

Concept Overview

Diversity of Sexual Orientation and Diversity of Gender Identity



The Population of this Dimension of Diversity



It doesn't matter where one is around the world, it's difficult to be **certain** of the number of people who self-identify as lesbian, gay, bisexual and transgender.

Governments are just beginning to “count” people who are LBGT. Limited *census* data exists.

Some governments ask if one is married to a same sex partner. (Obviously, not the US government yet, as same-sex marriage was just made legal. The US government asks if one is cohabitating with a same-sex partner.) Those types of relationship-based surveys don't accurately count the population of people who are LBGT. The transgender and bisexual population is particularly hard to count.

Sources: The Economist, How to Count How Many People Are Gay, May 5, 2015

<http://www.economist.com/blogs/economist-explains/2015/05/economist-explains-3>

The Williams Institute, LGBT Demographics: Comparisons among population-based surveys, October 2014

<http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-demogs-sep-2014.pdf>

The 2020 Census does not gather data on people who identify as LGBT

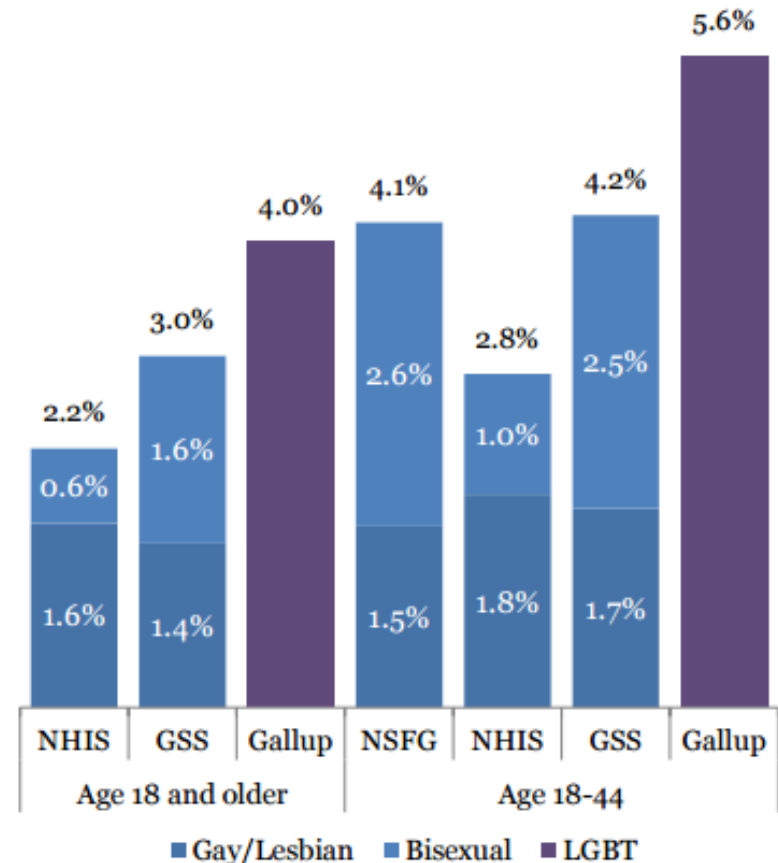
Initially, 2020 Census questions included identification in relation to sexual orientation and gender identity. However, the final Census question material sent to the US Congress was removed.

Source: Sexual Orientation and Gender Identity Erased from 2020 Census and the American Community Survey. National LGBTQ Taskforce
[https://www.thetaskforce.org/sexual-orientation-and-gender-identity-erased-from-2020-census-and-the-american-community-survey-acs/](https://www.thetaskforce.org/sexual-orientation-and-gender-identity-erased-from-2020-census-and-the-american-community-survey-ac/)

When one sees statistics on people who identify as LGBT, the statistics are often gathered or extrapolated by university-based researchers and independent organizations (like Gallup.)

Figures consistently vary, depending on the source. The sources are also not always measuring the same groups.

Figure 1. Proportion of adults who identify as LGB/T, by survey.



What is the US LBGT Population?

It depends on the survey you review

All who identify as LBGT

Gallup Poll (2018)	4.5% of US Population Highest Age Group: 8.1% of Millennials Identified
Harris Poll (2017)	12% of US Population Highest Age Group: 20% of Millennials Identified

Source: In U.S., Estimate of LGBT Population Rises to 4.5%, Gallup, May 22, 2018.

<https://news.gallup.com/poll/234863/estimate-lgbt-population-rises.aspx>

Source: New GLAAD study reveals twenty percent of millennials identify as LGBTQ, GLADD, March 30, 2017.

<https://www.glaad.org/blog/new-glaad-study-reveals-twenty-percent-millennials-identify-lgbtq>

The USCA William's Institute uses the Gallup poll data that indicates that in 2018, **4.5% of the US population identified as LBGT.**

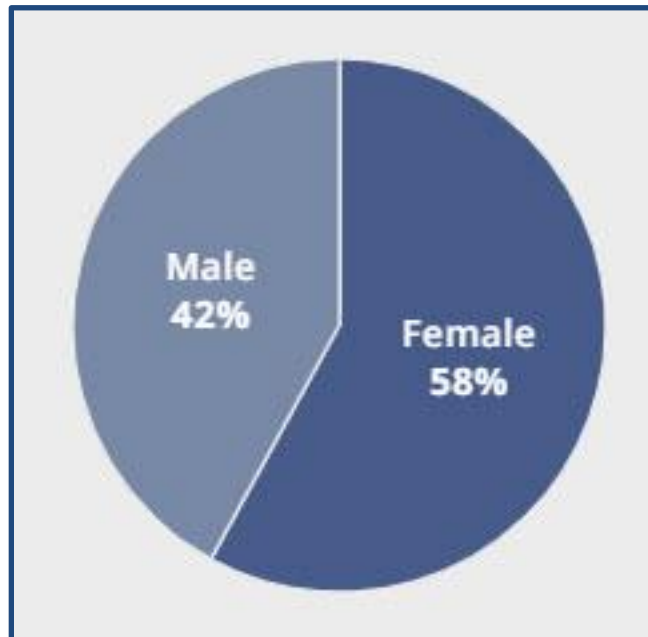
I would trust the Gallup poll data as UCLA does.

I've offered the UCLA Interactive website on LBGT data on the week page.

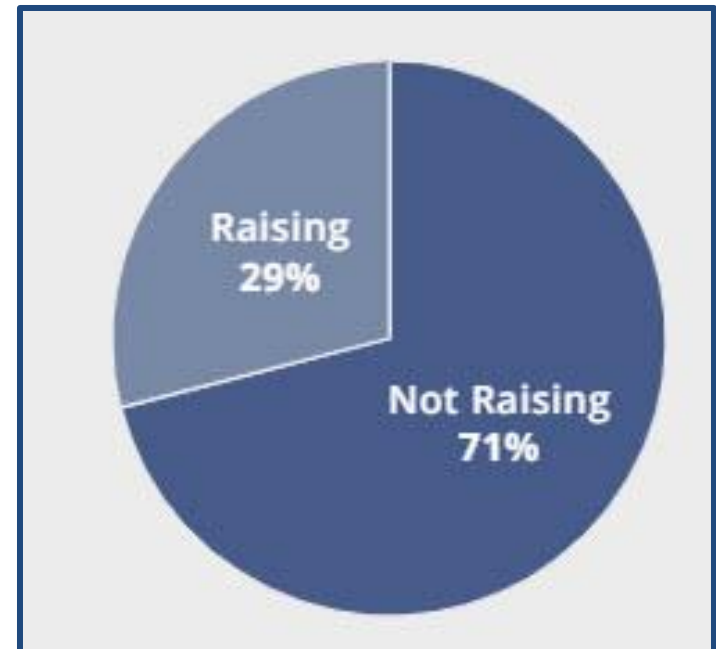
Source: UCLA School of Law, Williams Institute

<https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#density>

According to the 2018 Gallup Poll



Gender



Raising Children

We overestimate the number of people identifying as lesbian, bisexual, gay, transgender and queer in the US.

In 2019, a Gallup poll found that women and those between the ages of 18 and 34 have the highest estimates

Americans' Estimate of the Gay Population in the U.S., by Key Subgroup	
	Mean estimate %
Men	17.4
Women	29.7
18-29	28.5
30-49	24.4
50-64	23.1
65+	17.5
Republicans	18.3
Independents	25.2
Democrats	26.3

GALLUP, MAY 15-30, 2019

Source: Americans Still Greatly Overestimate U.S. Gay Population, Gallup, June 27, 2019

<https://news.gallup.com/poll/259571/americans-greatly-overestimate-gay-population.aspx>

What Sexual Orientation & Gender Identity Mean

“Sexual Orientation refers to emotional, romantic, sexual, and relational attraction to someone else, whether you’re gay, lesbian, bisexual, or straight. Refrain from using “sexual preference,” “homosexuality,” or “heterosexuality.” In other words, someone can be transgender and straight, or transgender and gay.”

“Gender Identity is one’s internal concept of self as male, female, a blend of both, or neither. It is how individuals perceive themselves, and what they call themselves. One’s gender identity can be the same or different from their sex assigned at birth. For transgender people, their birth-assigned sex and their own sense of gender identity do not match.”

What's the "Q" in LGBTQ?

According to the HRC (Human Rights Campaign):

“Queer” serves as an umbrella term that encompasses many people as it intersects with sexual orientation and gender identity. It includes anyone who **does not associate with heteronormativity**, rather they have **non-binary** or **gender expansive** identities.”

Source: Human Rights Campaign. HRC Officially Adopts Use of “LGBTQ” to Reflect Diversity of Own Community, June 3, 2016. <https://www.hrc.org/blog/hrc-officially-adopts-use-of-lgbtq-to-reflect-diversity-of-own-community>

Disclosing (Coming Out)

The Coming Out Experience: When You Thought, Knew, Told

*Median age at which gay men/lesbians/bisexuals
say they ... they were or might be LGB*



LGBT **employees** are faced with the decision on **whether to disclose their sexual orientation or gender identity**.

The HRC (Human Rights Campaign) indicates that there are benefits of being open about one sexual orientation/gender identity.

- ✓ Eliminates the need to hide or mislead.
- ✓ Makes deeper friendships possible.
- ✓ Breaks down barriers to understanding.
- ✓ Builds trusting working relationships.
- ✓ Lets us bring our “whole selves” to work.
- ✓ Being open can make you more productive and can even benefit your career because your peers will see you in a new, perhaps even courageous, light.

Source: Coming Out at Work, Human Rights Campaign
<http://www.hrc.org/resources/entry/coming-out-at-work>

In a 2018 study on the LGBTQ workplace experience, the following was identified.

46% Hide Who They Are At Work

LGBTQ employees are not open at work because:

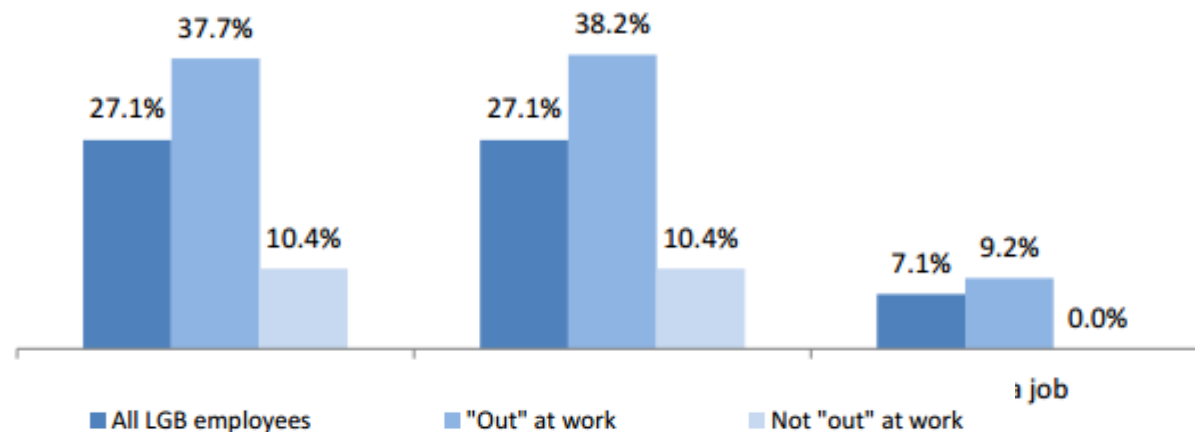
The possibility of being stereotyped	38%
The possibility of making people feel uncomfortable	36%
The possibility of losing connections or relationships with coworkers	31%
People might think I'm attracted to them just because I'm LGBTQ	27%

Source: A Workplace Divided: Understanding the Climate for LGBTQ Workers Nationwide. (2018). Human Rights Campaign, 10 – 11.

https://assets2.hrc.org/files/assets/resources/AWorkplaceDivided-2018.pdf?_ga=2.140773682.1409974327.1592347854-1874565387.1592347854

Risks

Research reports vary on the exact percentage that indicate LGBT employees have been discriminated against once they disclose their sexual orientation/gender identity. However, all research agrees that more lesbian and gay employees experience employment discrimination **if they have disclosed** than if they do not disclose. Example below.



Source of Chart: Documented Evidence of Employment Discrimination & Its Effects on LGBT People, The Williams Institute , UCLA, 2011. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>

Perception: Social Exclusion vs Career Penalty?

In a 2018 study, subjects obviously perceived more of a social risk than a “career penalty” risk.

Perception of Career Risk vs Social Exclusion	
Careers will be negatively impacted if I disclose	19%
My colleagues will feel uncomfortable around me if I disclose	70%

However, we should consider that if perceptions were correct and coworkers **did** feel uncomfortable, could that uncomfortable feeling lead to out-group exclusion?

Source: Trau, R., O’Leary, J., Brown, C. (October 19, 2018). 7 Myths About Coming Out at Work. Harvard Business Review. <https://hbr.org/2018/10/7-myths-about-coming-out-at-work>

The “B” and the “T” of LBGT



We know about the “L” and the “G” represented in LBGT
- Lesbian (female) and gay (male) individuals who are attracted to those of their own gender.

What about those who identify as bisexual and transgender?

We don’t hear as much about those two groups of people within the LBGT civil rights movement.

What Bisexual Means

We use Ochs's definition in this course.

“I call myself bisexual because I acknowledge that I have in myself the potential to be attracted — romantically and/or sexually — to people of more than one sex and/or gender, not necessarily at the same time, not necessarily in the same way, and not necessarily to the same degree.”

— Robyn Ochs

Demographics

Background Information

The **bisexual population** is the **LARGEST GROUP** within the **LBGT community**.

Most recent survey conducted by the US government indicates that **there are more female bisexuals** (5.5% of population) than lesbians and gay men combined (3.2% of population)

Homosexual, Gay, or Lesbian

Women

1.3%

Men

1.9%

Bisexual

Women

5.5%

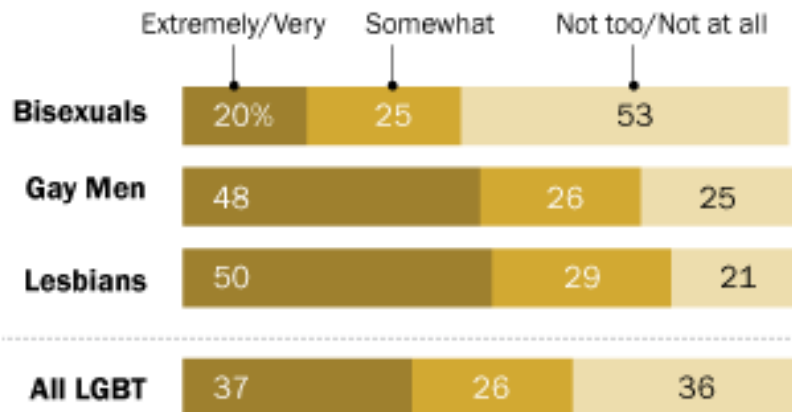
Men

2%

Source: Sexual Behavior, Sexual Attraction, and Sexual Orientation Among Adults Aged 18–44 in the United States: Data From the 2011–2013 National Survey of Family Growth
January 7, 2016. <http://i2.cdn.turner.com/cnn/2016/images/01/06/nhsr88.pdf>

Bisexuals Less Likely to Say Sexual Orientation is Important to Their Identity

Percent who say being LGBT is ... important to their overall identity



Notes: Based on all LGBT (N=1,197). Responses for transgender adults are not broken out due to small sample size but are included in the total for LGBT. Respondents' individual sexual or gender identities were inserted; for example, lesbians were asked how important "being lesbian" is

PEW RESEARCH CENTER

80% of people who are bisexual indicate that their sexual orientation does not *greatly* impact their identity.

Source: Parker. K. (February 20, 2015.) Among LGBT Americans, bisexuals stand out when it comes to identity, acceptance. Pew Research Center. Accessed: <http://www.pewresearch.org/fact-tank/2015/02/20/among-lgbt-americans-bisexuals-stand-out-when-it-comes-to-identity-acceptance/>

The Bisexual Employee

I think there is a lot of ignorance around being bisexual and when you talk about it, people think you're talking about your sexual practice rather than your orientation.

Morgan, public sector

Bisexuals are actually safe, normal, and boring. Just like you.

The Bisexual Index

If I were able to see someone in management and they were out as bisexual, I'd think that was amazing and that would make me more comfortable when someone made some remark about my sexuality. I could be like well actually this is what the situation is. *Sian, public sector*



Bisexuality is almost invisible in any training or discussions, all the time. It always has been. There's not much information unless a staff support network has a bi rep. There's generally nothing. Nothing in the newsletter that's relevant, on events or anything else. *Antoine, public sector*

Sources: The Bisexual Index <http://www.bisexualindex.org.uk/index.php/Bisexuality>
Chamberlain, B. (2009). Bisexual People in the Workplace. Stonewall Workplace Guides, p. 9,
http://www.stonewall.org.uk/documents/bisexual_people_in_the_workplace.pdf



<https://www.oregon.gov/gov/Pages/meet-the-governor.aspx>

Kate Brown

1st Openly Bisexual US governor
(2015)

"I believe it was during my early 30's that I figured out who, or what, I am. But it wasn't until it was written in the Oregonian newspaper that I was bisexual that I had to face the inevitable and let those around me know. Thus began my very public coming out as a bisexual:

- Coming out to my parents – who flew in from Minnesota “to have a talk.” Their response – “It would be much easier for us if you were a lesbian.”
- Coming out to my gay friends – who called me half-queer.
- Coming out to my straight friends – who never thought I could make up my mind about anything anyway.
- And, most frighteningly to me:

Coming out to my legislative colleagues ...

Some days I feel like I have a foot in both worlds, yet never really belonging to either.”

Governor Brown's quote above **veers from** the bisexual norm in that the median age that bisexuals indicate they knew for sure that they were bisexual is 17, not “in one's 30's.” Her comments about acceptance **mirror** the common sentiment shared by bisexuals.

Sources: Out and Elected in the USA: 1974 – 2004, Kate Brown, 1992. Out History.

Accessed: <http://outhistory.org/exhibits/show/out-and-elected/1992/kate-brown>

Parker. K. (February 20, 2015.) Among LGBT Americans, bisexuals stand out when it comes to identity, acceptance. Pew Research Center.

Accessed: <http://www.pewresearch.org/fact-tank/2015/02/20/among-lgbt-americans-bisexuals-stand-out-when-it-comes-to-identity-acceptance/>

Just as there are myths and stereotypes about lesbian and gay people, **myths and stereotypes also exist regarding bisexuals**. One common myth is that these individuals “are simply confused” about their sexuality. *This is not the case.*

From lesbian and gay colleagues I've been told 'you're indecisive' or 'you are really gay and you just aren't brave enough to be gay' or 'you're really straight and you're just a little bit curious'. I find that quite offensive because I know who I find attractive in the same way that anybody else does and I don't want to be told that's not correct.

Morgan, public sector

Source: Chamberlain, B. (2009). Bisexual People in the Workplace. Stonewall Workplace Guides, p. 4, http://www.stonewall.org.uk/documents/bisexual_people_in_the_workplace.pdf

Inclusion is an issue with bisexuals. One of the challenges of being bisexual is the **feeling that they do not “fit” with either homosexuals or heterosexuals**. They **feel invisible** in relation to other identity groups within the LBGT community. The myths associated with bisexuals as well as the feeling of being ostracized impacts this population cohort on both **economic and social** fronts.

“Bisexuals experience high rates of being ignored, discriminated against, demonized, or rendered invisible by both the heterosexual world and the lesbian and gay communities. Often, the entire sexual orientation is branded as invalid, immoral, or irrelevant. Despite years of activism and the largest population within the LGBT community, the needs of bisexuals still go unaddressed and their very existence is still called into question.”

Source: Bisexual Invisibility: Impacts and Recommendations - San Francisco Human Rights Commission - March 2011, p. 1. <http://ww2.lgbtqnation.com/wp-content/uploads/2011/03/bi-invisibility.pdf>

The Impact of Disclosing at Work

“ **Bisexual experience:**
“Ever since I told my boss I was going to a bi event she seems to treat me as a flake. She makes little comments all the time about how I can't stick at things, how I'm not a team player. One time she told me not to apply for a promotion because they wanted 'someone loyal, who could commit'. I think I'd have got that one too. I wish I'd never mentioned it now.”¹⁰³ ”

People are thinking you're tricky and complicated and hard to pin down – that you will always be trying to evade getting things set in an organised way; that you will always be a little bit off to one side or another. *Ewan, public sector*

Source: Chamberlain, B. (2009). Bisexual People in the Workplace. Stonewall Workplace Guides, p. 6, http://www.stonewall.org.uk/documents/bisexual_people_in_the_workplace.pdf

Source: The Bisexuality Report – The Open University – February 2012
Centre for Citizenship, Identities and Governance/Faculty of Health and Social Care, p. 24.
<http://www.open.ac.uk/ccig/files/ccig/The%20BisexualityReport%20Feb.2012.pdf>

Bisexual in the Workplace

- ✓ are discriminated against because others believe they are either homosexual – or - heterosexual.
- ✓ experience a high level of ignorance that is evidenced by ongoing questioning in the workplace about their sexuality.
- ✓ are reluctant to disclose their sexual orientation for fear of being judged or losing their jobs.

- ✓ do not experience the support that is provided to lesbian and gay employees; for example affinity networks.
- ✓ are not discussed in staff diversity training.
- ✓ talk about their sexual orientation in the workplace less than lesbians and gay people.

Sources:

Human Rights Campaign. (2018). Bisexual Visibility in the Workplace.

https://assets2.hrc.org/files/images/resources/Bi_Inclusion_One_Sheet_FINAL_2018.pdf?_ga=2.119725320.1219379327.1540849041-417485493.1539295660

Chamberlain, B. (2009). Bisexual People in the Workplace. Stonewall Workplace Guides,,

http://www.stonewall.org.uk/documents/bisexual_people_in_the_workplace.pdf

The Bisexuality Report – The Open University – February 2012 Centre for Citizenship, Identities and Governance/Faculty of Health and Social Care

<http://www.open.ac.uk/ccig/files/ccig/The%20BisexualityReport%20Feb.2012.pdf>

Bisexual Invisibility: Impacts and Recommendations - San Francisco Human Rights Commission - March 2011

<http://ww2.lgbtqnation.com/wp-content/uploads/2011/03/bi-invisibility.pdf>

Common Myths of Bisexuality, <http://www.uic.edu/depts/quic/bisandallies/myths.html>

The Transgender Employee

Background Information

- Transgender individuals are those whose personal identity is different than the gender of the individual's birth.
- While bisexuals outnumber lesbians and gay males within the LBGT cohort, **transgendered people comprise the smallest group within the LBGT cohort.**
- According to the latest Williams Institute survey, approximately 0.6% of Americans identify as transgender. That percentage equates to **1.4 million people**. The US government doesn't ask about one's gender identity on any government form.

Source: The Williams Institute. (June 30, 2016.) Updated Estimates Show 1.4 Million Adults Identify as Transgender in the US, Doubling Estimates from A Decade Ago.

Accessed: <http://williamsinstitute.law.ucla.edu/press/press-releases/updated-estimates-show-1-4-million-adults-identify-as-transgender-in-the-us-doubling-estimates-from-a-decade-ago/>

There are a variety of challenges to the transgender people involving discrimination and exclusion emanating from families, communities and the **workplace**



<http://www.transequality.org/issues/employment>

From the chart provided on the next side, one can recognize the type of workplace challenges transgender employees experience. These challenges come at a cost to the individual. By analyzing data from the *National Transgender Discrimination Survey*, startling conclusions can be drawn.

For example, **65%** of study subjects who experience **violence at work** and **59%** of those were **denied access to appropriate bathrooms** attempted suicide.

Table 10.3: Reported reasons for not being hired, being denied a promotion, or being fired in the past year

Reported reasons for negative experience in the past year	Reasons for not being hired (% of those not hired)	Reasons for being denied promotion (% of those denied promotion)	Reasons for being fired (% of those fired)
Age	21%	16%	6%
Disability	7%	9%	15%
Income level or education	21%	13%	6%
Gender identity or expression	39%	49%	43%
Race or ethnicity	11%	14%	10%
Religion or spirituality	1%	3%	2%
Sexual orientation	10%	16%	14%
None of the above	41%	33%	40%

Source: 2015 US Transgender Survey p. 191; National Center for Transgender Equity
<http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>

Actions taken to avoid anti-transgender discrimination at work in the past year	% of those who had a job
They had to hide their gender identity	53%
They did not ask employer to use pronouns they prefer (such as he, she, or they)	47%
They delayed their gender transition	26%
They stayed in a job they would have preferred to leave	26%
They hid the fact that they had already transitioned gender	25%
They kept a job for which they were overqualified	24%
They quit their job	15%
They did not seek promotion or raise	13%
They requested transfer to a different position or department	6%
One or more experiences listed	77%

Source: 2015 US Transgender Survey p. 191; National Center for Transgender Equity
<http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>

Table 16: Lifetime suicide attempts by negative work experiences

Work experience	Have Attempted Suicide	
	Frequency	Row %
I did not get a job I applied for	987	53%
I am or have been under-employed	977	50%
I was removed from direct contact with clients, customers or patients	491	57%
I was denied a promotion	553	56%
I lost my job	660	55%
I was harassed by someone at work	1259	51%
I was the victim of physical violence by someone at work	209	65%
I was the victim of sexual assault by someone at work	176	64%
I was forced to present in the wrong gender to keep my job	806	54%
I was not able to work out a suitable bathroom situation with my employer	500	58%
I was denied access to appropriate bathrooms	546	59%
I was asked inappropriate questions about my transgender or surgical status	1019	55%
I was referred to by the wrong pronoun, repeatedly and on purpose	1155	56%
Supervisors or coworkers shared information about me that they should not have	1193	54%

Source: Suicide Attempts Among Transgender and Gender Non-Conforming Adults – The Williams Institute – January 2014
<http://williamsinstitute.law.ucla.edu/research/suicide-attempts-among-transgender-and-gender-non-conforming-adults/#sthash.07b3m5pv.dpuf>

Transsexual wins lawsuit against Library of Congress

This week you'll listen to Ms. Schroer regarding her experience of being discriminated against by the US Government (Library of Congress.)

Recognize that if the **Executive Order 11246** discussed later in this **slide set** was in effect at the time she applied for the position, her potential employer couldn't have denied her the position.

Diane Schroer won her federal lawsuit against the Library of Congress after officials backed out of a 2005 job offer when told of her intention to become a transsexual. At the time of the job interview for a position as a senior terrorism research analyst, David Schroer was a male. He had been a onetime Army Special Forces commander.

A Transsexual Vs. the Government

By John Cloud | Friday, Sept. 12, 2008



Charlotte Preece wanted a cigarette. She was freaking out, and she needed a moment outside her Capitol Hill building in Washington to think about the odd turn her life had taken that day, Dec. 20, 2004.

Preece, who was 51 at the time, worked then — as she does now — for the Library of Congress, where she helps make hiring decisions for the Congressional Research Service (CRS), the U.S. Congress's analysis agency. She had decided to recommend an ex-Special Forces colonel named David Schroer to be CRS's terrorism specialist. Schroer was a dream candidate, a guy out of a Tom Clancy novel: he had jumped from airplanes, undergone grueling combat training in extreme heat and cold, commanded hundreds of soldiers, helmed



Diane Schroer, a former Army Special Forces commander, has brought a discrimination lawsuit against the Library of Congress

Ninety percent (90%) of transgender employees report harassment, mistreatment or discrimination on the job or took actions like hiding who they are to avoid it. (Injustice at Every Turn)

More than 25% of transgender employees have lost a job because of the bias associated with transgender employees. (National Center for Transgender Equality)

Sources:

Injustice at Every Turn, A Report of the National Transgender Discrimination Survey (executive Summary), The National Gay and Lesbian Task Force and the National Center for Transgender Equality, 2014, p. 2

https://fortunedom.files.wordpress.com/2014/09/executive_summary.pdf

National Center for Trans gender Equity. Employment Issues. Accessed:

<http://www.transquality.org/issues/employment>

Transgender in the Military

“Don’t Ask, Don’t Tell” (DADT) was repealed by Congress and the repeal legislation was signed into law by President Obama in 2010. The repeal allowed gay and lesbian and bi-sexual military personnel to serve openly in the military.

Transgender military personnel had to remain “closet(ed)” – **the repeal of DADT did not cover transgender people in the military.** Trans people were banned by health regulations that were instituted in the 1970’s – where trans people are described as having “psychosexual conditions.”

In a 2014 government report, the US Surgeon General recommended an end to the ban on transgender people serving in the military, **noting the outdated medical reasoning for exclusion.** The US Defense Secretary indicated that he is “open to lifting the ban,” In 2016 the ban was lifted.

Sources:

US officials: Military worries about easing transgender ban, Associated Press, March 2015

<http://news.yahoo.com/ap-sources-concerns-over-easing-transgender-ban-military-071719922.html>

Transgender military members are in a precarious position, Washington Post, 2014

http://www.washingtonpost.com/politics/transgender-military-members-are-in-a-precarious-position/2014/10/27/38204fd6-5870-11e4-b812-38518ae74c67_story.html

About 21% of all transgender adults have served in the US military. People who are transgender serve in the military at a disproportionate rate compared to the general US population.



Jennifer Long served in Iraq in 2008 when she was Edward Long. She now lives in New Jersey and works as a financial advisor.

Source: Zarembo, A. (September 4, 2015.) Why Do Transgender People Join the Military in Such High Numbers? Los Angeles Times. Accessed: <http://www.latimes.com/nation/la-na-transgender-military-20150904-story.html>

While it may come to a surprise to some students, there are enough trans ex-military veterans to warrant a Transgender American Veteran's Association.

Two VA clinics provide services specifically for transgender veterans.

Transgender people serve the citizens of the US in the military at a higher rate (15%) than the general population of the US serves in the military.

Sources: Jenkins. J. (December 29, 2015.) New VA Clinic Opens for Transgender Vets. (print and audio.)

Accessed:

<http://www.npr.org/2015/12/29/460955296/new-va-clinic-opens-for-transgender-vets>

Transgender American Veteran's Association. Accessed: <http://transveteran.org/>

2015 US Transgender Survey p. 166 - 168; National Center for Transgender Equity

<http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>

“Outdated medical and administrative policies have banned transgender people from serving in the U.S. military, yet 18 other countries allow their service.”

These countries include the United Kingdom and Israel.

(NBC News)

On June 30, 2016, US Secretary of Defense indicated that the ban of transgender service people is being lifted. Transgender people will be allowed to openly serve in the US military. Medical benefits specific to the needs of transgender people are to be made available.

Sources: Dawson, F. (June 30, 2016.) Trans Service Members Detail Historic Meeting With Defense Secretary. NBC News. Accessed: <http://www.nbcnews.com/feature/nbc-out/trans-service-members-detail-historic-meeting-defense-secretary-n601676>

Kube. C. (June 30, 2016.) Pentagon Lifts Ban on Transgender Service Members Serving Openly. NBC News. Accessed: <http://www.nbcnews.com/feature/nbc-out/pentagon-lifts-ban-transgender-service-members-serving-openly-n601816>



Transgender service members from SPARTA pose with SPARTA's Sue Fulton, far left, and Secretary of Defense Ash Carter, third from right. © TransMilitary

<http://www.nbcnews.com/feature/nbc-out/trans-service-members-detail-historic-meeting-defense-secretary-n601676>

President Trump has attempted to reinstitute a military service ban on transgender people

Trump signs directive banning transgender military recruits

August, 2017

<http://www.cnn.com/2017/08/25/politics/trump-transgender-military/index.html>

Pentagon's top military officer says he advised President Trump not to ban transgender troops

15 Attorneys General Oppose Trump Transgender Military Ban

The attorneys general argue that "nothing about being transgender inhibits a person's ability to serve in the military or otherwise contribute to society."

October 2017

<https://www.nbcnews.com/feature/nbc-out/15-attorneys-general-oppose-trump-transgender-military-ban-n811416>

The New York Times

New Rule for Transgender Troops: Stick to Your Birth Sex, or Leave

On April 12, 2019, the US Defense Department put into affect a new policy where “troops and recruits can identify as transgender, but must use the uniforms, pronouns, and sleeping and bathroom facilities for their biological sex. They will not be allowed to serve if they have a diagnosis of gender dysphoria, a disorder in which a person’s gender identity does not match their physical gender at birth.” Service people who already disclosed as transgender and have transitioned or have begun the medical process of transitioning are exempt.

Source: New Rule for Transgender Troops: Stick to Your Birth Sex, or Leave, New York Times, March 13, 2019.
<https://www.nytimes.com/2019/03/13/us/transgender-troops-ban.html>

Why Marriage Equality is an Employment Issue

(and not only a religious and political issue)



Latest survey indicates that 61% of the US population supports same-sex marriage.

For Millennials, the support increases to 74%

Source: Attitudes on Same-Sex Marriage, Pew Research Center, May 14, 2019.
<https://www.pewforum.org/fact-sheet/changing-attitudes-on-gay-marriage/>

Why should we be interested in marriage equality in this course?

Below is what marriage *can* offer the spouse of an employee. Lesbian and gay employees want to be offering the same to their loved one:

- ✓ **Access to healthcare** (ability to put one's wife or husband on their health care plan)
- ✓ **Pension benefits** (ability for spouse to receive pension benefits upon death of the loved one)
- ✓ **Ability to use family medical leave to take care of spouse.**

In June of 2015, the US Supreme Court ruled that same-sex marriage is legal throughout the country. That meant that in the 14 states that banned same-sex marriage at the time of the ruling, the state would no longer be able to enforce the ban.



June 26, 2015: The White House is lit in rainbow colors to commemorate SCOUS ruling to legalize same-sex marriage nationwide.

With marriage legal in the US, lesbian and gay employees should have access to the same workplace benefits that other heterosexual married couples do (For example, access to benefits and pensions.)

Laws Protecting LGBT from Employment Discrimination



Understanding the Patchwork of Protection for (Some) LGBT Employees

— **Federal Level**

ENDA - Senate Bill

The Equality Act – House Bill

- **EEOC** (Use of Title VII for Sexual Orientation and Transgender Employment Discrimination Protection)
- **Executive Order**

— **State**

On the Federal Level

On the federal level, **no law exists that specifically offers protection against employment discrimination and harassment for LGBT employees.** Sexual orientation and gender identity is not specifically protected under Title VII of the Civil Rights Act of 1964.

In November 2013 the **US Senate** passed the **Employment Non-Discrimination Act (ENDA)**.

The ENDA was first filed by Senator Edward Kennedy in **1994**.
It took 19 years for the bill to be passed in the Senate.



At the time, the bill had to be voted on by the House of Representatives.

If the ENDA would have pass in the House, President Obama indicated that he would have signed the bill into law.

Members of the republican dominated **House** opposed ENDA.

After over 4 years – the bill never got out of committee in the House.

The bill was dead.

The Equality Act

Since the time of the passing of the ENDA in the Senate, the climate in the House of Representatives has changed.

The change occurred after elections brought more LGBTQ friendly legislators into the House.

In May of 2019, the House passed H. R. – 5 – The Equality Act.

BREAKING: House Passes Equality Act in Historic Vote



The Equality Act, which was first introduced into the House of Representatives in 2015, offers, among other protections, employment discrimination protections on the basis of sexual orientation and gender identity by adding “sexual orientation” and “gender identity” to the 1964 Civil Rights Act.

According to a recent national survey, a majority of Americans – **from every demographic group** – support non-discrimination protection laws for people who identify as LGBT.

Sources:

House Passes Sweeping LGBTQ Nondiscrimination Bill in Historic Vote, May 17, 2019, NBC News.

<https://www.nbcnews.com/feature/nbc-out/house-passes-sweeping-lgbtq-nondiscrimination-bill-historic-vote-n1007001>

Americans Show Broad Support for LGBT Nondiscrimination Protections, PRRI, March 12, 2019.

<https://www.prri.org/research/americans-support-protections-lgbt-people/>

The Senate Majority Leader has indicated that he will not bring the bill to the Senate for a vote.

President Trump does not support the bill.

The Equality Act could experience the same fate as the ENDA did after it was passed years ago.

Source: Trump Opposes Federal LGBTQ Nondiscrimination Bill, Citing 'Poison Pills' NBC News, May 14, 2019. <https://www.nbcnews.com/feature/nbc-out/trump-opposes-federal-lgbtq-nondiscrimination-bill-citing-poison-pills-n1005551>

Executive Orders

For Federal Employees

Original Executive Order - 11478

President Clinton:

Executive Order Amended:

Executive Order barring discrimination against **federal employees** (on basis of race, color, religion, sex, national origin, disability and age)

Added sexual orientation to the list of protected categories in federal employment.

President Obama:

Executive Order Amended:

President Clinton's amendment.

Added gender identity to the list of protected categories in federal employment.

Federal employees can no longer be discriminated against for being gay or transgender

For Employees of Federal Contractors/Subcontractors – Original Executive Order - 11246

President Obama:

Executive Order Amended:

President Johnson's Executive Order barring **federal contractors** from discriminating (on basis of race, color, religion, sex, national origin)

Added **sexual orientation** AND
gender identity to the policy.



For Employees of Federal Contractors/Subcontractors - 11246

There is no religious exemption for faith-based businesses.

There is a small exemption for religious organizations.

Religiously affiliated contractors can still favor individuals *of a particular religion* when making employment decisions. (For example, a Catholic hospital that accepts federal dollars can still prefer to hire/promote Catholic nurses – because the nurses are Catholic.)

However, religious organizations that accept federal dollars (like the Catholic hospital) cannot take the sexual orientation or gender identity of an applicant or employee into account when making employment decisions.

President Trump's Department of Labor is currently attempting to impact this Executive Order.

President Obama's Executive Order that addresses both **federal employees** and **employees of federal contractors** was signed in 2014. The Executive Order went into effect in **April 2015**.

The Obama White House estimated that **1.5 million workers will be protected**.

"This will effectively prevent any company that does business with the government from firing an employee based on who they are or who they love."

August 2019

The Washington Post

Trump administration proposes protecting federal contractors who fire or hire workers based on religious beliefs

Under President Trump's administration the US Department of Labor has published a proposal to protect religiously based non-profits and businesses from acting against their beliefs in employment actions. Religious organizations (like Catholic Charities) are already exempt from Obama's Executive Order that offered employment protection to LGBTQ employees who work for federal contractor.

"The new rule "is the latest in a line of steps by the Trump administration to clarify protections for religious believers that critics have often seen as coming at the expense of LGBTQ rights."

Source:

Trump Administration Proposes Protecting Federal Contractors Who Fire or Hire Workers Based on Religious Beliefs. Washington Post, August 14, 2019.

<https://www.washingtonpost.com/religion/2019/08/14/trump-administration-proposes-protecting-federal-contractors-who-fire-or-hire-workers-based-religious-beliefs/>

The EEOC



The EEOC considers employment discrimination for transgender employees under Title VII where employers are forbidden to discriminate *because of an employee's sex*.

The EEOC

EEOC Says That Discrimination Based on Sexual Orientation Violates Title VII: Employment and Benefits Implications
posted on: Tuesday, July 21, 2015

In 2015, the EEOC announced that they changed perspective and policy regarding leveraging existing Title VII employment protections of lesbian and gay people who have been discriminated against because of their sexual orientation.

The EEOC, uses protection from discrimination because of sex (a Title VII protection) in cases that involve employment discrimination of lesbian and gay employees.

The EEOC

Commission comment:

“We conclude that sexual orientation is inherently a ‘sex-based consideration,’ and an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII. “

The commission’s perspective on the ability to ligate sexual orientation and employment cases supports those who reside in the states where employment discrimination because of sexual orientation is still legal.

Mia Macy, Transgender Woman Denied Employment By ATF, Wins Major Victory In Discrimination Case

Posted: 07/18/2013 11:47 am EDT | Updated: 07/18/2013 11:47 am EDT

This week, you'll hear from Mia Macy, a military veteran and a past detective on the Phoenix police force, regarding the employment discrimination she faced because she transitioned from a male to a female.

Ms. Macy's claim **was the first transgender case that EEOC supported** after its historic decision that transgender people could be protected by Title VII of the Civil Rights Act.

HISTORIC: EEOC ruling protects trans workers from discrimination



The next two slides highlight two cases that were brought to the US Appetit Courts that involved the EEOC's perspective that employment discrimination because of one's sexual orientation is sex discrimination with **differing results**.

Hively vs Ivy Community College

Professor Kimberly Hively, claiming employment discrimination based on her sexual orientation as a lesbian took Ivey Community College to court and lost because **judges didn't agree that Title VII provided protection based on sexual orientation, as the EEOC contends.**

Professor Hively's attorneys petitioned the 7th District Court of Appeals to review the case. The case was accepted. The case was won in April 2017. **The US Court of Appeals ruled in favor of Hively and supported the EEOC's interpretation of Title VII.** Professor Hively can now sue the community college for employment discrimination.



United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

October 11, 2016

By the Court:

No. 15-1720

KIMBERLY HIVELY,
Plaintiff-Appellant,

v.

IVY TECH COMMUNITY COLLEGE,
South Bend,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Indiana,
South Bend Division.

No. 3:14-cv-01791-RL-CAN

Rudy Lozano,
Judge.

ORDER

The Petition for Rehearing En Banc is **GRANTED**, and the panel's opinion and judgment are **VACATED**.

The court will announce the date for oral argument in a separate order.

2017 – Evens v. Georgia Regional Hospital



Jameka Evans **lost her case.**

11th District Court of Appeals **did not agree with the EEOC** - that employment discrimination based on sexual orientation is covered under sex discrimination.

The U.S. Supreme Court **declined** to review the 11th District Court of Appeals ruling on the Evans case.

One of two actions was needed to settle the issue of whether employment discrimination based on sexual orientation and gender identity is illegal on the Federal level:

1 - Congress: Both the House and the Senate could decide, and the president could sign the bill into law. *Currently, The Equality Act has been passed by the House.*

2 - The Supreme Court could decide. *And option #2 is exactly what occurred.*

Cases Before the Supreme Court

October 2019



The Supreme Court heard three cases involving employment discrimination of two gay employees and one transgender employee.

At issue: Do the protections offered to employees “on the basis of sex” in Title VII of the 1964 Civil Rights Act also protect employees who identify as lesbian, gay and transgender?

The Plaintiffs

Gerald Bostock – Fired because he joined a gay-friendly community sports team.

Donald Zarda – Fired because he was gay.

Aimee Stephens – Fired because she transitioned from a male to a female.



Aimee Stephens in front of the Supreme Court building.

On June 15, 2020, the Justice' s ruling on the cases was announced.

SCOTUS ruled with the plaintiffs. Title VII of the 1964 Civil Rights Act protects LGBTQ employees from employment discrimination.

The Justices determined that Title VII's protection "because of sex" applied to LBGT employees.

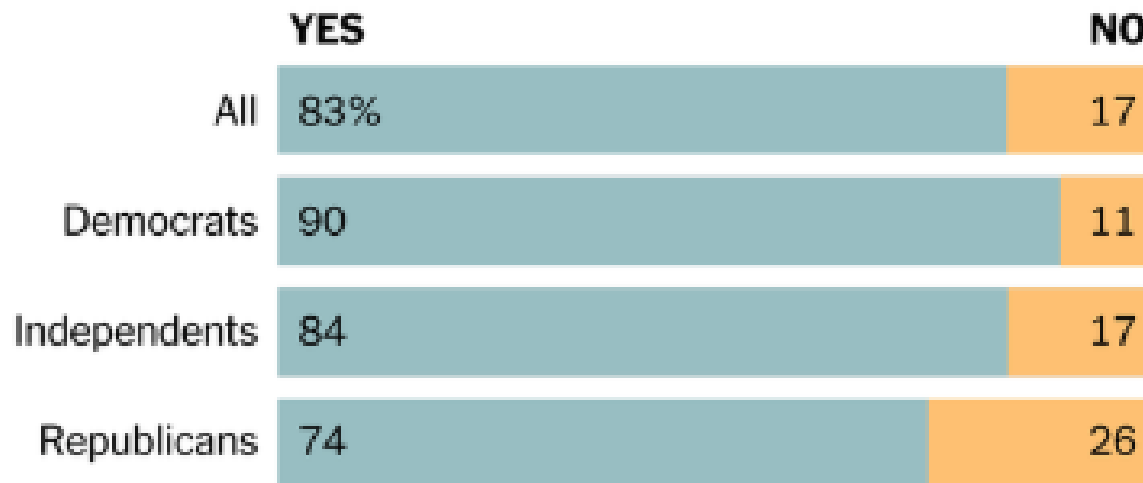
"It is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

Justice Gorsuch in majority opinion

Source: Liptak, A, (June 15, 2020). Civil Rights Law Protects Gay and Transgender Workers, Supreme Court Rules. New York Times.

The 2020 SCOTUS ruling is supported by public opinion

Should it be illegal for employees to be fired based on sexual orientation?



Source: SCOTUSPoll

Source of Graph: Liptak, A, (June 15, 2020). Civil Rights Law Protects Gay and Transgender Workers, Supreme Court Rules. New York Times.

The lives of LGBTQ employees who work in states that did not specifically offer employment protections on the basis of sexual orientation and gender identity have been positively impacted.

That's employees in MORE THAN HALF of the states in the US, where state law **did not** already offer employment protection for employees identifying as LGBTQ.

New Jersey Law

Both **sexual orientation** and **gender identity** were already protected under New Jersey's LAD (Law Against Discrimination) before the 2020 Supreme Court ruling.



FACT SHEET

Sexual Orientation & Discrimination

Does New Jersey Law Protect People from Discrimination on the Basis of Sexual Orientation?

Yes. Although Federal law does not extend protection in this area, the New Jersey Law Against Discrimination prohibits discrimination based on sexual or affectional orientation. This means that it is against the law for you to be treated differently or otherwise denied the rights and privileges extended to others on the basis of sexual orientation. The law also forbids discrimination on the basis of "perceived" sexual orientation, meaning that the Law protects you if you are subjected to discrimination because someone makes an erroneous presumption about your sexual orientation.

The law is equally applicable to men and women. The sexual orientations specifically included are:

- heterosexuality, which is attraction to people of the opposite gender
- homosexuality, which is attraction to people of the same gender
- in firing you from your job
- forcing you to retire

What Kinds of Discrimination Are Illegal?

Unlawful Employment Discrimination

Examples of illegal employment discrimination based on sexual orientation include:

- refusal to hire
- firing you or forcing you to retire
- harassment
- unequal salary or other terms, conditions or privileges of employment

Exception

The law does not require employers to offer insurance and other fringe benefits to unmarried couples, including same-sex partners of employees, even if they provide them for married couples.

Places of Public Accommodation

Examples of places of public accommodation in which sexual orientation discrimination is not allowed include places generally open to the public where goods and services are provided. This includes restaurants, movie theaters, stores, camps, organizations, schools, professional offices (such as doctors and lawyers), and other facilities.

Exception

The law does not consider private clubs or schools operated or maintained by a bona fide religious or sectarian institution to be places of public accommodation.

Housing

Regardless of the ruling, there will be people who do not support employment rights for people who identify as LGBTQ .

“This has to stop. The more and more we give to the homosexual community, the more and more this nation is going to be destroyed,” said Jacob Phelps, 36, from Topeka, Kansas, who held a sign that read, “Jesus will return in wrath.” “It’s very easy in the workplace, shut your mouth, do what you’re supposed to do.”

Source: For LGBT people outside U.S. Supreme Court, Cases Have a Familiar Ring, October 8, 2019, Reuters.
<https://www.reuters.com/article/uk-usa-court-lgbt-rally/for-lgbt-people-outside-u-s-supreme-court-cases-have-a-familiar-ring-idUSKBN1WN22N>

Contemporary Issues: *What's Going on in the US?*



- ✓ Businesses support the LGBTQ employee continue to increase
- ✓ Historic representation in the 116th US Congress

Human Rights Campaign Corporate Equity Index (CEI) 2020



Since 2002, each year the nonprofit advocacy group Human Rights Campaign has measured the support that companies offer their LGBT employees.

In 2020, 686 major business earned a top score of 100% on the CEI. Some of year's statistics on the next several slides.

Source: Corporate Equity Index, 2020.

https://assets2.hrc.org/files/assets/resources/CEI-2020.pdf?_ga=2.216162454.1409974327.1592347854-1874565387.1592347854

2020

	All Fortune 500	Fortune 500 Participants	Fortune 500 Non-Responders
Sexual Orientation in U.S. Non-Discrimination Policy	93%	100%	75%
Gender Identity in U.S. Non-Discrimination Policy	91%	98%	70%
Domestic Partner Benefits	53%	71%	0%
Transgender-Inclusive Benefits	65%	88%	0%
Organizational LGBTQ Competency	67%	89%	0%
Public Commitment to the LGBTQ Community	68%	91%	0%
Average 2020 CEI Score	71	90	15

Source of Chart: Corporate Equity Index, 2020 – page 6.

https://assets2.hrc.org/files/assets/resources/CEI-2020.pdf?_ga=2.216162454.1409974327.1592347854-1874565387.1592347854

Transgender Inclusive Benefits

Large corporations are increasingly abandoning health-care benefit discrimination by providing benefits that include medically necessary transition-related care for trans employees. While these types of benefits were only offered by 5% of major US companies in 2002, (when HRC began the Corporate Equity Index) as of 2020, 65% of all major companies offer the benefits to employees. (88% of those participating in the equity index for 2020)
(p. 6 of 2020 Corporate Equity Index.)

Corporate Citizenship for LGBTQ Rights

“Over the last five years, the rates of corporate engagement on matters of LGBTQ equality under the law and LGBTQ-related public policy have skyrocketed. As hundreds anti-LGBTQ bills proliferated across the states over the last several years of legislative sessions, businesses spoke out and rebuked attempts to undermine LGBTQ civil rights at record rates from state-to-state. These corporate leaders are speaking out not just on principle but also because anti-LGBTQ bills that attempt to curb access to public services for transgender people, or deny basic services to LGBTQ families, or preempt local nondiscrimination ordinances ultimately put their employees and their families, as well as their customers, at risk. “

Source of Quote: Corporate Equity Index, 2020. page 25

https://assets2.hrc.org/files/assets/resources/CEI-2020.pdf?_ga=2.216162454.1409974327.1592347854-1874565387.1592347854

Historic representation in the 116th US Congress

In 2019, a historic 10 legislators who identify as gay, lesbian or bisexual were sworn into the 116th US Congress.

“The relationships these LGBTQ lawmakers will build with their colleagues on Capitol Hill are transformative, and with an unprecedented number of women and people of color also joining the 116th Congress, equality issues will finally receive the attention they deserve.”

Mayor Annise Parker
President and CEO, LGBTQ Victory Institute

Source: Reynolds, D. (January 3, 2019). Meet the 10 Gay, Lesbian, and Bisexual Members of the 116th Congress. Advocate.

<https://www.advocate.com/politicians/2019/1/03/meet-10-gay-lesbian-and-bisexual-members-116th-congress#media-gallery-media-1>