

UCLA

Other Recent Work

Title

The Impact of Employment Nondiscrimination Legislation in South Dakota

Permalink

<https://escholarship.org/uc/item/4x60f1vb>

Authors

Goldberg, Naomi G
Badgett, M V Lee
Ramos, Christopher

Publication Date

2010



The Impact of Employment Nondiscrimination Legislation in South Dakota

This report explores the issue of employment discrimination against lesbian, gay, bisexual, and transgender (LGBT) citizens of South Dakota. We used the best available data from government sources and from recent research to examine the impact of employment discrimination on LGBT people and on South Dakota businesses.

Specifically this report concludes the following:

- As many as 12,400 gay, lesbian, and bisexual individuals live in South Dakota, and estimates suggest that 2,000 transgender individuals live in South Dakota. LGBT South Dakotans are racially and ethnically diverse, live throughout the state, and actively participate in the economy.
- Across a number of surveys, large percentages of LGBT people report discrimination and harassment in the workplace.
- According to Census Bureau data, South Dakotans in same-sex couples are 15% less likely to be employed than those in different sex married couples.
- Those that are employed earn substantially less money than their different-sex married counterparts: men in same-sex couples in South Dakota earn one-third less, while partnered lesbian earn just half that of married women.
- Employment discrimination hurts businesses. When LGBT employees fear discrimination in the workplace, they hide their identity, have less job satisfaction, and are less productive.
- Nondiscrimination laws protect employees and assist businesses in recruiting and retaining employees. A number of South Dakota's largest employers, including Sanford Health, Larson Manufacturing, and 3M, have already adopted such policies.
- Data collected from states that have already adopted non-discrimination laws protecting LGBT employees show that such laws do not overwhelm enforcement agencies or courts.

The Impact of Employment Nondiscrimination Legislation in South Dakota

This report explores the issue of employment discrimination against lesbian, gay, bisexual, and transgender (LGBT) citizens of South Dakota. We used the best available data from government sources and from recent research to examine the impact of employment discrimination on LGBT people and on South Dakota businesses.

Estimates of the LGBT Population in South Dakota

Data from the US Census and the National Survey of Family Growth suggest that approximately 12,400 gay, lesbian, and bisexual individuals live in South Dakota.¹ While exact estimates of the transgender population are difficult to obtain, some studies suggest that 0.25% of the population identifies as transgender.² Using that figure, there may be as many as 2,000 transgender individuals living in South Dakota. Data suggest that the LGBT people in South Dakota are racially and ethnically diverse, live throughout the state, and actively participate in South Dakota's economy.³

Many LGBT People Experience Employment Discrimination

Evidence of employment discrimination faced by LGBT people may be found in several forms. First, on surveys, LGBT employees and their non-LGBT coworkers may report experiences of employment discrimination. Second, LGBT employees may be underemployed or paid less than non-LGBT employees, despite having similar qualifications and experience. Data collected by government agencies also show that substantial numbers of LGBT people report employment discrimination. In total, current research and surveys of employees from around the country indicate that many LGBT people experience various forms of employment discrimination.

Reporting of Discrimination on Surveys: On a national level, a large body of research finds that many LGBT people report experiences of discrimination in the workplace. Fifteen studies conducted since the mid-1990s have found that 15-43% of LGBT respondents experienced discrimination in the workplace.⁴ For example, a

2007 survey found that 16% of lesbians and gay men and 5% of bisexual people reported being fired or denied a job because of their sexual orientation.⁵ Numerous local community surveys of LGBT people find that sexual orientation discrimination is also commonly reported in those areas.⁶

The 2008 General Social Survey, which is a national survey, included questions about discrimination on the basis of sexual orientation. This survey found that 37% of gay and lesbian people reported workplace harassment in the last five years, and 12% reported losing a job because of their sexual orientation.⁷

There are fewer surveys about the workplace experiences of transgender people. However, eleven recent local surveys of transgender people have found that at least 20% and as many as 57% reported having experienced some form of employment discrimination.⁸ Most recently, a 2009 survey of transgender people living in California found that 67% reported experiences with workplace harassment or discrimination directly related to their gender identity.⁹

Because every survey of LGBT people finds evidence of discrimination, regardless of the specific place studied, we believe that discrimination against LGBT people in South Dakota is also likely to occur, even though there are few surveys specifically of South Dakota residents. A South Dakota School of Mines campus climate survey found that only 39% of faculty and staff somewhat or strongly agreed that the School was welcoming to LGBT faculty, and only 40% agreed that the School was welcoming to LGBT staff.¹⁰

LGBT People are Often Underemployed and Underpaid: Very little research on discrimination against LGBT people in South Dakota exists. However, data from the US Census allows us to examine individuals in same-sex couples who live in South Dakota. While it isn't possible to identify single LGBT people on the Census, a large body of

research has relied upon Census data to provide a demographic picture of individuals living in same-sex couples.

The picture that emerges from Census data is that South Dakotans who live in same-sex couples are less likely to be employed and earn less than married different-sex couples despite higher levels of education. Such findings are likely to be related to discrimination faced by LGBT people. For example, data from the 2000 Census show that South Dakotans in same-sex couples are less likely to be employed full-time when compared to married individuals (62% versus 71%).

Additionally, when individuals in same-sex couples work, their annual earnings are significantly lower than those of married individuals. On average, men in same-sex couples in South Dakota earn \$24,551 each year, significantly less than the \$37,248 average earnings for married men. Women in same-sex couples also earn significantly less than married women (\$9,980 versus \$20,015). These lower wages exist despite the fact that individuals in same-sex couples are more likely to have a college degree than are married individuals, a comparison that supports the possibility of unequal treatment of people in same-sex couples by employers.

These findings are not unique to South Dakota. Analyses of national data consistently find that men in same-sex couples and men who identify as gay earn 10-32% less than similarly qualified heterosexual men.¹¹ Surveys of transgender people find that they have high rates of unemployment and very low earnings.¹² An unpublished study suggests that in those states that implement nondiscrimination laws, the wage gap for gay men lessens, suggesting that such laws curb discrimination against LGBT people.¹³

Filing Complaints of Discrimination with State Agencies: Evidence of employment discrimination against LGBT employees is found by examining the filing of complaints with state agencies. Currently, 20 states prohibit employment discrimination on the basis of sexual orientation, and of those, 13 also prohibit discrimination based on gender

identity. A 2008 study examined complaints filed by employees in these states and found that sexual orientation discrimination laws were used at similar frequencies by LGB workers as were sex discrimination laws by female workers.¹⁴ Both LGB employees and women filed complaints at a rate of 5 complaints per 10,000 workers in those groups. Race complaints were filed at a slightly higher rate of 7 complaints per 10,000 workers who are people of color.

Effects of Nondiscrimination Laws on Businesses and Other Employers

In South Dakota, South Dakota State University, the University of South Dakota, the cities of Brookings, Lead, and Vermillion, Minnehaha County, Clay County, and Shannon County have implemented policies that prohibit discrimination on the basis of sexual orientation and/or gender identity. School districts in Sioux Falls, Pierre, Brookings, and Vermillion have also implemented policies that prohibit sexual orientation discrimination. Additionally, 80% of the 50 largest employers in South Dakota have policies that prohibit discrimination on the basis of sexual orientation or gender identity, including Sanford Health, Larson Manufacturing Company, HSBC Card Services, and 3M Company.¹⁵

These South Dakota employers are adopting nondiscrimination policies that place them in the mainstream of corporate practice in the United States. More than two-thirds of Fortune 1000 companies prohibit discrimination on the basis of sexual orientation, and one quarter prohibit discrimination on the basis of gender identity.

The widespread adoption of these policies suggests that nondiscrimination policies make good business sense. Nondiscrimination policies increase the ability to recruit and retain qualified employees and can improve the productivity and satisfaction of employees. Businesses are most successful when they can recruit, hire, and retain employees on the basis of talent, not personal characteristics that have no impact on an employee's ability to perform a job well.

Numerous studies from various academic disciplines suggest that LGBT workers will have greater job satisfaction and be more productive workers if they have legal protection from discrimination. The key link here is between discrimination and disclosure of one's sexual orientation or gender identity. Many studies have demonstrated that discrimination keeps LGBT workers from revealing their sexual orientation in the workplace. Although having experienced discrimination directly is a powerful reason for some to "stay in the closet," many studies show that LGBT people who fear discrimination are also less likely to reveal their sexual orientation to co-workers and supervisors.

Employers have a stake in these individual decisions, since disclosure has potentially positive benefits to LGBT workers' well-being and job performance. Studies find that people who have come out report lower levels of anxiety, less conflict between work and personal life, greater job satisfaction, more sharing of employers' goals, higher levels of satisfaction with their co-workers, more self-esteem, and better physical health.

On the flipside, when fear of discrimination causes LGBT employees to conceal their sexual orientation or gender identity, employers experience negative costs along with LGBT people themselves. The time as well as social and psychological energy that are required to maintain a hidden identity would, from an employer's perspective, be better used on the job.

A 2009 Human Rights Campaign survey provides recent evidence of the harmful impact of an unsupportive work environment on LGBT employees. The study finds that employees who are not out to anyone in the workplace were less productive, more distracted, and less likely to stay in their current positions. Specifically, when compared to more open employees, closeted employees were:

- More likely to report feeling depressed (44%) than were those employees who were out (26%);
- More likely to avoid a social work event (29%) than out employees (18%);

- More likely to report feeling distracted at work (31% versus 25%);
- More likely to feel exhausted (30% versus 12%); and
- More likely to have searched for another job (24% versus 16%).

Nondiscrimination policies can improve the workplace climate and influence choices about disclosure and concealment. Several studies have found higher levels of disclosure in workplaces when employers have their own non-discrimination policies that include sexual orientation.¹⁶

Nondiscrimination laws do not overwhelm enforcement agencies

Some question the increased burden on government agencies that a sexual orientation and gender identity anti-discrimination law may create. However, even if LGBT people filed complaints at the same rates that women file sex discrimination complaints or minorities file racial/ethnic discrimination complaints, government agencies would not be overwhelmed. A 2008 national study of data from 1999-2007 identified the average annual number of sexual orientation complaints for all states with LGBT protections at just over 1,200, versus race and sex complaints at 11,500 and 13,800, respectively.¹⁷ This study estimated that for every 10,000 LGB workers, there are approximately 5 complaints filed on the basis of sexual orientation.

Using the earlier estimates of the number of LGB people living in South Dakota (12,400) and workforce statistics, we predict that in a given year, approximately 5 LGB workers per year would file a complaint alleging sexual orientation discrimination. The rate of 5 complaints per 10,000 workers does not include transgender employees, as necessary data was not available. However, the small size of the transgender population suggests that the number of complaints of gender identity would also be low, or approximately one complaint per year. Given these numbers, there is no evidence that expanding employment protections to include LGBT would encumber the services of existing agencies.

-
- ¹ This estimate uses data from the 2005-2007 American Community Survey for the number of same-sex couples living in each state and then distributes the estimated 9 million Americans who identify as gay, lesbian or bisexual across the 50 states according to those figures. Similar methods may be found in Gates, G.J., "Same-sex Couples and the Gay, Lesbian, Bisexual Population: New Estimates from the American Community Survey," The Williams Institute, October 2006, available here: <http://www.law.ucla.edu/williamsinstitute/publications/SameSexCouplesandGLBpopACS.pdf>
- ² "Transgender Population and the Number of Transgender Employees," The Human Rights Campaign, available here: <http://www.hrc.org/issues/9598.htm>
- ³ Romero, A.P., C.J. Rosky, M.V.L. Badgett, and G.J. Gates, "Census Snapshot: South Dakota," The Williams Institute, June 2008, available here: <http://www.law.ucla.edu/williamsinstitute/publications/SouthDakotaCensusSnapshot.pdf>
- ⁴ A comprehensive review of studies about employment discrimination may be found in Badgett, M.V.L, H. Lau, B. Sears, and D. Ho, "Bias in the Workplace: Consistent evidence of sexual orientation and gender identity discrimination," The Williams Institute, June 2007, available here: <http://www.law.ucla.edu/williamsinstitute/publications/Bias%20in%20the%20Workplace.pdf>
- ⁵ Herek, Gregory M. 2007. "Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States: Prevalence Estimates from a National Probability Sample." *Journal of Interpersonal Violence*, forthcoming.
- ⁶ See Badgett, M.V.L, H. Lau, B. Sears, and D. Ho, "Bias in the Workplace: Consistent evidence of sexual orientation and gender identity discrimination," The Williams Institute, June 2007, available here: <http://www.law.ucla.edu/williamsinstitute/publications/Bias%20in%20the%20Workplace.pdf>
- ⁷ Analysis conducted by The Williams Institute, unpublished, 2009.
- ⁸ Badgett, M.V.L, H. Lau, B. Sears, and D. Ho, "Bias in the Workplace: Consistent evidence of sexual orientation and gender identity discrimination," The Williams Institute, June 2007, available here: <http://www.law.ucla.edu/williamsinstitute/publications/Bias%20in%20the%20Workplace.pdf>
- ⁹ "The State of Transgender California Report," The Transgender Law Center, 2009, available here: http://www.transgenderlawcenter.org/pdf/StateTransCA_report_2009Print.pdf
- ¹⁰ South Dakota School of Mines and Technology Campus Climate Survey, 2007, available here: http://sdmines.sdsmt.edu/cgi-bin/global/a_bus_card.cgi?SiteID=420466
- ¹¹ Badgett, M.V.L, H. Lau, B. Sears, and D. Ho, "Bias in the Workplace: Consistent evidence of sexual orientation and gender identity discrimination," The Williams Institute, June 2007, available here: <http://www.law.ucla.edu/williamsinstitute/publications/Bias%20in%20the%20Workplace.pdf>
- ¹² See Badgett, M.V.L, H. Lau, B. Sears, and D. Ho, "Bias in the Workplace: Consistent evidence of sexual orientation and gender identity discrimination," The Williams Institute, June 2007, available here: <http://www.law.ucla.edu/williamsinstitute/publications/Bias%20in%20the%20Workplace.pdf> and "The State of Transgender California Report," The Transgender Law Center, 2009, available here: http://www.transgenderlawcenter.org/pdf/StateTransCA_report_2009Print.pdf
- ¹³ On file with the authors.
- ¹⁴ Ramos, C., M.V.L. Badgett, and B. Sears, "Evidence of Employment Discrimination on the Basis of Sexual Orientation and Gender Identity: Complaints filed with state enforcement agencies, 1999-2007," The Williams Institute, November 2008, available here: <http://www.law.ucla.edu/williamsinstitute/pdf/PACR.pdf>
- ¹⁵ List compiled by Equality South Dakota, available here: <http://institute.egsd.org/news/hotornot.html>
- ¹⁶ Burton, S. B., "Organizational efforts to affirm sexual diversity: A cross-level examination" *Journal of Applied Psychology*, 86(1), 17-28, 2001.
- ¹⁷ Ramos, C., M.V.L. Badgett, and B. Sears, "Evidence of Employment Discrimination on the Basis of Sexual Orientation and Gender Identity: Complaints filed with state enforcement agencies, 1999-2007," The Williams Institute, November 2008, available here: <http://www.law.ucla.edu/williamsinstitute/pdf/PACR.pdf>

ABOUT THE AUTHORS

Naomi G. Goldberg, MPP, is the Peter J. Cooper Public Policy Fellow at the Williams Institute, UCLA School of Law. Her research interests focus on policies affecting families.

M.V. Lee Badgett, PhD, is the Research Director at the Williams Institute, and Director of the Center for Public Policy and Administration at the University of Massachusetts Amherst, where she is also a Professor of Economics. She studies family policy and employment discrimination related to sexual orientation.

Christopher Ramos is a Research Assistant at the Williams Institute, UCLA School of Law. He studies social inequality through a lens of race, class, gender, and sexual orientation.

ABOUT THE WILLIAMS INSTITUTE

The Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at UCLA School of Law advances law and public policy through rigorous, independent research and scholarship, and disseminates its work through a variety of education programs and media to judges, legislators, lawyers, other policymakers and the public. These studies can be accessed at the Williams Institute website.

For more information, contact:

The Williams Institute

UCLA School of Law

Box 951476

Los Angeles, CA 90095-1476

T (310)267-4382

F (310)825-7270

williamsinstitute@law.ucla.edu

www.law.ucla.edu/williamsinstitute