

**National Gay and Lesbian
Task Force
Action Fund**



Testimony of the National Gay and Lesbian Task Force Action Fund

For the Hearing:
An Examination of Discrimination Against Transgender Americans in the
Workplace

Subcommittee on Health, Employment, Labor, and Pensions
Committee on Education and Labor
United States House of Representatives
Room 2175
Rayburn House Office Building

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Chairman and Members of the Committee:

We would like to thank the House Subcommittee on Health, Employment, Labor, and Pensions for holding a legislative hearing on gender identity discrimination in the workplace and allowing us to submit testimony today. It is historic when Congress holds a hearing like today's, when the issues that transgender people face everyday are given consideration by the lawmaking body of our nation. On behalf of the National Gay and Lesbian Task Force – the oldest national organization advocating for the rights of lesbian, gay, bisexual and transgender (LGBT) people – we urge you to consider the necessity and urgency of including gender identity in future federal employment protections. There is evidence of pervasive discrimination against transgender people in the workplace and current laws and employer policies are insufficient to protect their rights.

Transgender employees have historically faced considerable discrimination in the workplace, including failure to hire or promote, demotions, terminations, restrictions on a person's gender expression, and hostile workplace environments. Employment discrimination may be the largest barrier transgender people must overcome to live secure lives. A national study conducted by Lombardi between 1996 and 1997 reported that 37% of transgender people surveyed have experienced employment discrimination.

(Lombardi, E.L., *Gender Violence: Transgender Experiences with Violence and Discrimination*, 2001). Survey results are similar across cities and regions on both coasts and the Midwest. For example, a study conducted between 1995 and 2001 in Illinois found that 37-42% of transgender individuals experienced employment discrimination. (Plotner, B. *Discrimination 2002: 6th Report on Discrimination and Hate Crimes Against Gender Variant People*. Chicago: It's Time Illinois!). In 2002, a study conducted in San Francisco found that 49% of transgender people had experienced employment discrimination. (Minter, S. *Trans Realities: A Legal Needs Assessment of San Francisco's Transgender Communities*, 2003). In Washington State, a 2008 study found that 41.5 % of transgender people were denied employment, fired, or otherwise discriminated against in the workplace because of their gender identity. (*Perspectives Northwest Survey Report: Transgender and Gender Variant Community Needs Assessment Survey*, 2008). Lastly, in Virginia, a 2007 study of transgender individuals reported 20% were denied employment, and 13% were fired based on their gender identity. (Xavier, J.M. *The Health, Health-Related Needs, and Lifecourse Experiences of Transgender Virginians*, 2007). Attached is Appendix A, which provides more statistics on transgender employment discrimination.

As a result of employment discrimination, large percentages of the transgender population are unemployed and have incomes far below the national average. Although there is no national study on the topic, findings of studies conducted in various local and state jurisdictions are alarming, confirming that the economic hardship transgender people face is consistent across the nation. For example, a study conducted in Minnesota between 1997 and 2002 reported 22% of transgender people lived below the poverty line. (Bockting, W. 2005. *Are Transgender Persons at Higher Risk for HIV Than Other Sexual Minorities?*). In Philadelphia, a study conducted in 1997 reported 59% of transgender people were unemployed and 56% made less than \$15,000 annually. (Kenagy, G.P. 2005. *The Health and Social Service Needs of Transgender People in Philadelphia*). In Chicago, a study conducted between 2000 and 2001 found 34% of transgender people were unemployed and 40% made less than \$20,000 annually, with a median income of just \$16,900 a year, less than half the national median income. (Kenagy, G.P. 2005. *The Health and Social Service Needs of Transgender People in Chicago*). In Virginia, a study conducted between 2005 and 2006 reported that 39% of transgender individuals made less than \$17,000 annually. (Xavier, J.M. 2007. *The Health, Health-Related Needs, and Lifecourse Experiences of Transgender Virginians*) Finally, in Washington, D.C., a study conducted in 1999 found that only 58% of transgender respondents were employed, 29% had no annual source of income, and 31% had an annual source of income under \$10,000. (Xavier, J.M. 2000. *The Washington, DC. Transgender Needs Assessment Survey Final Report for Phase Two*). Attached is Appendix A, which provides more statistics on the economic hardship transgender people face.

Due to high levels of unemployment and underemployment many transgender people, and those in their families, are left in difficult and sometimes unlivable situations. Lack of employment means that transgender people are unable to afford housing and pay for other basic services. Lack of employment often means having no or inadequate health insurance and being unable to afford basic health services. They cannot support their spouse and families. The economic hardship created by employment discrimination not only affects transgender people, it directly impacts their families who fall into poverty along with them. Transgender individuals who are people of color, HIV-positive, and youth are particularly affected. Far too many transgender people are forced to engage in sex work in order to survive. Ultimately, high levels of transgender unemployment further burden the welfare system of each state and our nation.

In most states, transgender employees have no legal protections and employers often terminate them when it is discovered the employee is transitioning, or has previously transitioned, genders. Currently, twelve states – California, Colorado, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington – the District of Columbia, and 106 local jurisdictions have passed laws prohibiting discrimination against transgender people in employment. Five other states and sixteen local jurisdictions have laws, executive orders, or other rules prohibiting discrimination against transgender people that are employees of that jurisdiction (state, county, or city). States from coast to coast are adding transgender-inclusive workplace protections at an unprecedented pace. Today, 39% of the United States population lives in a city, county, or state with a transgender-inclusive workplace anti-discrimination law. Seven years ago only 5% of the United States population lived in a jurisdiction with a transgender-inclusive anti-discrimination law. While the expansion of transgender nondiscrimination laws at the state and local level demonstrates progress and creates a foundation for protections at the federal level, modest penalties and inconsistent enforcement limit the laws' effectiveness. We need a strong federal law in order to provide uniformity of coverage and close gaps in state and local law. As shown, the pervasive discrimination transgender individuals face in the workplace warrants strong and urgent Congressional action.

Despite legal mandates to have policies prohibiting discrimination against transgender people, corporate America acted on its own to enact such policies because it is good for business. In fact, 153 of the FORTUNE 500 companies have implemented nondiscrimination policies that include gender identity. Corporate America has voluntarily endorsed policies to judge employees solely on the quality of their work because it is efficient to retain experienced employees and hire the best qualified applicants. Nondiscrimination policies make for a better work environment, demonstrate respect for diversity, alleviate wasteful and counter-productive stress, and set clear standards for workplace behavior. In order to bring the rest of America's businesses and companies up to corporate America's standard, Congress should prohibit discrimination in employment

based on gender identity. Due to economic necessity, this country cannot afford to leave talented people out of the workforce. Competition in the global economy is increasingly acute in almost every industry and field; we cannot afford to leave our best and brightest out of our economy.

Previously proposed federal legislation had prohibited an employer from using an individual's sexual orientation or gender identity as the basis for adverse or different treatment in employment or employment opportunities. The legislation would have also protected individuals who are perceived to be of a certain sexual orientation or gender identity, but who are not actually of that sexual orientation or gender identity. Furthermore, similar to Title VII of the Civil Rights Act of 1964, the legislation would have exempted small businesses and employers with fewer than 15 employees. In addition, every previous version of the legislation has included some form of religious exemption that prevents discrimination without inhibiting on the religious freedom of religious organizations.

Lambda Legal's assessment of non-discrimination laws found that a gender identity-inclusive law is vital in order to fully protect lesbian, gay, bisexual and even heterosexual people who may not fit traditional gender norms. In addition, the National Center for Lesbian Rights reported that for many individuals in the LGBT community gender identity and sexual orientation are inextricably intertwined. Any piece of legislation that does not include gender identity protections leaves gender non-conforming LGB people vulnerable to strict court interpretations that define sexual orientation narrowly.

To move forward with a federal law that only includes sexual orientation is an unacceptable compromise. Furthermore, movement of legislation that singles out a part of the LGBT community to be exempt from protections would impose a classification structure upon the community that would divide us. We are a united community and do not support a law which leaves a part of our community behind; omitting transgender people would be unprincipled and unfair.

The LGBT community has one chance to pass an employment discrimination law that will effectively and adequately protect the entire community. Strategically, as shown at the state level, it is easier to include "gender identity" in civil rights legislation the first time it passes than have to go back and add it in later. The trend in state legislatures the past five years has been to keep "gender identity" in civil rights bills and, in fact, the last seven states to pass employment protections included both sexual orientation and gender identity: Colorado, Oregon, Iowa, Washington, Maine, Illinois, and New Mexico. If Congress passed federal employment protections which excluded gender identity it could halt such progress and send a powerful and negative signal to future state legislatures. Federal legislation should reflect the progress at the state level, not impede it.

The inclusion of “gender identity” into future federal employment protections is essential. We cannot and will not support federal employment protections which exclude people who are among the most discriminated against individuals in this country. Transgender individuals are an integral part of our Nation’s diversity and should not be denied a job on the basis of personal characteristics that have no relationship to job performance. As a community we are more unified than we have ever been and we will continue to advocate for fully inclusive federal employment protections to ensure that all Americans are protected from discrimination in employment because of their sexual orientation and gender identity.

Appendix A
National Gay and Lesbian Task Force Action Fund Testimony

Data on Employment Discrimination Against Transgender People

Employment discrimination may be the largest barrier transgender people must overcome to live secure lives. Many transgender individuals are passed over for promotions and raises, simply not hired, and/or terminated when their employer discovers they are transitioning or have previously transitioned genders. As a result, large percentages of the transgender population are unemployed and have incomes far below the national average.

Although few studies have been conducted on the national level, the findings of the following studies conducted in various local and state jurisdictions are alarming, confirming that transgender workplace discrimination and economic hardship are consistent across the nation.

Employment Discrimination Against Transgender People is Widespread

- **Nationally**, a study conducted between 1996 and 1997 found that 37% of transgender individuals had experienced employment discrimination.¹ The 2007 Williams Institute review, of six studies conducted between 1996 and 2006 in cities and regions on both coasts and the Midwest, found between 13%-56% of transgender respondents were fired, between 13%-47% were denied employment, between 22%-31% were harassed, either verbally or physically, in the workplace, and 19% were denied a promotion based on their gender identity.²
- In **Illinois**, a study conducted between 1995 and 2001 found that 37-42% of gender variant individuals surveyed experienced some type of employment discrimination. Of the 44 reported cases of workplace discrimination, more than half involved firings, nearly a third involved workplace harassment, and the remainder involved refusals to hire. The study documented 38 cases of employment discrimination based on gender identity or expression in Cook County alone.³
- In **San Francisco**, a study conducted in 2002 reported that almost half of 155 transgender survey respondents had been discriminated against in employment.⁴ A study conducted in 1999 in San Francisco found that among 392 male-to-female (MTF) participants 46% reported job discrimination and among 123 female-to-male (FTM) participants 57% reported job discrimination.⁵
 - In a 2006 report of the San Francisco transgender community, 40% of respondents believed they were discriminated against when applying for work, over 24% of people reported that they were

sexually harassed at work, almost 23% felt that co-workers intentionally used the wrong name or pronoun or failed to comply with repeated requests to stop doing so, 21% heard comments that made it difficult for them to feel safe and supported at work, 19% experienced trouble in advancing in their company or department, 18% were fired from a job due to gender identity discrimination, over 14% reported discrimination in the conditions of their employment, and over 12% reported that questions about whether they had surgery, what kind of surgery they had, or if they plan to have surgery, have created uncomfortable or hostile work environments.⁶

- In **Los Angeles**, a study conducted between 1998 and 1999 of 244 MTF transsexual individuals found that 29% were fired based on their gender identity. Forty-seven percent of the respondents had difficulty in finding employment.⁷
- In **Washington, D.C.**, a study conducted between 1999 and 2000 of 248 transgender people of color in Washington, D.C. reported that 15% of respondents lost a job because of their transgender status.⁸
- In **Virginia**, a study conducted between 2005 and 2006 reported that 20% of transgender respondents were denied employment and 13% were fired based on their gender identity.⁹
- In **Washington State**, a study conducted between 2006 and 2007 of 258 transgender people found that 41.5 % had been denied employment, fired or otherwise discriminated against on the job because of their gender identity and/or expression.¹⁰
- In **Idaho**, a 2003 survey study of over 2000 LGBT people reported that 16.3% of transgender participants said their employer actually stated that they had been denied a job, a raise, promotion or other compensation expressly because of their sexual orientation or gender identity. In describing their work environment, transgender participants described it more negatively than lesbian, gay, and bisexual participants.¹¹

Employment Discrimination Contributes to Economic Hardship for Transgender People

- In 2007, the Williams Institute review of eleven studies found that large percentages of the transgender population are unemployed and have incomes far below the national average. Between 6% and 60% of transgender people reported unemployment and between 22% and 64% reported incomes of less than \$25,000 per year.¹²

- In **Minnesota**, a study conducted between 1997 and 2002 found that 22% of transgender people lived below the poverty line.¹³
- In **San Francisco**, a study conducted in 1997 found that of 515 transgender people, 19% of FTM individuals and 60% of MTF individuals were unemployed.¹⁴ In 2006, a report conducted in the San Francisco Bay Area of 194 transgender individuals found a 35% unemployment rate, with 59% earning less than \$15,300 annually.¹⁵
 - A survey of African-American transgender people in San Francisco showed that 44% depended on government assistance. Many lived below the federal poverty level, with two-thirds of respondents reporting an annual income under \$14,400.¹⁶
 - A 2006 report on the transgender community in San Francisco found that 15% of those surveyed earned income sporadically (kindness of family or friends, day labor, sex work, freelance work, and various business ventures). Furthermore, 20% of respondents reported receiving some income from the street economy (defined to include sex work and narcotic sales).¹⁷
- In **Philadelphia**, a study conducted in 1997 found that of 81 transgender people, 59% were unemployed and 56% made less than \$15,000 annually.¹⁸
- In **Chicago**, a study conducted between 2000 and 2001 found that of 111 transgender individuals, 34% were unemployed and an additional 40% made less than \$20,000 annually, with a median income of just \$16,900 a year, less than half the national median income.¹⁹
- In **Los Angeles**, a study conducted between 1998 and 1999 of MTF transgender individuals found that 50% reported incomes of less than \$12,000 per year, and 23% depended on government assistance.²⁰
- In **Washington, D.C.**, a study conducted between 1998 and 2000 found that only 58% of transgender respondents were employed, 29% had no annual source of income, 31% had annual incomes under \$10,000, and 15% had lost a job due to employment discrimination.²¹
 - In a study conducted between 1999 and 2000 of 248 transgender people of color in Washington, D.C., 35% reported they were unemployed and 64% made less than \$15,000 annually.²²
- In **Virginia**, a study conducted between 2005 and 2006 of 350 transgender people found between 9-24% were unemployed and 39% made \$17,000 or less annually.²³

- In **Washington State**, a study conducted between 2006 and 2007 of 258 transgender people found that 39% of those surveyed made less than \$20,000 annually.²⁴

¹ Lombardi, E. L., Wilkins, R. A., Priesing, D. & Malouf, D. (2001). Gender violence: Transgender experiences with violence and discrimination. *Journal of Homosexuality*, 42.

² Badgett, M. V. L., Lau, H., Sears, B. & Ho, D. (2007). *Bias in the workplace: Consistent evidence of sexual orientation and gender identity discrimination*. Los Angeles: The Williams Institute.

³ Plotner, B., Stevens-Miller, M. & Wood-Sievers, T. (2002). *Discrimination 2002: 6th report on discrimination and hate crimes against gender variant people*. Chicago: It's Time Illinois!

⁴ Minter, S. & Daley, C. (2003). *Trans realities: A legal needs assessment of San Francisco's transgender communities*. San Francisco: National Center for Lesbian Rights and Transgender Law Center.

⁵ Clements, K., Katz, M. & Marx, R. (1999). *The transgender community health project: Prevalence of HIV infection in transgender individuals in San Francisco*. San Francisco: San Francisco Department of Health.

⁶ San Francisco Bay Guardian and Transgender Law Center. (2006). *Good jobs now! A snapshot of the economic health of San Francisco's transgender communities*. San Francisco: The San Francisco Bay Guardian and Transgender Law Center.

⁷ Reback, C. J., Simon, P.A., Bemis, C.C. & Gaston, B. (2001). *The Los Angeles transgender health study: Community report*. Los Angeles: University of California at Los Angeles.

⁸ Xavier, J. M. & Simmons, R. (2005). A needs assessment of transgender people of color living in Washington, DC. *International Journal of Transgenderism*, 8(2/3).

⁹ Xavier, J. M., Hannold, J.A., Bradford, J. & Simmons, R. (2007). *The health, health-related needs, and lifecourse experiences of transgender Virginians*. Richmond: Division of Disease Prevention through the Centers for Disease Control and Prevention, Virginia Department of Health.

¹⁰ Ingersoll Gender Center. (2008, January 9). *Perspectives Northwest survey report: Transgender and gender variant community needs assessment survey*. Ingersoll Gender Center.

¹¹ Pollard, J. (2003). *Report on the 2003 Idaho lesbian, gay, bisexual and transgender survey*.

www.idaholgbsurvey.com. Retrieved June 25, 2008, from <http://www.safeschoolscoalition.org/Nicole-SURVEYREPORT-%20final.pdf>

¹² Badgett, M. V. L. et al. (2007).

¹³ Bockting, W., Huang, C., Ding, H., Robinson, B. & Rosser, S. (2005). Are transgender persons at higher risk for HIV than other sexual minorities? A comparison of HIV prevalence and risks. *International Journal of Transgenderism*, 8(2/3).

¹⁴ Clements, K. et al. (1999).

¹⁵ San Francisco Bay Guardian and Transgender Law Center. (2006).

¹⁶ Rose, V. et. al. (2002). *Investigation of the high HIV prevalence in the transgender African American community in San Francisco*. San Francisco: University of California San Francisco AIDS Research Institute.

¹⁷ San Francisco Bay Guardian and Transgender Law Center. (2006).

¹⁸ Kenagy, G. P. (2005). The health and social service needs of transgender people in Philadelphia. *International Journal of Transgenderism*, 8(2/3).

¹⁹ Kenagy, G. P. & Bostwick, W. B. (2005). Health and social service needs of transgender people in Chicago. *International Journal of Transgenderism*, 8(2/3).

²⁰ Reback, C. J. et al. (2001).

²¹ Xavier, J. M. (2000). *The Washington, DC transgender needs assessment survey final report for phase two*. Washington, DC: Administration for HIV/AIDS of the District of Columbia.

²² Xavier, J. M. & Simmons, R. (2005).

²³ Xavier, J. M. et al. (2007).

²⁴ Ingersoll Gender Center. (2008, January 9).