to receive attorney fees and compensatory damages if they file their action in court. Public employees, on the other hand, can only receive compensatory damages if they file their action in court, but are allowed to receive attorney fees if they file their complaint in court or with the corresponding administrative agency. All employees, however, can receive punitive damages only if they have filed their action in court instead of the corresponding administrative agency.

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### Washington (law: sexual orientation and gender identity)

Employees have the right to seek action or administrative remedies if they are discriminated against on the basis of sexual orientation or gender identity. Employees can only receive attorney's fees if they file their complaint in court. But employers may be ordered to take affirmative action measures including but not limited to hiring, reinstating, or upgrading employees with or without back pay in cases where the Washington State Human Rights Commission finds that unlawful discrimination occurred. Furthermore, an administrative law judge may impose additional remedies, including damages up to \$20,000 for humiliation or mental suffering.

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### Wisconsin (law: sexual orientation)

Employees have the right to seek action if they are discriminated against on the basis of sexual orientation after they have exhausted any available administrative remedies and the Wisconsin Department of Workforce Development makes a favorable ruling for the employee. The employee cannot receive attorney fees

unless they file a complaint in court. And they can only receive punitive damages (local government employees excluded) if their complaint is filed in court instead of with the corresponding administrative agency. Private employees, however, can receive compensatory damages only if they have filed their action in court.

## Penalties and recourse terms used in this report

**Action:** A lawsuit in which one party (or parties) sues another.

**Administrative remedies:** The nonjudicial remedy provided by an agency, board, commission, or any other like organization (e.g., being reinstated, given a promotion, given back pay, etc.).

**Affirmative action:** Affirmative action refers to concrete steps that are taken not only to eliminate employment discrimination but also to attempt to redress the effects of past discrimination (e.g., hiring, reinstatement, or upgrading employees with or without back pay, etc.).

**Attorney fee:** Payment for legal services, which can take several forms—hourly charge, flat fee of service, contingent fee (usually one-third of gross recovery from the lawsuit), statutory fees (percentage of an estate), court-approved fees, and mixture of the aforementioned.

**Civil action:** Any lawsuit relating to civil matters (business, contracts, estates, domestic relations, accidents, etc.) and not criminal prosecution.

**Compensatory damages:** Damages recovered in payment for actual injury or economic loss, which does not include punitive damages.

**Declaratory relief:** A judge's determination of the parties' rights under a contract or a statute often requested in a lawsuit over a contract.

**Equitable remedy:** A court-ordered action that directs parties to do or not to do something. This is usually obtained when a legal remedy such as monetary damages cannot adequately redress the injury.

**Injunction:** An order issued by a court ordering someone to do something or prohibiting some act after a court hearing.

**Injunctive relief:** A court-ordered act or prohibition against an act or condition requested and sometimes granted in a petition to the court for an injunction (e.g., ordering an employer and its employees to stop discriminatory treatment and harassment on the basis of sexual orientation or gender identity).

**Punitive damages:** Damages awarded in a lawsuit as a punishment and example to others for malicious, evil, or particularly fraudulent acts (can also refer to compensation in excess of actual damages).

**Remedy:** The means to achieve justice in any matter in which legal rights are involved. Some remedies require that certain acts be performed or prohibited (originally called "equity"); others involve payment of money to cover loss due to injury or breach of contract (e.g., receiving a promotion that was denied because of one's sexual orientation or gender identity, back pay, etc.).

**Treble damages:** Tripling of damages allowed by state statute in certain types of cases.

Source: [dictionary.law.com](https://www.dictionary.law.com) and [definitions.uslegal.com](https://www.definitions.uslegal.com).

# Arguments against ENDA don't hold up

State laws and executive policies have been instrumental in providing 39 percent of gay and transgender workers and 51 percent of gay workers with protection against discrimination. These protections have afforded gay and transgender workers with job security and economic stability. Still, 49 percent of gay and transgender workers live in a state that does not provide them with protection against employment discrimination.

As a result, the diverse number of state laws and policies above doesn't provide adequate protection for gay and transgender workers, and a federal law such as the Employment Non-Discrimination Act is clearly needed. Yet the act's opponents have successfully stalled the bill using several different arguments, two of which involve the number of cases of discrimination that could come forward should the act become law.

First is the “drought” argument, which says there are not enough cases of sexual orientation or gender identity discrimination to warrant passage of Employment Non-Discrimination Act. The second is the “flood” argument, which takes the opposite position and says that federal agencies charged with enforcing the Employment Non-Discrimination Act would be flooded with claims of sexual orientation and gender identity discrimination if ENDA became law.

These are two common claims to stop ENDA. The reality would likely be somewhere in the middle of these two.

Data from the Williams Institute shows that both the “drought” and “flood” claims are invalid. In fact, for the “drought” argument, Williams's researchers found that gay employees file claims for sexual orientation discrimination under state laws at a similar rate as female workers file claims for sex discrimination: 5 complaints per every 10,000 gay workers.<sup>12</sup> On the other hand, for the “flood” argument, the average annual number of sexual orientation complaints for all states with these laws

was 1,200,<sup>13</sup> compared to 11,500 and 13,800 for race and sex respectively. These would not overwhelm or flood government agencies with complaints based on the population-adjusted compliant rates.

Unfortunately, there were not enough data for a similar analysis on gender identity and expression. Nevertheless, the facts about sexual orientation complaints show that there is a need for protections and that they would not overwhelm any enforcement agencies.

Building off the data from the Williams Institute, the Center for American Progress’s own research of data from states with existing laws (presented below and in the appendix) about the number of sexual orientation and gender identity discrimination cases also show a need for these protections.

To illustrate that the number of claims will be similar to those of sex and race, we analyze the sex, race, and sexual orientation complaint rates from 2005 for California, Minnesota, Rhode Island, and Wisconsin. (These states were chosen because we were able to obtain consistent data from these states across the categories analyzed here for that year.) We calculated these rates by dividing the number of complaints in 2005 by the population of gay adults,<sup>14</sup> adult women,<sup>15</sup> and people of color,<sup>16</sup> and then multiplying that number by 10,000 for each group. This gives us the number of complaints per 10,000 workers for each of the groups.

We find that the rate of complaints on the basis of sexual orientation is in line with those on the basis of sex and race. (see the state profiles appendix for detailed information on the number of complaints in each state) This confirms previous research by the Williams Institute surrounding the “flood” and “drought” argument and shows that protections are warranted for gay employees.

## Sexual orientation complaints are consistent with other protected classes

Sex, race, and sexual orientation complaints per 1,000 people in select states, 2005

State	Sex	Race	Sexual Orientation
California	4.7	4.6	0.52
Rhode Island	1.7	3.6	2.5
Minnesota	1.2	3.7	1.4
Wisconsin	3.6	16.3	4.4

Due to a lack of general population data on gender identity, we are unable to perform a similar analysis about those complaints. But the high level of employment discrimination experienced by transgender individuals has been well documented and shows the need for employment protections on the basis of gender identity.<sup>17</sup>

## Number of sexual orientation (SO) and gender identity (GI) complaints, 2005–2010<sup>1</sup>

State	SO	GI	Administrative Remedies	Compensatory Damages	Punitive Damages	Attorney Fees	Corrective Measures	Fines
Alaska	U	N/A						
Arizona	N/A	N/A						
California	4,581	U <sup>2</sup>	X					X
Colorado	92	6	X				X	
Connecticut	279	U	X	X <sup>3</sup>	X <sup>4</sup>			
Delaware <sup>5</sup>	23	U	X	X	X	X		
District of Columbia	U	U		X		X	X	
Hawaii	42	N/A	X			X	X	
Illinois	457 <sup>6</sup>	U	X	X		X	X	X
Indiana	U	U						
Iowa	134	12	X	X		X	X	
Kansas	U	U						
Kentucky	U	U						
Louisiana	U	N/A						
Maine	147 <sup>7</sup>	U	X	X <sup>8</sup>		X	X	
Maryland	118	N/A	X	X			X	
Massachusetts	330	U	X	X <sup>9</sup>	X <sup>10</sup>		X	
Michigan	U	U						
Minnesota	140 <sup>11</sup>	U		X	X	X	X	
Missouri	U	N/A						
Montana	U	N/A						
Nevada	138	U	X	X			X	
New Hampshire	36	N/A	X	X				
New Jersey	111	3	X	X	X <sup>12</sup>			
New Mexico	165	7	X	X		X <sup>13</sup>		
New York	894	N/A		X			X	
Ohio	U	U						
Oregon	184 <sup>14</sup>	N/A	X	X <sup>15</sup>	X <sup>16</sup>	X <sup>17</sup>		
Pennsylvania	U	U						
Rhode Island	34	2	X		X <sup>18</sup>	X <sup>19</sup>	X <sup>20</sup>	
Vermont	4 <sup>21</sup>	0 <sup>22</sup>	X	X <sup>23</sup>	X <sup>24</sup>	X <sup>25</sup>		
Virginia	U	N/A						
Washington	97 <sup>26</sup>	U	X	X		X <sup>27</sup>	X <sup>28</sup>	
Wisconsin	360	N/A	X	X <sup>29</sup>	X <sup>30</sup>	X <sup>31</sup>		

- 1 We collected the information presented in this table using publicly available records and data. If a state's data was not publicly available, we requested the information through phone calls and email. States from which data could not be ultimately obtained are marked with "unavailable." States that do not have relevant policies are marked with "N/A" (not applicable).
- 2 Gender identity complaints are counted with sex complaints.
- 3 Compensatory damages are available to private employees only if an aggrieved employee files a complaint in court.
- 4 Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency.
- 5 Only executive branch employees have gender identity protections; they have no right to action.
- 6 Gender identity complaints are counted with sex complaints. When we asked the state for information about gender identity complaints, they informed us that from 2007 through 2009, 27 employment discrimination complaints were filed on the basis of gender identity. However, the total number of complaints reflects those filed from 2005-2010 under the category of sexual orientation.
- 7 Gender identity complaints are counted with sexual orientation complaints.
- 8 Compensatory damages are available to private employees only if an aggrieved employee files a complaint in court.
- 9 Ibid.
- 10 Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency.
- 11 Gender identity complaints are counted with sexual orientation complaints. When we asked the state for information about gender identity complaints, they informed us that from 2007 through 2009, five of the sexual orientation complaints were filed by people who identified as transgender. However, the total number of complaints reflects those filed from 2005-2010 under the category of sexual orientation.
- 12 Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency.
- 13 If the Commission finds that unlawful discrimination has occurred, then it may require the offending party to pay actual damages and, in certain circumstances, reasonable attorneys' fees.
- 14 Gender identity complaints are counted with sex complaints.
- 15 A successful complainant in an administrative hearing under the Oregon Equality Act is limited to recovery of actual damages and equitable relief, but a successful plaintiff in a civil action can be awarded compensatory damages, punitive damages, and attorneys' fees. There are no caps on damages under the Oregon Equality Act.
- 16 Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency.
- 17 Litigants are not allowed to recuperate attorneys' fees unless the complaint was filed in court.
- 18 Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency. A Rhode Island state court may award punitive damages if it finds that the employer's conduct was motivated by "malice or ill will" or "involve[d] reckless or callous indifference to the statutorily protected rights of others."
- 19 In cases where the Rhode Island Commission for Human Rights (RICHR) finds that unlawful discrimination has occurred, it may order the guilty employer to take affirmative action including, but not limited to, hiring, reinstatement, or the upgrading of employees with or without back pay. Attorneys' fees may be awarded and, if the RICHR finds intentional discrimination, then it may award compensatory damages.
- 20 Ibid.
- 21 Number only includes complaints by state employees. Private sector complaints are not recorded.
- 22 Ibid.
- 23 Compensatory damages are available to private sector employees only if an aggrieved employee files a complaint in court.
- 24 Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency.
- 25 Private sector employee litigants are not allowed to recuperate attorneys' fees unless the complaint was filed in court; state employee litigants are allowed to recuperate attorneys' fees either through the administrative process or in court.
- 26 Gender identity complaints are counted with sexual orientation complaints.
- 27 Litigants are not allowed to recuperate attorney's fees unless the complaint was filed in court.
- 28 In cases where the Washington State Human Rights Commission (WHRC) finds that unlawful discrimination has occurred, it may order the guilty employer to take affirmative action including, but not limited to, hiring, reinstatement, or the upgrading of employees with or without back pay.
- 29 Employees may file a civil action to recover compensatory damages only after the administrative agency has rendered a final decision in the case, and local government employees are not permitted to recover compensatory damages under any circumstances.
- 30 Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency, and only after a final decision from the Wisconsin Fair Employment Act has been obtained. Punitive damages are not available to employees of a local government.
- 31 Litigants are not allowed to recuperate attorney's fees unless the complaint was filed in court.

# Conclusion

All of our nation's workers deserve a fair chance at earning an honest living and supporting themselves and their families. The existing state laws and executive policies have provided 39 percent of gay and transgender workers and 51 percent of gay workers protection against discrimination. Extending protections to gay and transgender workers has not created a “drought” or “flood” of complaints to government agencies. Still, conservative opponents continue to tout the flood and drought arguments.

The arguments against ENDA do not hold up. In fact, in the states with protections on the basis of sexual orientation and/or gender identity they are neither flooded with complaints nor completely void of them. Instead, what we see is a need for these protections to combat the high rates of employment discrimination that gay and transgender people experience in the workplace.

Congress therefore should pass ENDA to make sure that gay and transgender people across the country have a fair shot at success in the workplace. Policies that create fair workplaces have real, positive impacts on people's lives, and they reflect the best of our country's ideal of granting people equal treatment under the law.

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## Endnotes

- 1 In this column, the term gay is used as an umbrella term for people who identify as lesbian, gay, bisexual, or transgender.
- 2 Crosby Burns, Jeff Krehely, "Gay and Transgender People Face High Rates of Workplace Discrimination and Harassment" (Washington: Center for American Progress, 2011).
- 3 Brad Sears, Nan D. Hunter, Christy Mallory, "Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment" (California: The Williams Institute, 2009).
- 4 Jamie M. Grant, Lisa A Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling, "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).
- 5 Ibid.
- 6 Jeff Krehely, "Polls Show Huge Public Support for Gay and Transgender Workplace Protections" (Washington: Center for American Progress, 2011).
- 7 Seth Althaus, Sarah Greenberg, "FAQ: The Employment Non-Discrimination Act" (Washington: Center for American Progress, 2011).
- 8 Jerome Hunt, "A History of the Employment Non-Discrimination Act" (Washington: Center for American Progress, 2011).
- 9 "Employment Non-Discrimination Laws: Percent of LGBT Population Covered by Laws," available at [http://www.lgbtmap.org/equality-maps/employment\\_non\\_discrimination\\_laws](http://www.lgbtmap.org/equality-maps/employment_non_discrimination_laws) (last accessed June 2012).
- 10 Massachusetts only recently added a gender identity provision to its state employment law. It will go into effect in July 2012.
- 11 Louisiana (whose policy has been rescinded) and Virginia (whose policy has expired), did not provide their employees with a right of action.
- 12 Christopher Ramos, M.V. Lee Badgett, and Brad Sears, "Evidence of Employment Discrimination on the Basis of Sexual Orientation and Gender Identity: Complaints Filed with State Enforcement Agencies 1999-2007" (California: The Williams Institute, 2008).
- 13 Ibid.
- 14 Gary J. Gates, "Same-sex Couples and the Gay, Lesbian, Bisexual Population: New Estimates from the American Community Survey" (California: The Williams Institute, 2006).
- 15 "Population Estimates – Vintage 2005: National Tables," available at [http://www.census.gov/popest/data/historical/2000s/vintage\\_2005/index.html](http://www.census.gov/popest/data/historical/2000s/vintage_2005/index.html) (last accessed May 2012).
- 16 Ibid.
- 17 Crosby Burns, Jeff Krehely, "Gay and Transgender People Face High Rates of Workplace Discrimination and Harassment" (Washington: Center for American Progress, 2011).

# Appendix: Profiles of states with workplace protection laws and number of complaints

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## Alaska (2002)—Sexual orientation protected in public employment

**Summary:** Gov. Tony Knowles issued an executive order in 2002 banning discrimination based on sexual orientation for state employees.

**Text of executive order:**

Administrative Order 195

I, Tony Knowles, Governor of the State of Alaska, under the authority vested in me by art. III, secs. 1, 16, and 24, of the Alaska Constitution, and in recognition of the findings concerning perceived institutional intolerance in state agencies set out in the final report of the Governor’s Commission on Tolerance, renew the state’s commitment to diversity in the state workplace free from discrimination and harassment. I declare that it is the continued goal of the executive branch to eliminate discrimination and harassment in the contexts of the state as an employer and service provider; to assure timely response to discrimination and harassment complaints concerning state personnel or services; to prohibit and prevent discriminatory behavior in the state workplace based on race, sex, color, religion, physical or mental disability, sexual orientation, or economic status, to assure that all Alaskans have the opportunity to compete fairly for state jobs; and to assure that state personnel serve all Alaskans with respect. This Order fosters policies contained in AS 18.80.010 - 18.80.300, AS 39.25.010 - 39.25.995, AS 44.19.450 - 44.19.458, in related regulations adopted under those statutes, and in Administrative Orders No. 189, 129, 109, 93, 86, 81, 76, 75, 59, 35, 24, and 18 on this subject.

**Definition of sexual orientation:** No information provided

**Definition of gender identity:** Not applicable

**Penalties:**

- Employees who have been discriminated against do not have the right to file a lawsuit against their employer.

**Minimum number of employees:** Not applicable

**Religious organization exemption:** Not applicable

**Nonprofit exemption:** Not applicable

**Complaint statistics:** Alaska does not compile information on sexual orientation discrimination.

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## Arizona (2003)—Sexual orientation protected in public employment

**Summary:** Gov. Janet Napolitano issued an executive order in 2003 banning discrimination based on sexual orientation for state employees.

**Text of executive order:**

Executive Order 2003-22

Direct that no state agency, board or commission (collectively “state agency”) shall discriminate in employment solely on the basis of an individual’s sexual orientation; No provided, however, that no state agency shall be required to establish employment goals based on sexual orientation.

Give notice to all state employees that acts of sexual harassment or other harassment based on sexual orientation shall be a cause for discipline, up to and including termination of employment with the State.

**Definition of sexual orientation:** No information provided

**Definition of gender identity:** Not applicable

**Penalties:**

- Harassment on the basis of sexual orientation is cause for discipline up to and including termination of employment.
- Employees who have been discriminated against do not have the right to file a lawsuit against their employer.
- Power is not explicitly given to investigate informal complaints to the department or department head that is responsible for the implementation of antidiscrimination policies.

**Minimum number of employees:** Not applicable

**Religious organization exemption:** Not applicable

**Nonprofit exemption:** Not applicable

**Complaint statistics:** Arizona does not compile information on sexual orientation discrimination.

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## California (1992, 2003)—Sexual orientation and gender identity protected in all employment

**Summary:** In the 1979 case of *Gay Law Students Ass’n v. Pacific Tel. & Tel. Co.*, a California court held that gay men and lesbians are protected from employment discrimination. The court reasoned that, “The struggle of the homosexual community for equal rights, particularly in the field of employment, must be recognized as political activity,” and that any policy that penalizes people who are openly gay violates the California Labor Code, which bans employers from controlling or limiting the political activities of their employees.

In 1992 the California legislature passed a bill prohibiting sexual orientation discrimination in public and private employment under the California Fair Employment and Housing Act. In 2003 the act was amended again by the Gender Nondiscrimination Act, which prohibited California employers from discriminating on the basis of gender identity or expression.

**Text of statutes:**

California Government Code § 12920

It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

California Government Code § 12940

It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to refuse to hire or employ the person, or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

**Definition of sexual orientation:**

California Government Code § 12926

(m) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

California Government Code § 12926

(q) “Sexual orientation” means heterosexuality, homosexuality, and bisexuality.

**Definition of gender identity:**

California Government Code § 12926

(p) “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is not limited to, a person’s gender, as defined in Section 422.56 of the Penal Code.

Section 422.56 of the Penal Code

(c) “Gender” means sex, and includes a person’s gender identity and gender related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

**Penalties:**

- The Fair Employment and Housing Commission may assess administrative fines against an employer for discrimination. Together with any actual damages assessed, the amount of this fine may not exceed \$150,000 per employee. Administrative fines are available only when the commission finds express or implied guilt, oppression, fraud, or malice. The amount of the fine will take into consideration willful, intentional, or purposeful conduct, refusal to prevent or eliminate discrimination, harassment, conduct without just cause or excuse, and multiple FEHA violations. Public entities are not subject to administrative fines. The Fair Employment and Housing Commission may also assess civil penalties up to \$25,000 against an employer to be awarded to a person denied freedom from violence or intimidation under Section 51.7 of the Unruh Civil Rights Act.
- Plaintiffs must first exhaust administrative remedies—the nonjudicial decision provided by an agency, board, commission, or any other like organization—before they are permitted to file a complaint in civil court.
- Litigants are precluded from receiving punitive damages (compensation in excess of actual damages).
- Litigants are not allowed to recuperate attorney fees unless the complaint was filed in court.

**Minimum number of employees:** Five (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	SFY <sup>1</sup> 2005	SFY 2006	SFY 2007	SFY 2008	SFY 2009	SFY 2010
Sex*	6,289	6,111	5,768	6,695	7,161	7,156
Race	3,828	3,531	3,503	4,031	3,865	3,668
Sexual orientation	694	716	722	858	874	717

\*Gender identity complaints are counted with sex complaints.

<sup>1</sup> SFY = State fiscal year

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## Colorado (1990, 2007)—Sexual orientation and gender identity and expression protected in all employment

**Summary:** Gov. Roy Romer issued an executive order in 1990 banning employment discrimination for all state employees on the basis of sexual orientation. In 2007 Colorado revised statutes §24-34-401 & §24-34-402 of the Colorado Employment Nondiscrimination Act with Senate Bill 07-025. The bill extended protection on the basis of sexual orientation to all employees. Additionally, the bill included gender identity and expression protections for all employees by expanding the definition of “sexual orientation.”

### **Text of statute:**

Colorado Revised Statute § 24-34-402

Discriminatory or unfair employment practices.

(1) It shall be a discriminatory or unfair employment practice:

(a) For an employer to refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation against any person otherwise qualified because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job, and the disability has a significant impact on the job. For purposes of this paragraph (a), “harass” means to create a hostile work environment based upon an individual’s race, national origin, sex, SEXUAL ORIENTATION, disability, age, or religion. Notwithstanding the provisions of this paragraph (a), harassment is not an illegal act unless a complaint is filed with the appropriate authority at the complainant’s workplace and such authority fails to initiate a reasonable investigation of a complaint and take prompt remedial action if appropriate.

### **Definition of sexual orientation:**

Colorado Revised Statute § 24-34-401

Definitions: (7.5) “Sexual orientation” means a person’s orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or an employer’s perception thereof.

**Definition of gender identity:** No information provided

### **Penalties:**

- The Division of Civil Rights may order the employer to cease and desist and take any other action it deems appropriate, including ordering back pay, hiring, reinstatement or upgrading of employees, restoration of membership in a labor organization, and admission into an apprentice program.

- The Division of Civil Rights does not have statutory power to act upon its own initiative to eliminate discriminatory behavior.
- Plaintiffs must first exhaust administrative remedies before they are permitted to file a complaint in civil court.
- Litigants are precluded from receiving compensatory damages (damages recovered in payment for economic loss or injury).
- Litigants are precluded from receiving punitive damages.
- Litigants are not allowed to recuperate attorney fees from the party at fault.

**Minimum number of employees:** One (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	SFY <sup>2</sup> 2008	SFY 2009	SFY 2010
Sex	210	300	290
Race	101	162	105
Sexual orientation	22	34	36
Gender Identity	1	3	2

<sup>2</sup> SFY = State fiscal year

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Connecticut (1991, 2011)—Sexual orientation and gender identity and expression protected in all employment

**Summary:** In 1991 Connecticut passed An Act Concerning Discrimination on the Basis of Sexual Orientation, which prohibits discrimination based on sexual orientation in public and private employment.

Then in 2011 Connecticut passed An Act Concerning Discrimination, which prohibits discrimination in public and private employment based on gender identity and expression.

**Text of statute:**

Public Act 91-58, Section 3

It shall be a discriminatory practice in violation of this section:

- (1) For an employer, by himself or his agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against him in compensation or in terms, conditions or privileges of employment because of the individual's sexual orientation,
- (2) for any employment agency, except in the case of a bona fide occupational qualification or need, to fail or refuse to classify properly or refer for employment or otherwise to discriminate against any individual because of the individual's sexual orientation,
- (3) for a labor organization, because of the sexual orientation of any individual to exclude from full membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, unless such action is based on a bona fide occupational qualification; or
- (4) for any person, employer, employment agency or labor organization, except in the case of a bona fide occupational qualification or need, to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against individuals because of their sexual orientation.

Full text of the 2011 version of An Act Concerning Discrimination (Public Act No. 11-55) is available at <http://www.cga.ct.gov/2011/act/pa/2011PA-00055-R00HB-06599-PA.htm>.

**Definition of sexual orientation:**

Connecticut General Statute § 46a-81a

Having a preference for heterosexuality, homosexuality or bisexuality, having a history of such

preference or being identified with such preference, but excludes any behavior which constitutes a violation of part VI of chapter 952 [relating to sex offenses].

**Definition of gender identity:**

Connecticut General Statute § Section 1. Section 46a-51

“Gender identity or expression” means a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person’s core identity or not being asserted for an improper purpose.

**Penalties:**

- Private-sector plaintiffs must first exhaust administrative remedies before they are permitted to file a complaint in civil court.
- Compensatory damages are available to private employees but only if the aggrieved employee files a complaint in court.
- Punitive damages are sometimes unavailable due to a split of authority on whether a court can award punitive damages under the statute.
- Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency.
- Litigants are not allowed to recuperate attorney fees unless the complaint was filed in court.

**Minimum number of employees:** Three (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	FY <sup>3</sup> 2006	FY 2007	FY 2008	FY 2009	FY 2010
Sex	601	557	551	516	483
Race	588	571	544	490	517
Sexual orientation	56	72	49	44	58

<sup>3</sup> FY = Fiscal year

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## Delaware (2009)—Sexual orientation protected in all employment and gender identity protected in executive branch employment

**Summary:** Delaware added “sexual orientation” to the list of protected categories in its discrimination statute, the Discrimination in Employment Act, on July 2, 2009. The statute now forbids employers, including state and local governments, from discriminating against an employee based on his or her sexual orientation.

Gov. Jack Markell signed Executive Order Number Eight, which extended gender identity and expression protections to executive branch employees, on August 8, 2009. The order stressed the fact that the work atmosphere in the branches of the executive agencies be one of mutual respect and understanding among persons of diverse backgrounds, including gender identity or expression.

**Text of statute and executive order:**

Title 19 Delaware Code § 711

Unlawful employment practices; employer practices.

(a) It shall be an unlawful employment practice for an employer to:

(1) Fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual’s race, marital status, genetic information, color, age, religion, sex, sexual orientation, or national origin.

**Executive Order Number Eight**

1. The State of Delaware’s commitment to equal employment opportunity is hereby affirmed and heads of each Department and Agency within the Executive Branch (collectively “Executive Branch Agencies”) are directed to pursue diligently the recruitment and promotion of qualified applicants from diverse backgrounds and to be vigilant in complying with the laws prohibiting discrimination in employment.

2. The work atmosphere in Executive Branch Agencies shall be one that fosters mutual respect and understanding among persons of different gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, gender identity or expression, or military or veteran status.

**Definition of sexual orientation:**

Title 19 Delaware Code § 710

(18) Exclusively means heterosexuality, homosexuality, or bisexuality.

**Definition of gender identity:** No information provided

**Penalties:**

- The Department of Labor is not entitled to award damages or injunctive relief, and may only force the employer to engage in reconciliation. If the aggrieved employee files a civil action, the court may award compensatory damages and punitive damages (subject to the same graduated caps imposed on an employee filing a claim under Title VII) as well as injunctive relief and attorneys fees.
- Plaintiffs must first exhaust administrative remedies before they are permitted to file a complaint in civil court.
- Transgender executive branch employees who have been discriminated against are not provided with a private right of action.

**Minimum number of employees:** Four (state)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	SFY <sup>4</sup> 2006	SFY 2007	SFY 2008	SFY 2009	SFY 2010
Sex	271	268	298	259	155
Race	375	437	419	323	233
Sexual orientation	NA <sup>5</sup>	NA	NA	3	20
Gender identity	NA	NA	NA	NA	NA

<sup>4</sup> SFY = State fiscal year

<sup>5</sup> NA=Not available

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## District of Columbia (1977, 2006)—Sexual orientation and gender identity and expression protected in all employment

**Summary:** In 1977 the city council of the District of Columbia voted to pass the District of Columbia Human Rights Act, which prohibits discrimination on the basis of sexual orientation.

In 2006 the city council of the District of Columbia amended the Human Rights Clarification Amendment Act of 2005 (D.C. Law 16-58), which prohibited discrimination based on sexual orientation with D.C. Code 2-1401. This code changed the language in the Human Rights Clarification Amendment Act from “sexual orientation” to “sexual orientation, gender identity or expression” under the categories which are protected from discrimination.

In addition, Chapter 8 was added to Title 4 of the District of Columbia Municipal Regulations that very same year. The chapter titled “Compliance Rules and Regulation Regarding Gender Identity or Expression” extended protection of gender identity or expression in housing, education, employment, and agencies of the D.C. government.

**Text of statutes:**

D.C. Code § 1-2512

Unlawful discriminatory practices in employment.

(a) General. It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, disability, matriculation, or political affiliation of any individual:

(1) By an employer. To fail or refuse to hire, or to discharge, any individual; or otherwise to discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his status as an employee.

D.C. Code § 2-1401.

It is the intent of the Council of the District of Columbia, in enacting this chapter, to secure an end in the District of Columbia to discrimination for any reason other than that of individual merit, including, but not limited to, discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, and place of residence or business.

## Effect of Amendments

D.C. Law 16-58 substituted “sexual orientation, gender identity or expression,” for “sexual orientation.”

### Title 4 Addition:

#### 801 General Prohibitions of Gender Identity or Expression Discrimination

##### 801.1

It shall be unlawful for any person or entity, including agencies of the District of Columbia government and its contractors, to discriminate against a person in employment, housing, public accommodations, or educational institutions on the basis of that person’s actual or perceived gender identity or expression. Such unlawful discriminatory practices shall include but not be limited to the following in:

(a) Employment: failing to hire or promote; engaging in disparate treatment; engaging in unlawful termination and transfers; engaging in verbal or physical harassment; creation of a hostile environment; failing to make a reasonable accommodation when requested by the employee in accordance with 4 DCMR § 804 (1995); and denying access to restrooms and other gender specific facilities that are consistent with the employee’s gender identity or expression.

#### **Definition of sexual orientation:**

D.C. Code § 2-1401.02

##### Definitions

(28.) “Sexual orientation” means male or female homosexuality, heterosexuality and bisexuality, by preference or practice.

#### **Definition of gender identity:**

D.C. Code § 2-1401.02

##### Definitions

(12A) “Gender Identity or expression” means a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual’s assigned sex at birth.

#### **Penalties:**

- An employee has the right to seek action as well as obtain compensatory damages and attorney fees. Additionally, an employee is able to seek a number of remedies, including hiring, reinstatement, promotion, and back pay if they are able to successfully prove discrimination.

**Minimum number of employees:** One (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:** The District of Columbia does not break down sexual orientation or gender identity discrimination by employment.

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Hawaii (1991, 2011)—Sexual orientation and gender identity or expression protected in all employment

**Summary:** In 1991 Hawaii passed the Fair Employment Practices Act, which prohibits discrimination in public and private employment on the basis of sexual orientation.

In 2011 Hawaii passed H.B. 546, which prohibits discrimination in public and private employment on the basis of gender identity or expression. This act clarifies existing law with regard to sex discrimination and provides that discrimination based upon gender identity or expression constitutes a form of sex discrimination.

**Text of statutes:**

Hawaii Revised Statute §378-2

Discriminatory practices made unlawful; offenses defined.

It shall be an unlawful discriminatory practice:

(1) Because of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record:

(A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;

(B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;

(C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination;

(D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or

(E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be younger than sixteen years of age;

2011 Hawaii Revised Statute §378-2

§378-2 Discriminatory practices made unlawful; offenses defined.

It shall be an unlawful discriminatory practice:

(1) Because of race, sex, including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record:

(A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;

(B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;

(C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination;

(D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or

(E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be younger than sixteen years of age;

**Definition of sexual orientation:**

Hawaii Revised Statute § 378-1

**Definitions**

Having a preference for heterosexuality, homosexuality, or bisexuality, having a history of any one or more of these preferences, or being identified with any one or more of these preferences” but “shall not be construed to protect conduct otherwise proscribed by law.”

**Definition of gender identity:**

Section 378-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Gender identity or expression includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person’s sex at birth.”

**Penalties:**

- Victims of discrimination have a right to pursue action; if successful, plaintiffs may be able to recover costs, including reasonable attorney fees. Declaratory relief is also available. The employer may be ordered to cease and desist, to hire, to reinstate, to promote the complaining individual (with or without back pay), to implement compliance reporting, and to pay for the costs of the action.
- Plaintiffs must first exhaust administrative remedies before they are permitted to file a complaint in civil court.

**Minimum number of employees:** One (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	SFY <sup>6</sup> 2006	SFY 2007	SFY 2008	SFY 2009	SFY 2010
Sex	101	94	139	137	130
Race	61	55	59	66	62
Sexual orientation	7	3	8	9	15

<sup>6</sup> SFY = State fiscal year

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## Illinois (2006)—Sexual orientation and gender identity protected in all employment

**Summary:** Gov. Rod Blagojevich signed Senate Bill 3186 into law in 2005. The bill amended the Illinois Human Rights Act in order to prohibit discrimination on the basis of sexual orientation and gender identity.

**Text of statute:**

775 Illinois Compiled Statute 5/1-102

Declaration of Policy

It is the public policy of this State:

(A) Freedom from Unlawful Discrimination. To secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations.

**Definition of sexual orientation:**

775 Illinois Compiled Statute Section 5/1-103

General Definitions

(O-1) Sexual orientation. “Sexual orientation” means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person’s designated sex at birth. “Sexual orientation” does not include a physical or sexual attraction to a minor by an adult.

**Definition of gender identity:** No information provided

**Penalties:**

- If the claimant successfully proves his or her sexual orientation employment discrimination claim, the remedies allowed are: “(i) actual damages; (ii) back pay; (iii) perquisites; (iv) interest on damages; (v) damages for emotional distress; (vi) reinstatement; (vii) promotion; (viii) membership in apprenticeship or labor organization or job training programs; (ix) an order against the employer from violating the Act, and (x) attorney’s fees and costs.”
- Additionally, the Illinois attorney general is permitted to enforce the act by bringing a sexual orientation employment discrimination action on behalf of the people of Illinois in state court. If the claim is successfully litigated, the remedy is limited to only equitable relief and a fine to the employer not to exceed \$50,000.

- Plaintiffs must first exhaust administrative remedies before they are permitted to file a complaint in civil court.
- The act precludes litigants from receiving punitive damages.

**Minimum number of employees:** 15 (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	SFY <sup>7</sup> 2005	SFY 2006	SFY 2007	SFY 2008	SFY 2009	FY 2010
Sex	1,248	1,208	1,098	1,145	1,259	1289
Race	1,093	1,008	1,056	1,008	1,138	1009
Sexual orientation*	NA <sup>8</sup>	NA	109	80	143	125

\* Gender identity complaints are counted with sex complaints. Between FY 2007 and FY 2009, 27 employment discrimination complaints were filed on the basis of gender identity. They made up less than 0.2 percent of all complaints during this period.

7 SFY = State fiscal year

8 NA=Not available

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## Indiana (2005)—Sexual orientation and gender identity protected in public employment

**Summary:** In 2005 Gov. Mitchell Daniels issued the Governor’s Policy Statement, which reiterated former Gov. Joseph Kernan’s Indiana State Government Employment Policy Statement (2004) that extended protection to state workers from discrimination on the basis of gender identity and sexual orientation.

**Text of policy statement:**

Governor’s Policy Statement, April 26, 2005

Our policy is to provide equal employment opportunity to all people in all aspects of employer-employee relations without discrimination because of race, color, religion, sex, national origin, ancestry, age, disability, or veteran status. We will comply with the spirit as well as the letter of applicable state and federal law. In addition, sexual orientation and gender identity shall not be a consideration in decisions concerning hiring, development, advancement and termination of civilian employees.

**Definition of sexual orientation:** No information provided

**Definition of gender identity:** No information provided

**Penalties:**

- The policy statement does not provide employees who have been discriminated against with a private right of action.
- The policy statement does not explicitly confer the power to investigate informal complaints to a department or to the department head responsible for implementation of the policy.

**Minimum number of employees:** Six (state)

**Religious organization exemption:** Not applicable

**Nonprofit exemption:** Not applicable

**Complaint statistics:** Indiana does not compile information on sexual orientation or gender identity discrimination.

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## Iowa (2007)—Sexual orientation and gender identity protected in all employment

**Summary:** Iowa amended the Iowa Civil Rights Act in 2007 to prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment, housing, public accommodations, education, and in obtaining credit.

**Text of statute:**

Iowa Code Section § 216.6

Unfair employment practices

(1) It shall be an unfair or discriminatory practice for any:

(a) Person to refuse to hire, accept, register, classify, or refer for employment, to discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employee because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability of such applicant or employee, unless based upon the nature of the occupation.

**Definition of sexual orientation:**

Iowa Code Section § 216.2

Definitions

(14) Actual or perceived heterosexuality, homosexuality, or bisexuality.

**Definition of gender identity:**

Iowa Code Section § 216.2

Definitions

(10) A gender-related identity of a person, regardless of the person's assigned sex at birth.

**Penalties:**

- If the plaintiff wins a claim under the Iowa Civil Rights Act, she or he may be entitled to:
  - (1) Being hired, reinstated, or promoted with or without pay
  - (2) Admitted or reinstated in a labor organization or work-training program
  - (3) Admitted into a public accommodation or an educational institution
  - (4) The sale, exchange, lease, rental, assignment, or sublease of real property
  - (5) Damages caused by the unlawful discrimination, including court costs and reasonable attorney fees
  
- A plaintiff can obtain damages for emotional distress, but punitive damages are not allowed under the Iowa Civil Rights Act.

- Once a complaint under this statute is filed, the complainant can request a “right-to-sue” letter from Iowa’s Civil Rights Commission and file the claim on her or his own behalf in state district court. The commission is not invested with statutory power to act upon its own initiative to eliminate discriminatory behavior.
- Plaintiffs must first exhaust administrative remedies before they are permitted to file a complaint in civil court.
- The law precludes litigants from receiving punitive damages.

**Minimum number of employees:** Four (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	SFY <sup>9</sup> 2007	SFY 2008	SFY 2009	SFY 2010
Sex	551	596	661	553
Race	505	486	584	469
Sexual orientation	NA <sup>10</sup>	17	25	92
Gender identity	NA	4	3	5

<sup>9</sup> SFY = State fiscal year

<sup>10</sup> NA=Not available

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## Kansas (2007)—Sexual orientation and gender identity protected in public employment

**Summary:** Kansas Gov. Kathleen Sebelius issued an executive order in 2007 banning employment discrimination for all state employees on the basis of sexual orientation or gender identity.

**Text of executive order:**

Executive Order 2007-24 Diversity

WHEREAS, the State of Kansas is committed to employment practices which will prevent discrimination and harassment on account of race, color, gender, sexual orientation, gender identity, religion, national origin, ancestry, age, military or veteran status, or disability status. State of Kansas employers are expected to provide equal employment opportunity to all individuals in all aspects of employer-employee relations without discrimination, and will comply with the spirit, as well as the letter, of applicable state and federal law...

Now, therefore, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby declare that all state entities under my jurisdiction shall make certain the following programs are in place:

1. A diversity management program that includes outreach recruitment and hiring, support, mentoring, development, rewards, and recognitions for achievement; as well as monitoring the effectiveness of such programs.
2. A strong program prohibiting discrimination and harassment on account of race, color, gender, sexual orientation, gender identity, religion, national origin, ancestry, age, military or veteran status, or disability status. This program will include training, and a prompt and confidential method for expressing complaints.

**Definition of sexual orientation:** No information provided

**Definition of gender identity:** No information provided

**Penalties:**

- The order does not provide employees who have been discriminated against with a private right of action.
- It does not explicitly confer the power to investigate informal complaints to a department or to the department head responsible for implementation of the policy.

**Minimum number of employees:** Not applicable

**Religious organization exemption:** Not applicable

**Nonprofit exemption:** Not applicable

**Complaint statistics:** Kansas does not compile information on sexual orientation or gender identity discrimination.

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## Kentucky (2008)—Sexual orientation and gender identity protected in public employment

**Summary:** Gov. Paul Patton issued Executive Order 03-533 in 2003 banning discrimination based on sexual orientation and gender identity against state employees.

Gov. Ernie Fletcher rescinded the executive order in 2006, arguing that it did not fit with the state's affirmative action efforts to recruit based on race, ethnicity, and gender.

But Gov. Steve Beshear reinstated the ban on state employment discrimination based on sexual orientation and gender identity in 2008 through an executive order.

**Text of executive orders:**

Executive Order 2003-533

It shall be the policy of the Commonwealth of Kentucky to provide equal employment opportunity to all people in all aspects of employer-employee relations without discrimination because of race, color, religion, sex, national origin, sexual orientation or gender identity, ancestry, age, disability or veteran status. Employer-employee relations shall include but not be limited to hiring, promotion, termination, tenure, recruitment and compensation.

Executive Order 2008-473

1. This Executive Order applies to all applicants for positions within and employees of the program cabinets and the administrative bodies attached to the program cabinets or attached directly to the Governor's Office in the Executive Branch of the government of the Commonwealth of Kentucky as provided in KRS Chapter 12, et. seq. 2. It shall be the policy of the Commonwealth of Kentucky to provide equal employment opportunity to all people in all aspects of employer-employee relations without discrimination because of race, color, religion, sex, national origin, sexual orientation, or gender identity, ancestry, age, disability or veteran status. Employer-employee relations shall include but not be limited to hiring, promotion, termination, tenure, recruitment and compensation

**Definition of sexual orientation:** No information provided

**Definition of gender identity:** No information provided

**Penalties:**

- The order does not provide employees who have been discriminated against with a private right of action.
- It does not explicitly confer the power to investigate informal complaints to a department or to the department head responsible for implementation of the policy.

**Minimum number of employees:** Not applicable

**Religious organization exemption:** Not applicable

**Nonprofit exemption:** Not applicable

**Complaint statistics:** Kentucky does not compile information on sexual orientation or gender identity discrimination.

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## Louisiana (2004)—No protection

**Summary:** Gov. Kathleen Babineaux Blanco issued an executive order in 2004 banning discrimination based on sexual orientation against state employees.

Gov. Bobby Jindal rescinded the order in 2008, ending protections for gay and lesbian state employees.

**Text of executive order:**

Executive Order No. KBB 2004-54

No state agencies, departments, offices, commissions, boards, entities or officers of the state of Louisiana shall harass or discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, political affiliation or disabilities against any individual in the provision of any service and/or benefit by such agencies, departments, offices, commissions, boards or entities.

**Definition of sexual orientation:** No information provided

**Definition of gender identity:** No information provided

**Penalties:**

- The order did not provide employees who were discriminated against with a private right of action.

**Minimum number of employees:** Not applicable

**Religious organization exemption:** Not applicable

**Nonprofit exemption:** Not applicable

**Statistics:** Louisiana does not currently provide protection for sexual orientation discrimination and did not collect this data when the executive order was in place.

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## Maine (2005)—Sexual orientation and gender identity protected in all employment

**Summary:** The Maine Human Rights Act was amended in 2005 to include sexual orientation as a protected category. The law defines sexual orientation as including gender identity.

**Text of statute:**

Maine Revised Statute § 4572. Unlawful employment discrimination.

1. Unlawful employment. It is unlawful employment discrimination, in violation of this Act, except when based on a bona fide occupational qualification:

A. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of the applicant's previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions taken by the applicant that are protected under Title 26, chapter 7, subchapter 5-B; or, because of those reasons, to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment; or, in recruiting of individuals for employment or in hiring them, to utilize any employment agency that the employer knows or has reasonable cause to know discriminates against individuals because of their race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of their previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions that are protected under Title 26, chapter 7, subchapter 5-B.

**Definition of sexual orientation:**

Maine Revised Statute § 4553. Definitions

9-C. Sexual orientation. "Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression.

**Definition of gender identity:** No information provided

**Penalties:**

- If a plaintiff files a successful suit under the Maine Human Rights Act, she or he may be entitled to hiring, reinstatement, or promotion with or without pay, cease and desist orders, and/or damages caused by the unlawful discrimination, including court costs and attorneys' fees.
- Plaintiffs must first exhaust administrative remedies before they are permitted to file a complaint in civil court.

- Private employees can be awarded compensatory damages but only if the aggrieved employee files a complaint in court.

**Minimum number of employees:** 1 (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	2005	2006	2007	2008	2009	2010
Sex	201	236	207	196	149	147
Race	60	64	88	113	123	101
Sexual orientation*	N/A	13	33	32	19	50

\* Gender identity complaints are counted with sex complaints.

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## Maryland (2001)—Sexual orientation protected in all employment

**Summary:** On March 25, 2001 Maryland passed the Anti-discrimination Act of 2001, which prohibited discrimination against gays, lesbians, and bisexuals in employment, housing, and public accommodations.

**Text of statute:**

Maryland Annotated Code Article 49B § 14

It shall be an unlawful employment practice for an employer: (1) to fail or refuse to hire or to discharge any individual, or to otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test, or make available the results of a genetic test.

**Definition of sexual orientation:**

Maryland Annotated Code Article 49B, § 15

(j) The identification of an individual as to male or female homosexuality, heterosexuality, or bisexuality.

**Definition of gender identity:** No information provided

**Penalties:**

- The Maryland nondiscrimination law provides a range of remedies, including cease and desist orders; affirmative action, including but not limited to reinstatement or hiring, with or without back pay; and “any other equitable relief” that is appropriate.
- Plaintiffs must first exhaust administrative remedies before they are permitted to file a complaint in civil court.
- Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency.
- Litigants are not allowed to recuperate attorney's fees from the party at fault.

**Minimum number of employees:** 15 (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** Tax-exempt private membership clubs (other than labor organizations) are exempt from this statute.

### Complaint statistics:

Basis	SFY <sup>11</sup> 2006	SFY 2007	SFY 2008	SFY 2009	SFY 2010
Sex	195	112	199	173	188
Race	241	253	241	237	193
Sexual orientation	21	28	24	23	22

11 SFY= State fiscal year

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## Massachusetts (1989, 2011)—Sexual orientation and gender identity protected in all employment

**Summary:** The Massachusetts legislature amended Chapter 151B of the General Laws of Massachusetts (the state’s antidiscrimination law) in 1989 to include sexual orientation as a protected class.

The Massachusetts legislature passed and Gov. Deval Patrick signed into law An Act Relative to Gender Identity in 2011. This law protects against discrimination in the workplace on the basis of gender identity as well as in housing, credit, and under the state’s hate crimes law. The law takes effect on July 1, 2012.

**Text of statutes:**

Massachusetts General Laws Chapter 151B, § 3. Functions, powers and duties of commission.  
(6) To receive, investigate and pass upon complaints of unlawful practices, as hereinafter defined, alleging discrimination because of the race, color, religious creed, national origin, sex, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, or handicap of any person alleging to be a qualified handicapped person.

An Act Relative to Gender Identity amends Massachusetts General Laws Chapter 151B, § 3 to include gender identity after the word “sex.”

**Definition of sexual orientation:**

Massachusetts General Laws Chapter 151B, § 3. Functions, powers and duties of commission.  
(6) The term “sexual orientation” shall mean having an orientation for or being identified as having an orientation for heterosexuality, bisexuality, or homosexuality.

**Definition of gender identity:**

“Gender identity” shall mean a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity, or any other evidence that the gender-related identity is sincerely held, as part of a person’s core identity; provided however, gender-related identity shall not be asserted for any improper purpose.

**Penalties:**

- The available remedies for an employment case filed under the state’s antidiscrimination law include reinstatement or upgrading, back pay, restoration in a labor organization, and front pay.
- The Massachusetts Commission Against Discrimination will prosecute a case on behalf of the commission when the complainant does not have an attorney.
- Plaintiffs must first exhaust administrative remedies before they are permitted to file a complaint in civil court.
- Private employees are entitled to compensatory damages but only if the aggrieved employee files a complaint in court.
- Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency.

**Minimum number of employees:** Seven (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** Nonprofit fraternal associations or corporations and exclusively social organizations are exempt from this statute.

**Complaint statistics:**

Basis <sup>12</sup>	2004-06	SFY 2007	SFY 2008	SFY 2009	SFY 2010 <sup>13</sup>
Sex	1648	495	427	368	N/A
Race	1695	549	589	569	N/A
Sexual orientation	165	51	58	56	N/A

<sup>12</sup> Gender identity protection was not added until 2011.

<sup>13</sup> Statistics for SFY 2010 were unable to be obtained prior to publication of this report.

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## Michigan (2003, 2007)—Sexual orientation and gender identity and expression protected in public employment

**Summary:** Gov. Jennifer Granholm issued two executive orders, in 2003 and 2007, prohibiting employment discrimination based on sexual orientation and/or gender identity or expression. They are limited to protecting only state employees and do not provide for a private right of action.

**Text of executive orders:**

Executive Directive 2003-24

A. A department, board, commission, or other agency subject to supervision by the Governor under Section 8 of Article V of the Michigan Constitution of 1963 shall not do any of the following:

1. Fail or refuse to hire, recruit, or promote; demote; discharge; or otherwise discriminate against a person with respect to employment in the classified service, compensation, or a term, condition, or privilege of employment in the classified service, because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.

Executive Directive 2007-24

A. A department, board, commission, or other agency subject to supervision by the Governor under Section 8 of Article V of the Michigan Constitution of 1963 shall not do any of the following:

1. Fail or refuse to hire, recruit, or promote; demote; discharge; or otherwise discriminate against a person with respect to employment in the classified service, compensation, or a term, condition, or privilege of employment in the classified service, because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.

2. Limit, segregate, or classify an employee or applicant for employment in the classified service in a way that deprives or tends to deprive the employee or applicant of an employment opportunity or otherwise adversely affects the status of an employee or applicant because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.

**Definition of sexual orientation:** No information provided

**Definition of gender identity:**

Executive Directive 2007-24

H. “Gender identity or expression” means the perception by an individual or another person of the gender identity, appearance, behavior, or expression of the individual whether or not that gender identity, appearance, behavior, or expression is different from the gender identity, appearance, behavior, or expression traditionally associated with the sex assigned to the individual at birth.

**Penalties:**

- The executive orders do not provide employees who have been discriminated against with a private right of action.
- The executive orders do not explicitly confer the power to investigate informal complaints to a department or to the department head responsible for implementation of the policy.

**Minimum number of employees:** Not applicable

**Religious organization exemption:** Not applicable

**Nonprofit exemption:** Not applicable

**Complaint statistics:** Michigan does not compile information on sexual orientation or gender identity or expression discrimination.

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## Minnesota (1993)—Sexual orientation and gender identity protected in all employment

**Summary:** Minnesota amended its Human Rights Act in 1993 to prohibit the discrimination of a person based on his or her “sexual orientation” in the employment, housing, public accommodations, public service, education, credit, and business contexts.

**Text of statute:**

Minnesota Statute § 363A.02. Public Policy.

Subdivision 1. Freedom from discrimination.

(a) It is the public policy of this state to secure for persons in this state, freedom from discrimination:

(1) in employment because of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation, and age;

**Definition of sexual orientation:**

Minnesota Statute § 363A.03. Definitions.

Subdivision 44. Sexual orientation.

“Sexual orientation” means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness. “Sexual orientation” does not include a physical or sexual attachment to children by an adult.

**Definition of gender identity:** Included within the definition of “sexual orientation.”

**Penalties:**

- If the plaintiff wins a claim under the MHRA, s/he is entitled to treble damages and also may be entitled to damages from mental anguish or suffering, attorneys’ fees, and punitive damages. In addition, the plaintiff may be entitled to being hired, reinstated, or upgraded at a place of employment and back pay.
- Punitive damages are capped at \$8,500.

**Minimum number of employees:** One (state and private)

**Religious organization exemption:** Yes

If sexual orientation is a bona fide qualification for employment, the sexual orientation discrimination provisions do not apply. Moreover, a nonprofit religious association is exempt from these

provisions except when the association is engaged in secular business activities unrelated to the religious and educational purposes for which it is organized.

**Nonprofit exemption:** Nonpublic service organizations whose primary function is providing occasional services to minors are exempt.

**Complaint statistics:**

Basis	2005	2006	2007	2008	2009	2010
Sex	243	192	167	200	185	193
Race	201	157	160	153	141	142
Sexual orientation*	25	28	21	24	19	23

\* Gender identity complaints are counted with sex complaints. Note that between January 1, 2007 and December 31, 2009, five of the charges alleging sexual orientation discrimination in employment were filed by people who identified as transgender.

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## Missouri (2010)—Sexual orientation protected in executive branch employment

**Summary:** Gov. Jay Nixon issued an executive order on July 9, 2010 that prohibits the executive branch of the Missouri government from discriminating in employment on the basis of sexual orientation.

**Text of executive order:**

Executive Order 10-24

Article I

The executive branch of the State of Missouri shall ensure that all present and prospective employees are afforded equal opportunity at all levels and phases of employment within state government with respect to, but not limited to, hiring, recruiting, training, benefits, promotions, transfers, layoffs, demotions, terminations, rate of compensation, and recalls from layoffs. It shall be the responsibility of the State Office of Equal Employment Opportunity to monitor all departments of the executive branch of state government and assist them to ensure equal employment opportunity. The State of Missouri shall work to ensure that there will be no vestiges of discrimination against persons on account of race, color, religion, national origin, sex, ancestry, age, sexual orientation, veteran status, or disability; not only in employment practices but in the provision of services and the operation of facilities.

**Definition of sexual orientation:** No information provided

**Definition of gender identity:** Not applicable

**Penalties:**

- The executive order does not provide employees who have been discriminated against with a private right of action.

**Minimum number of employees:** Not applicable

**Religious organization exemption:** Not applicable

**Nonprofit exemption:** Not applicable

**Complaint statistics:** Missouri does not compile information on sexual orientation discrimination.

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## Montana (2000)—Sexual orientation protected in public employment

**Summary:** Gov. Marc Racicot issued state personnel rules in 2000 that prohibit the state government from discrimination and harassment on the basis of sexual orientation with respect to employment.

**Text of executive order:**

The Nondiscrimination-EEO Policy 3-0630

2.21.4002 Policy and Objectives

(1) It is the policy of the state of Montana that state government:

- (a) Is an equal employment opportunity employer;
- (b) does not discriminate in employment based upon race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, or political beliefs.

**Definition of sexual orientation:** No information provided

**Definition of gender identity:** Not applicable

**Penalties:**

- The rules do not provide employees who have been discriminated against with a private right of action.

**Minimum number of employees:** Not applicable

**Religious organization exemption:** Not applicable

**Nonprofit exemption:** Not applicable

**Complaint statistics:** Montana does not compile information on sexual orientation discrimination.

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## Nevada (1999, 2011)—Sexual orientation and gender identity or expression protected in all employment

**Summary:** Nevada enacted legislation in 1999 to prohibit discrimination in employment based on sexual orientation (as part of Chapter 613 of Nevada’s legal code).

In 2011 the Nevada legislature passed Assembly Bill 211, which prohibits discrimination in employment based on gender identity or expression. The bill Amends Chapter 613 of Nevada’s legal code to include gender identity or expression under its enumerated classes.

**Text of statutes:**

Nevada Revised Statute Annotated § 613.330. Labor and Industrial Relations.

Unlawful employment practices: Discrimination on basis of race, color, religion, sex, sexual orientation, age, disability or national origin; interference with aid or appliance for disability; refusal to permit service animal at place of employment.

1. Except as otherwise provided in NRS 613.350, it is an unlawful employment practice for an employer:

(a) To fail or refuse to hire or to discharge any person, or otherwise to discriminate against any person with respect to the person’s compensation, terms, conditions or privileges of employment, because of his or her race, color, religion, sex, sexual orientation, age, disability, or national origin.

NRS 613.330 is hereby amended to read as follows:

613.330 1. Except as otherwise provided in NRS 613.350, it is an unlawful employment practice for an employer:(a) To fail or refuse to hire or to discharge any person, or otherwise to discriminate against any person with respect to the person’s compensation, terms, conditions or privileges of employment, because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin;

**Definition of sexual orientation:**

Nevada Revised Statute Annotated § 613.310. Definitions.

(6) Having or being perceived as having an orientation for heterosexuality, homosexuality, or bisexuality.

**Definition of gender identity:**

Nevada Revised Statute Annotated § 610.10

“Gender identity or expression” means a gender-related identity, appearance, expression, or behavior of a person, regardless of the person’s assigned sex at birth.

**Penalties:**

- With respect to remedies, Nevada law provides that if attempts to settle a complaint fail the Nevada Equal Rights Commission, or NERC, may order that a person cease and desist from unlawful employment practices and restore the benefits of the aggrieved person, including rehiring and back pay up to two years. The NERC may also apply to the district court to order injunctive relief with respect to any employment practice it deems to be unlawful. Complainants also have a statutory right to submit an application to the district court for an order to restore rights after an unfavorable NERC decision. But Nevada law also provides that a NERC order is a “final decision in a contested case for purposes of judicial review.”
- After NERC completes an investigation it issues a right to sue letter (valid for 90 days) if it finds illegal employment discrimination. NERC is not invested with statutory power to act upon its own initiative to eliminate discriminatory behavior.
- Plaintiffs must exhaust administrative remedies before they can file a complaint in civil court.
- The law precludes plaintiffs from receiving compensatory damages.
- It also precludes litigants from receiving punitive damages.
- Litigants are not allowed to recuperate attorney’s fees from the party at fault.

**Minimum number of employees:** 15 (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** Tax-exempt private membership clubs are exempt.

**Discrimination charge statistics:**

Basis	SFY 2007	SFY 2008	SFY 2009	SFY 2010
Sex	453	421	285	180
Race	335	267	228	127
Sexual orientation	40	46	22	30

Data represent number of charges, not compliants.

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## New Hampshire (1997)—Sexual orientation protected in all employment

**Summary:** New Hampshire law has prohibited discrimination on the basis of sexual orientation in employment, housing, and public accommodations since 1997.

**Text of statute:**

New Hampshire Revised Statute Annotated § 354-A:6. Opportunity for Employment Without Discrimination a Civil Right.

The opportunity to obtain employment without discrimination because of age, sex, race, creed, color, marital status, physical or mental disability or national origin is hereby recognized and declared to be a civil right. In addition, no person shall be denied the benefits of the rights afforded by this section on account of that person's sexual orientation.

**Definition of sexual orientation:**

New Hampshire Revised Statute Annotated § 21:49. Sexual Orientation.

Having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the status of persons and does not render lawful any conduct prohibited by the criminal laws of this state or impose any duty on a religious organization. This definition does not confer legislative approval of such status, but is intended to assure the basic rights afforded under New Hampshire law.

**Definition of gender identity:** Not applicable

**Penalties:**

- In New Hampshire the administrative agency governing antidiscrimination is not invested with statutory power to act upon its own initiative to eliminate discriminatory behavior.
- Plaintiffs must exhaust administrative remedies before they are permitted to file a complaint in civil court.
- Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency.
- Litigants are not allowed to recuperate attorney's fees from the party at fault.

**Minimum number of employees:** Six (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** Exclusively fraternal and social clubs are exempt.

**Complaint statistics:**

Basis	SFY 2006	SFY 2007	SFY 2008	SFY 2009	SFY 2010
Sex	138	138	100	73	82
Race	21	25	12	10	24
Sexual orientation	5	14	7	4	6

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## New Jersey (1992, 2006)—Sexual orientation and gender identity or expression protected in all employment

**Summary:** The New Jersey Law Against Discrimination has prohibited discrimination on the basis of sexual orientation since 1992. The New Jersey Legislature amended the law in 2006 to protect people from adverse treatment due to “gender identity or expression.”

New Jersey’s administrative code includes an antidiscrimination policy for state government employees in addition to the Law Against Discrimination. This policy also prohibits discrimination on the basis of sexual orientation and gender identity.

**Text of statutes:**

New Jersey Statute Annotated § 10:5-4. Obtaining employment, accommodations and privileges without discrimination; civil right.

4. All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.

New Jersey Statute Annotated § 10:5-12. Unlawful employment practices, discrimination.

11. It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination:

a. For an employer, because of the race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual ...

New Jersey Department of Personnel, Title 4A, Chapter 7, Subchapter 3.1

(a) The State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability.

**Definition of sexual orientation:**

New Jersey Statute Annotated § 10:5-5. Definitions.

(hh) Affectional or sexual orientation means male or female heterosexuality, homosexuality, or bisexuality by inclination, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation.

**Definition of gender identity:**

New Jersey Statute Annotated § 10:5-5. Definitions.

(rr) Gender identity or expression means having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person’s assigned sex at birth.

**Penalties:**

- Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency.

**Minimum number of employees:** 1 (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	2007	2008	2009	2010
Sex	211	215	163	78
Race	255	240	200	134
Sexual orientation	38	34	21	18
Gender identity	0	0	0	3

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## New Mexico (2003)—Sexual orientation and gender identity protected in all employment

**Summary:** In 2003 the New Mexico legislature amended its Human Rights Act, originally adopted in 1978, to prohibit discrimination on the basis of sexual orientation and gender identity in employment, housing, public accommodations, and consumer credit.

**Text of statute:**

New Mexico Statute Annotated § 28-1-7. Unlawful discriminatory practice.

It is an unlawful discriminatory practice for:

A. an employer, unless based on a bona fide occupational qualification or other statutory prohibition, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation; provided, however, that 29 U.S.C. Section 631(c)(1) and (2) shall apply to discrimination based on age; or, if the employer has fifteen or more employees, to discriminate against an employee based upon the employee's sexual orientation or gender identity.

**Definition of sexual orientation:**

New Mexico Statute Annotated § 28-1-2.

(P) Heterosexuality, homosexuality, or bisexuality, whether actual or perceived.

**Definition of gender identity:**

New Mexico Statute Annotated § 28-1-2.

(Q) A person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth.

**Penalties:**

- If the human rights commission finds that unlawful discrimination occurred, then it may require the offending party to pay actual damages and, in certain circumstances, reasonable attorneys' fees.
- Plaintiffs must exhaust administrative remedies before they can file a complaint in civil court.
- The law precludes litigants from receiving punitive damages.

**Minimum number of employees:** 15 (state and private)

**Religious organization exemption: Yes**

**Nonprofit exemption: No**

**Complaint statistics:**

<b>Basis</b>	<b>SFY 2007</b>	<b>SFY 2008</b>	<b>SFY 2009</b>	<b>SFY 2010</b>
Sex	367	278	258	245
Race	109	119	102	91
Sexual orientation	48	46	31	40
Gender identity	2	1	1	3

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## New York (2002)—Sexual orientation protected in all employment

**Summary:** On January 16, 2003 sexual orientation became a protected status in New York when Gov. George Pataki signed Chapter 2 of the Laws of 2002, referred to as the Sexual Orientation Non-Discrimination Act, on SONDA. SONDA amended the state’s Human Rights Law, Civil Rights Law, and the Education Law to include sexual orientation as a protected class. Under SONDA, discrimination on the basis of actual or perceived sexual orientation in employment, housing, public accommodations, education, credit, and the exercise of civil rights is prohibited.

**Text of statute:**

New York Consolidated Law Service, Executive Article 15 Human Rights Law § 296. Unlawful discriminatory practices.

1. It shall be an unlawful discriminatory practice:

(a) For an employer or licensing agency, because of an individual’s age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

**Definition of sexual orientation:**

New York Consolidated Law Service, Executive Article 15 Human Rights Law § 292(27).

Definitions.

Heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived. However, nothing contained herein shall be construed to protect conduct otherwise proscribed by law.

**Definition of gender identity:** Not applicable

**Penalties:**

- If the claimant successfully proves their sexual orientation discrimination claim, they may be entitled to recover compensatory damages for pain and suffering, lost wages, and benefits. Neither punitive damages nor attorneys’ fees, however, are available under SONDA.

**Minimum number of employees:** Four (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint Statistics:**

Basis	2007	2008	2009	2010
Sex	1509	1670	1676	1350
Race	1884	2258	2159	1689
Sexual orientation	203	263	231	197

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## Ohio (2007)—Sexual orientation and gender identity are protected in public employment

**Summary:** Gov. Ted Strickland issued executive order 2007-10S in May 2007 prohibiting discrimination in public employment based on sexual orientation and/or gender identity.

**Text of executive order:**

Executive Order 2007-10S, Establishing Policy Against Discrimination Based on Sexual Orientation or Gender Identity

6. Prohibition Against Discrimination. For the reasons stated above, I am declaring it to be the policy of the State of Ohio that no person employed by a Cabinet agency or by a State of Ohio Board or Commission may discriminate on the basis of sexual orientation or gender identity in making any of the following employment related decisions:

- |                |   |
|----------------|---|
| a. Hiring      | e. Promotion                                    |
| b. Layoff      | f. Demotion                                     |
| c. Termination | g. Rate of Compensation                         |
| d. Transfer    | h. Eligibility for In-Service Training Programs |

**Definition of sexual orientation:**

Executive Order 2007-10S

a. Sexual Orientation: A person's actual or perceived homosexuality; bisexuality; or heterosexuality, by orientation or practice, by and between adults who have the ability to give consent.

**Definition of gender identity:**

Executive Order 2007 - 10S

b. Gender Identity: The gender a person associates with him or herself, regardless of the gender others might attribute to that person.

**Penalties:**

- The executive order does not provide employees who have been discriminated against with a private right of action.

**Minimum number of employees:** Not applicable

**Religious organization exemption:** Not applicable

**Nonprofit exemption:** Not applicable

**Complaint statistics:** Ohio does not compile information on sexual orientation or gender identity discrimination.

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## Oregon (2007)—Sexual orientation and gender identity are protected in all employment

**Summary:** In May 2007 Gov. Ted Kulongoski signed into law the Oregon Equality Act, banning discrimination based on sexual orientation and gender identity in employment, housing, and public accommodations. The law took effect on January 1, 2008.

It also repealed Oregon Revised Statute § 236.380, a statute that prevented personnel action from being taken against a state employee on the basis of sexual orientation.

This legislation updated and amended more than 30 provisions in previously existing statutes to make the antidiscrimination laws apply to sexual orientation as well.

**Text of statutes:**

Oregon Revised Statute § 659A.006. Declaration of policy against unlawful discrimination; opportunity to obtain employment without unlawful discrimination recognized as a civil right; exception of religious group.

(1) It is declared to be the public policy of Oregon that practices of unlawful discrimination against any of its inhabitants because of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability or familial status are a matter of state concern and that this discrimination not only threatens the rights and privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

(2) The opportunity to obtain employment or housing or to use and enjoy places of public accommodation without unlawful discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability hereby is recognized as and declared to be a civil right.

Oregon Revised Statute § 659A.030. Discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status or age prohibited.

(1) It is an unlawful employment practice:

(a) For an employer, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to refuse to hire or employ the individual or to bar or discharge the individual from employment. However, discrimination is not an unlawful employment practice if the discrimination results from a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business.

(b) For an employer, because of an individual’s race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual’s juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to discriminate against the individual in compensation or in terms, conditions or privileges of employment.

**Definition of sexual orientation:**

Oregon Revised Statute § 174.100. Definitions.

As used in the statute laws of this state, unless the context or a specially applicable definition requires otherwise:

(6) “Sexual orientation” means an individual’s actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.

**Definition of gender identity:** No information provided

**Penalties:**

- A successful complainant in an administrative hearing under the Oregon Equality Act is limited to recovery of actual damages and equitable relief. But a successful plaintiff in a civil action can receive compensatory damages, punitive damages, and attorneys’ fees. There are no caps on damages under the Oregon Equality Act.
- Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency.
- Litigants are not allowed to recuperate attorneys’ fees unless the complaint was filed in court.

**Minimum number of employees:** One (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	SFY 2006	SFY 2007	SFY 2008	SFY 2009	SFY 2010
Sex	642	644	746	546	554
Race	278	310	335	267	239
Sexual orientation*	34	33	27	55	35

\* Gender identity complaints are counted with sexual orientation complaints.

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## Pennsylvania (1975, 2003)—Sexual orientation and gender identity protected in public employment

**Summary:** Gov. Milton Shapp issued the first state executive order, Executive Order 75-5, in 1975 banning discrimination in public employment on the basis of sexual orientation.

In 2003 Gov. Edward Rendell signed Executive Order 03-10, which extended protection from gender identity/expression discrimination to state employees. The order states that no agency under the governor’s jurisdiction shall discriminate against any employee or prospective employee on the basis of a number of factors including gender identity or expression.

### **Text of executive orders:**

#### Executive Order 1975-5

In continuing the Commonwealth’s commitment to provide leadership in the effort to obtain equal rights for all persons in Pennsylvania, this Administration is committed to working towards ending discrimination against persons because of their sexual or affectional orientation. There shall be no discrimination by any Commonwealth department, board, commission or other official entity under the Governor’s jurisdiction, or any representative thereof, because of sexual or affectional orientation in any matter of hiring or employment, housing, credit, contracting, provisions of services, or any other matter whatsoever.

#### Executive Order 2003-10

Now, therefore, I, Edward G. Rendell, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby order and direct as follows:

1. Prohibition of discrimination and affirmation of equal employment opportunity.
  - a. No agency under the jurisdiction of the Governor shall discriminate against any employee or applicant for employment because of race, color, religious creed, ancestry, union membership, age, gender, sexual orientation, gender identity or expression, national origin, AIDS or HIV status, or disability.
  - b. Positive steps shall be taken by each agency under the jurisdiction of the Governor to ensure fair and equal employment opportunity at every level of government.

**Definition of sexual orientation:** No information provided

**Definition of gender identity:** No information provided

**Penalties:**

- The executive order does not provide employees who have been discriminated against with a private right of action.

**Minimum number of employees:** Not applicable

**Religious organization exemption:** Not applicable

**Nonprofit exemption:** Not applicable

**Complaint statistics:** Pennsylvania does not compile information on sexual orientation or gender identity discrimination.

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## Rhode Island (1985, 1995, 2001)—Sexual orientation and gender identity and expression protected in all employment

**Summary:** In 1985 Gov. Edward DiPrete issued the first executive order prohibiting employment discrimination by state agencies on the basis of sexual orientation.

In 1995 Rhode Island’s General Assembly added protection from discrimination based on sexual orientation to the state civil rights law, initially passed in 1949.

In 2001 Rhode Island adopted a nondiscrimination law prohibiting discrimination against transgender people in employment, housing, credit, and public accommodations. The law amends all of the state’s nondiscrimination laws to ensure that transgender people who face discrimination may seek redress in the form of injunctive relief and damages.

**Text of statute:**

Rhode Island General Law § 28-5-7. Unlawful employment practices.

It shall be an unlawful employment practice:

(1) For any employer:

(i) To refuse to hire any applicant for employment because of his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin;

(ii) Because of those reasons, to discharge an employee or discriminate against him or her with respect to hire, tenure, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment. However, if an insurer or employer extends insurance related benefits to persons other than or in addition to the named employee, nothing in this subdivision shall require those benefits to be offered to unmarried partners of named employees;

(v) When an employee has presented to the employer an internal complaint alleging harassment in the workplace on the basis of race or color, religion, sex, disability, age, sexual orientation, gender identity or expression, or country of ancestral origin, to refuse to disclose in a timely manner in writing to that employee the disposition of the complaint, including a description of any action taken in resolution of the complaint; provided, however, no other personnel information shall be disclosed to the complainant.

**Definition of sexual orientation:**

Rhode Island General Laws § 28-5-6. Definitions.

(15) “Sexual orientation” means having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the status of persons and does not render lawful any conduct prohibited by the criminal laws of this state nor impose any duty on a religious organization. This definition does not confer legislative approval of that status, but is intended to assure the basic human rights of persons to obtain and hold employment, regardless of that status.

**Definition of gender identity:**

Rhode Island General Laws § 28-5-6. Definitions.

(10) “Gender identity or expression” includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self image, gender-related appearance, or gender-related expression; whether or not that gender identity, gender-related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person’s sex at birth.

**Penalties:**

- In cases where the Rhode Island Commission for Human Rights, or RICHR, finds that unlawful discrimination has occurred, it may order the guilty employer to take affirmative action including but not limited to hiring, reinstatement, or upgrading employees with or without back pay. Attorneys’ fees may be awarded, and if the RICHR finds intentional discrimination it may award compensatory damages. A Rhode Island state court may award punitive damages if it finds that the employer’s conduct was motivated by “malice or ill will” or “involve[d] reckless or callous indifference to the statutorily protected rights of others.”
- Plaintiffs must exhaust administrative remedies before they can file a complaint in civil court.
- Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency.

**Minimum number of employees:** Four (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	SFY 2005	SFY 2006	SFY 2007	SFY 2008	SFY 2009	SFY 2010
Sex	73	82	59	84	62	64
Race	43	51	52	50	42	48
Sexual orientation	7	2	5	11	3	6
Gender identity	0	0	1	0	0	1

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## Vermont (1992, 2007)—Sexual orientation and gender identity protected in all employment

**Summary:** In 1992 Vermont passed a comprehensive statewide law prohibiting discrimination on the basis of sexual orientation, the Vermont Human Rights Law.

In 2007 Vermont enacted legislation prohibiting discrimination in employment on the basis of gender identity. The legislation, Senate Bill 51, modifies both the Vermont Fair Employment Practices Act, which covers private employers, and Vermont statutes pertaining to state employers by adding gender identity to their respective lists of protected characteristics.

**Text of statute:**

Title 21 Vermont Statutes Annotated § 495. Unlawful employment practice.

(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition:

(1) For any employer, employment agency, or labor organization to discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual;

(3) For any employment agency to fail or refuse to classify properly or refer for employment or to otherwise discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual;

**Definition of sexual orientation:**

Title 1 Vermont Statutes Annotated § 143. Sexual orientation.

The term “sexual orientation” means female or male homosexuality, heterosexuality, or bisexuality. “Sexual orientation” shall not be construed to protect conduct otherwise proscribed by law.

**Definition of gender identity:**

Title 1 Vermont Statutes Annotated § 144. Gender identity.

The term “gender identity” means an individual’s actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual’s gender or gender-identity, regardless of the individual’s assigned sex at birth.

**Penalties:**

- Private employees are entitled to compensatory damages but only if the aggrieved employee files a complaint in court.
- Litigants may only receive punitive damages if they file their complaint in court instead of the corresponding administrative agency.
- Nonstate employee litigants are not allowed to recuperate attorneys' fees unless the complaint was filed in court; state employee litigants are allowed to recuperate attorneys' fees either through the administrative process or in court.

**Minimum number of employees:** One (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics (only includes public employee complaints):**

Basis	SFY 2005	SFY 2006	SFY 2007	SFY 2008	SFY 2009	SFY 2010
Sex	3	9	3	5	3	1
Race	2	1	3	2	0	0
Sexual orientation	0	4	0	0	0	0
Gender identity	NA	NA	0	0	0	0

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## Virginia (2010)—No protection

**Summary:** In 2005 Gov. Mark Warner amended a preexisting executive order banning discrimination by Virginia state agencies by adding provisions that prohibited discrimination on the basis of sexual orientation. Warner's successor, Timothy Kaine, affirmed Warner's actions once he assumed power in 2006.

On February 24, 2006, however, the Virginia attorney general issued an opinion that declared this order unconstitutional. It stated:

It is my opinion that while Executive Order No. 12 is permissible to the extent the Governor is ensuring that the laws are faithfully being executed, the addition of sexual orientation as a protected employment class within state government was intended to, and in fact did, alter the public policy of the Commonwealth.

It is further my opinion that changing the public policy of the Commonwealth is within the purview of the General Assembly; therefore, that portion of Executive Order No. 1 is beyond the scope of executive authority and, therefore, unconstitutional.

In February 2010 Gov. Bob McDonnell rescinded the previous executive order of Gov. Kaine by issuing his own that did not include protection from discrimination on the basis of sexual orientation. But the press criticized Governor McDonnell for removing the protection on the basis of sexual orientation. In response the governor rescinded his executive order and issued an executive directive that included sexual orientation protection.

In May 2010, in a separate ruling, the Virginia Supreme Court found that former Gov. Kaine's executive order did not offer real protection from discrimination on the basis of sexual orientation. Gov. McDonnell's executive directive, therefore, didn't offer any protections since executive directives are weaker than executive orders.

**Text of executive directive:**

Executive Directive 1 (2010)

Employment discrimination of any kind will not be tolerated by this Administration. The Virginia Human Rights Act recognizes the unlawfulness of conduct that violates any Virginia or federal statute or regulation governing discrimination against certain enumerated classes of persons. The Equal Protection Clause of the United States Constitution prohibits discrimination without a rational basis against any class of persons. Discrimination based on factors such as one's sexual orientation or parental status violates the Equal Protection Clause of the United States Constitution. Therefore,

discrimination against enumerated classes of persons set forth in the Virginia Human Rights Act or discrimination against any class of persons without a rational basis is prohibited.

Consistent with state and federal law, and the Virginia and United States Constitutions, I hereby direct that the hiring, promotion, compensation, treatment, discipline, and termination of state employees shall be based on an individual's job qualifications, merit and performance. No employee of the Executive Branch shall engage in any discriminatory conduct against another employee.

**Definition of sexual orientation:** No information provided

**Definition of gender identity:** No information provided

**Penalties:** No information provided

**Minimum number of employees:** Not applicable

**Religious organization exemption:** Not applicable

**Nonprofit exemption:** Not applicable

**Complaint statistics:** While Virginia's executive directive does prohibit discrimination based on sexual orientation, the 2011 ruling by the Virginia Supreme court basically rendered the directive useless.

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## Washington (2006)—Sexual orientation and gender identity protected in all employment

**Summary:** Gov. Booth Gardner issued executive orders in 1985 and 1991 prohibiting state agencies and institutions of higher education from discriminating in employment solely on the basis of sexual orientation.

The Washington legislature enacted a bill in 2006 adding protection from discrimination based on sexual orientation and gender identity to its state civil rights law, the Washington Law Against Discrimination, initially passed in 1949.

### **Text of statutes and executive order:**

Executive Order 91-06

Direct that no state agency or institutions of higher education shall discriminate in employment solely on the basis of an individual's sexual orientation. No state agency or institution of higher education shall be required to establish employment goals based on sexual orientation.

Revised Code Washington Annotated § 49.60.030

(1) The right to be free from discrimination because of race, creed, color, national origin, sex, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

Revised Code Washington Annotated § 49.60.180

It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved: PROVIDED, That this section shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.

(2) To discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

**Definition of sexual orientation:**

Revised Code Washington Annotated § 49.60.040(15)

Heterosexuality, homosexuality, bisexuality, and gender expression or identity.

**Definition of gender identity:**

Revised Code Washington Annotated § 49.60.040(15)

Gender expression or identity means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

**Penalties:**

- In cases where the Washington State Human Rights Commission finds that unlawful discrimination has occurred, it may order the guilty employer to take affirmative action including but not limited to hiring, reinstatement, or the upgrading of employees with or without back pay. The administrative law judge may also impose any additional remedy that could be ordered by a court provided that damage awards for humiliation or mental suffering are limited to \$ 20,000 or less.
- The law precludes litigants from receiving punitive damages.
- Litigants are not allowed to recuperate attorneys’ fees unless the complaint was filed in court.

**Minimum number of employees:** Eight (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	SFY 2006	SFY 2007	SFY 2008	SFY 2009	SFY 2010
Sex	257	191	208	199	112
Race	183	112	160	124	68
Sexual orientation*	N/A	34	25	23	15

\* Gender identity complaints are counted with sexual orientation complaints.

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## Wisconsin (1982)—Sexual orientation protected in all employment

**Summary:** In 1982 Wisconsin became the first state to pass a comprehensive statute prohibiting sexual orientation discrimination, the Wisconsin Fair Employment Law.

**Text of statute:**

Wisconsin Statute § 111.31. Declaration of policy.

(1) The legislature finds that the practice of unfair discrimination in employment against properly qualified individuals by reason of their age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, or use or nonuse of lawful products off the employer's premises during nonworking hours substantially and adversely affects the general welfare of the state. Employers, labor organizations, employment agencies, and licensing agencies that deny employment opportunities and discriminate in employment against properly qualified individuals solely because of their age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, or use or nonuse of lawful products off the employer's premises during nonworking hours deprive those individuals of the earnings that are necessary to maintain a just and decent standard of living.

(2) It is the intent of the legislature to protect by law the rights of all individuals to obtain gainful employment and to enjoy privileges free from employment discrimination because of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, or use or nonuse of lawful products off the employer's premises during nonworking hours, and to encourage the full, nondiscriminatory utilization of the productive resources of the state to the benefit of the state, the family, and all the people of the state. It is the intent of the legislature in promulgating this subchapter to encourage employers to evaluate an employee or applicant for employment based upon the employee's or applicant's individual qualifications rather than upon a particular class to which the individual may belong.

(3) In the interpretation and application of this subchapter, and otherwise, it is declared to be the public policy of the state to encourage and foster to the fullest extent practicable the employment of all properly qualified individuals regardless of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, or use or nonuse of lawful products off the employer's premises during nonworking hours. Nothing in this subsection requires an affirmative action program to correct an imbalance in the work force. This subchapter shall be liberally construed for the accomplishment of this purpose.

**Definition of sexual orientation:**

Wisconsin Statute § 111.32. Definitions.

(13m) Having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such preference.

**Definition of gender identity:** Not applicable

**Penalties:**

- The Wisconsin Department of Workforce Development administers the Wisconsin Fair Employment Act. If a hearing examiner finds that the respondent engaged in discrimination, then it may order administrative remedies that include back pay, reinstatement, compensation in lieu of reinstatement, and interim earnings.
- Under the Wisconsin Fair Employment Act a complainant cannot seek a right to sue letter from the Department of Workforce Development and must proceed through the entire administrative process before he or she is entitled to file in court. Only when the department makes a ruling favorable to the complainant may he or she seek additional remedies by filing a civil action. If a prevailing administrative complainant chooses to file a civil action for additional remedies, he or she may be awarded compensatory and punitive damages as well as attorneys' fees and costs. Nonpecuniary, future pecuniary, and punitive damages are subject to the same graduated caps Title VII imposes.
- Private employees can receive compensatory damages but only if the aggrieved employee files a complaint in court.
- Employees may file a civil action to recover compensatory damages only after the administrative agency has rendered a final decision in the case, and local government employees are not permitted to recover compensatory damages under any circumstances.
- Litigants may only receive punitive damages if they have filed their complaint in court instead of the corresponding administrative agency and only after a final decision from the Department of Workforce Development has been obtained. Local government employees cannot recover punitive damages.
- Litigants are not allowed to recuperate attorneys' fees unless they file their complaint in court.

**Minimum number of employees:** One (state and private)

**Religious organization exemption:** Yes

**Nonprofit exemption:** No

**Complaint statistics:**

Basis	SFY 2005	SFY 2006	SFY 2007	SFY 2008	SFY 2009	SFY 2010
Race	896	900	793	887	842	827
Sex	764	724	688	733	706	689
Sexual orientation	70	49	51	56	63	71

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