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### Employment Discrimination against LGBT Utahns

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#### Recommended Citation

Employment Discrimination Against LGBT Utahns, Williams Institute, UCLA School of Law 1-20 (2011)  
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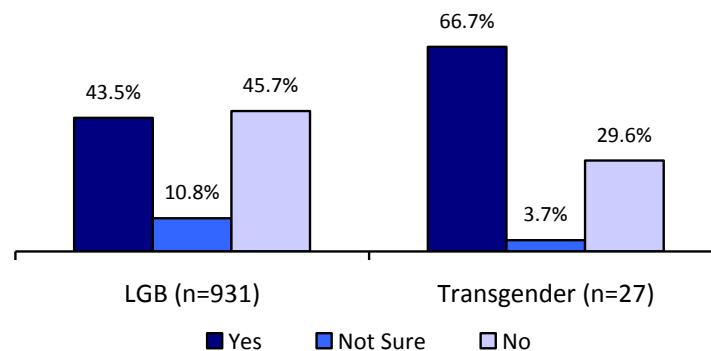
## Employment Discrimination against LGBT Utahns

### Executive Summary

Utah does not have a statewide law that prohibits discrimination based on sexual orientation and gender identity in employment. This report gathers together all existing data on the prevalence of discrimination in Utah to examine how frequently lesbian, gay, bisexual, and transgender Utahns experience employment discrimination based on sexual orientation and gender identity and assess the likely impact of passing a statewide nondiscrimination law.

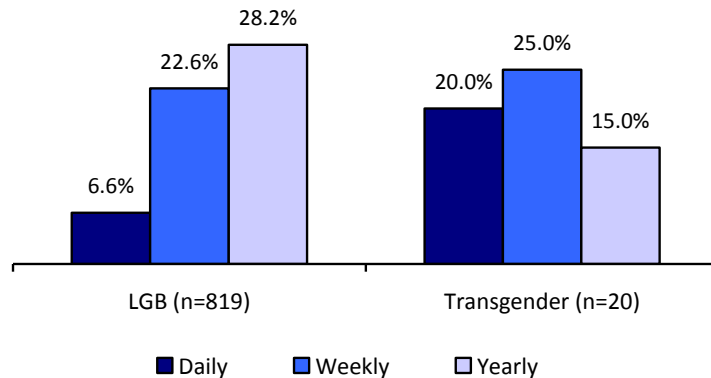
The report begins by analyzing the data collected through a 2010 survey conducted by Equality Utah, which is the state's first survey on discrimination based on sexual orientation and gender identity in employment. The data show that employment discrimination on the basis of sexual orientation and gender identity is a pervasive and persistent problem in Utah, as it is in other states. Forty-three percent of the LGB respondents and 67% of the transgender respondents reported that they have experienced discrimination in employment.

Percent Ever Fired, Denied a Job, or Not Promoted Because of Sexual Orientation or Gender Identity



The data show that employment discrimination based on sexual orientation and gender identity is presently occurring in Utah. Close to 30% of LGB respondents and 45% of transgender respondents reported that they experienced some form of workplace harassment on a weekly basis during the previous year. Over 26% of LGB respondents and 37% of transgender respondents reported that they fear discrimination by their current employer. The data further show that Utah's LGBT employees are being discriminated against and harassed no matter how open they are about their sexual orientation or gender identity in the workplace.

Frequency of Homophobia, Transphobia, or Harassment Experienced at Work in the Last Year



The 2010 survey allowed respondents to supplement their responses with more detailed written accounts of their experiences. These responses support the quantitative data and paint a more complete picture of the problem of employment discrimination in Utah. Survey respondents frequently reported verbal harassment and derogatory name-calling in the workplace. Some respondents gave detailed accounts of being subjected to harassment or discrimination, even though they did not discuss their sexual orientation or gender identity while at work, because a supervisor or co-workers discovered their LGBT identity second-hand. Many respondents explained that they are not out in the workplace because they have personally experienced discrimination and harassment. Some respondents reported being fired because they sought employer-sponsored domestic partner benefits for a same-sex partner. Respondents also described a broad range of disparate treatment based on sexual orientation and gender identity, such as being paid less for the same work, being asked to work longer hours, or being assigned less desirable shifts. A few respondents even indicated that they had experienced sexual harassment, sexual assault, and inappropriate physical touching by co-workers after disclosing that they were LGBT or transgender.

The results of the 2010 survey are consistent with data gathered from other sources, such as national surveys and reports from state agencies. National surveys indicate that substantial percentages of LGBT people report discrimination and harassment in the workplace, and discrimination against transgender employees is even more prevalent. Two recent studies demonstrate that when the underlying population of workers in a protected class is taken into account, the rate of complaints filed with state administrative agencies alleging sexual orientation discrimination in employment is comparable to the rate of complaints filed on the basis of race or sex.

By reviewing the available data on the passage of statewide nondiscrimination laws in other jurisdictions, this report shows that passing such a law would have a beneficial impact on Utah employees and employers, without imposing any significant burdens or costs on the state's enforcement agencies.

## Introduction

Utah does not have a statewide law that prohibits discrimination based on sexual orientation and gender identity in employment. For the past three years, state legislators have debated a bill that would add sexual orientation and gender identity to the list of classifications protected by the Utah Antidiscrimination Act. Recent polling has indicated that a significant majority of Utahns support these protections, and in the past year, several cities and counties in Utah have adopted ordinances incorporating them into municipal codes.


As in many debates about nondiscrimination laws, the discussion of these measures has involved two arguments about the incidence of employment discrimination based on sexual orientation and gender identity. The first argument is that the law is not necessary because cases of such discrimination are extremely rare. The second argument is that if the law were passed, employers and state agencies would be inundated with frivolous claims.

To inform these discussions, this report gathers together all existing data on the prevalence of discrimination based on sexual orientation and gender identity in Utah. The report focuses on two questions: First, how frequently do lesbian, gay, bisexual, and transgender Utahns experience discrimination based on sexual orientation and gender identity in employment? Second, what would be the impact of passing a statewide nondiscrimination law that prohibits discrimination based on sexual orientation and gender identity in employment?

To answer these questions, the report begins by analyzing the data collected through a 2010 survey conducted by Equality Utah, which is the state's first survey on discrimination based on sexual orientation and gender identity in employment. Second, the report compares the 2010 survey findings to the relevant findings from national surveys, U.S. Census data, and reports from state agencies. Third, the report analyzes available data to estimate the likely impact of a statewide law on LGBT employees, employers, and state agencies.

By analyzing the data collected in the 2010 survey, Part I of this report presents findings that employment discrimination is a pervasive problem in Utah, as in other states. Nearly half of the LGBT respondents in the survey reported that they have experienced discrimination in employment. Moreover, the survey shows, the problem of employment discrimination is persistent. Many respondents reported that they continue to fear discrimination from current employers, and more than half reported that they have been subjected to verbal harassment in the workplace in the previous year. In the absence of a statewide law, the vast majority of discrimination and verbal harassment against LGBT employees has not been reported to employers, attorneys, or state agencies. Also, LGBT employees in Utah have experienced discrimination across a broad range of personal and socio-economic characteristics, regardless of how open (or "out") they are at work.

Part II shows that the results of the 2010 survey are consistent with data gathered from national surveys, U.S. Census data, and reports from state agencies. National surveys indicate that large percentages of LGBT people report discrimination and harassment in the workplace. U.S. Census data show that in Utah, as in many other states, men in same-sex couples earn nearly one-fifth less than men in different-sex marriages, even though men in same-sex couples are more likely to have a college degree. Reports from state agencies indicate that discrimination against LGBT employees occurs as often as discrimination against female employees, and discrimination against transgender employees is even more prevalent.



By reviewing the available data on the passage of statewide nondiscrimination laws in other jurisdictions, Part III shows that passing such a law would have a beneficial impact on Utah employees and employers, without imposing any significant burdens or costs on the state's enforcement agencies.

## **I. A Survey on Employment Discrimination in Utah**

### **A. Methods**

#### **1. Survey Distribution and Data Collection**

In February, 2010, Equality Utah sent an email message to an internal distribution list of 7,521 people asking them to complete an online survey using Survey Monkey. The organization had compiled this distribution list over a period of several years by asking people to sign up through the organization's website, at local events, and by making donations.

In addition, Equality Utah distributed the survey through social networking web sites by posting a link to the survey on the organization's Facebook and Simply Social pages. In February 2010, Equality Utah had established connections with approximately 4,700 individuals on Facebook and 1,000 individuals on Simply Social.

At Equality Utah's request, the survey was distributed through similar means by the Utah Pride Center, an organization that serves the LGBT community in the state. The Utah Pride Center estimates that in February 2010, the survey was made available to approximately 6,200 individuals via email and 10,000 individuals via Facebook.


Neither Equality Utah nor the Utah Pride Center has any way of identifying overlaps among these distributions channels. As a result, it is not possible to calculate the total number of individuals who had access to the survey, or to calculate the overall response rate.

The survey collected responses from 1,199 individuals, 939 of whom are LGBT and living in Utah. Based on data produced by the U.S. Census Bureau, the Williams Institute has estimated that in 2008, there were between 47,000 and 63,000 lesbian, gay, and bisexual people living in Utah.

Because Equality Utah's outreach strategies are not designed to attract a random sample of LGBT individuals, this sample is not likely to be representative of all LGBT people in the state. However, it is the largest sample of LGBT Utahns surveyed to date, and it includes individuals who exhibit a broad range of personal and socio-economic characteristics. As a result, the survey seems to provide a reasonably broad sample of LGBT people and experiences in the state.

#### **2. Data Analysis**

The survey contained 24 questions. Many questions allowed for multiple responses, and many of the questions allowed for open-ended responses, i.e. the choice of "Other, Please Specify." In general, questions that allowed for multiple responses were placed into particular categories if respondents chose any of the included answers. When possible, open-ended responses were recoded and placed into the category that most accurately reflected by the response. The majority of the information we used for our study was drawn from sexual orientation and gender identity questions, discrimination



questions, and basic demographic questions (age, race, location, education level, income, and work status).

The sexual orientation question offered several different responses. When we discuss sexual orientation in this report, we are referring to respondents who chose at least one (or more) of the following responses: “Lesbian,” “Gay,” “Bisexual,” or “Queer.” We grouped these respondents into a distinct group that we called “LGB,” which included 931 people. The respondents who indicated that they were “straight” were dropped from the study unless they were transgender.

Likewise, the gender question offered several different responses. When we discuss gender identity in this report, we are referring to respondents who chose at least one (or more) of the following responses: “MTF” or “FTM.” We grouped these respondents into a distinct group that we called “transgender,” which included 27 people. Some of the respondents who answered only “Female” or “Male” to this question might also identify as transgender, but we were not able to distinguish those individuals from respondents who identified as non-transgender.

In this survey, “sexual orientation” and “gender identity” were presented as two distinct characteristics in two different questions, so we have treated them separately in our analysis. As a result, there is some overlap between LGB respondents and transgender respondents: Twenty-one individuals identified as both LGB and transgender.

The survey asked the following specific questions about discrimination in employment:

- “Do you believe you have ever been discriminated against in employment (e.g. fired, denied a job, not promoted) due to your sexual orientation or gender identity?”
- “Do you fear being discriminated against with your current employer?”

Respondents had three possible answers to choose from for each of those questions: “Yes,” “No,” and “Not Sure.” In addition, the survey asked respondents who had experienced some form of employment discrimination, “To whom, if anyone, did you report being discriminated against in employment?”

Apart from these specific questions, the survey asked more general questions that included responses that were specifically related to discrimination in employment. For example, the survey asked, “In the last 12 months, please indicate how often, if at all, you have experienced homophobia, transphobia, and/or harassment.” Respondents were provided with several different answers, but for the purposes of this report, we have reported only the respondents who indicated that they had experienced such harassment “at work.” Likewise, the survey asked, “How open (“out”) are you regarding your sexual orientation/gender identity with the following people? (1 being not open, 5 being very open).” Respondents were provided with many different answers, including parents, children, coworkers, and supervisor(s), but for the purposes of this report, we have reported only the respondents who indicated how open they were with “supervisor(s).” Finally, the survey invited respondents to describe incidents of discrimination in “housing” or “employment” in additional detail, and for the purposes of this report, we have reported only the respondents who described discrimination in employment.<sup>1</sup>

The “Zip Code” and “County” questions were used together to get a more accurate picture of where our respondents were located. The county question was open ended so all like answers were combined into the correct county. Respondents who listed cities were placed into their corresponding county. For responses that did not fall into either of these groups, the “zip code” question was consulted. Respondents who listed something other than a valid city or county for this question were placed into the county that corresponded to their listed zip code. Because relatively few respondents lived outside

of Salt Lake County, we made the decision to further reduce the groupings to “Salt Lake County” and “Other County.”

Because this study focused on Utah, we dropped from the study the twelve respondents who were found to have listed neither a county, city, nor zip code that existed in Utah.

The race question offered respondents several choices along with the open-ended “Other, please specify” mentioned above. These open-ended responses were placed into their most relevant grouping.<sup>2</sup> Due to the extremely low number of respondents in the more detailed race/ethnic categories, we made the decision to further reduce the groupings to “White/Caucasian” and “Person of Color/Multi-Racial/Other.”

## B. Profile of Respondents

In an effort to document discrimination based on sexual orientation and gender identity in Utah, this report focuses only on respondents who identified themselves as lesbian, gay, bisexual, or transgender and reported that they are currently residing in Utah zip codes. We identified a total of 939 respondents who met these criteria. Below we present two charts that report the personal and socio-economic characteristics of these respondents.

In each of these charts, we have included columns that provide cross-tabs for two different subgroups of respondents: the 931 respondents who identified as lesbian, gay, bisexual or queer, and the 27 respondents who identified as transgender.<sup>3</sup>

The first column of Chart 1 shows that 57% of LGB respondents identified as male, and 39% identified as female. In addition, 1.2% of LGB respondents identified as MTF, 1.1% identified as FTM, 0.3% identified as intersex, and 1.1% declined to identify as a member of any of these categories. Nearly one-third of LGB respondents were between the ages of 25 and 34, and almost all were between the ages of 18 and 64, the most relevant age range for defining the workforce. Twelve percent of LGB respondents identified themselves as people of color, and 28% reported living outside of Salt Lake County.

The second column of Chart 1 shows that 59% of transgender respondents identified as MTF and 41% identified as FTM. More than one-third of transgender respondents were between the ages of 25 and 34, and all were between the ages of 18 and 64. Thirty percent of transgender respondents identified themselves as people of color, and 33% reported living outside of Salt Lake County.

	Lesbian, Gay, Bisexual (n=931)	Transgender (n=27)
Gender		
Female	39.2%	0.0%
Male	57.1%	0.0%
FTM	1.1%	40.7%
MTF	1.2%	59.3%

	Intersex	0.3%	0.0%
	Other	1.1%	0.0%
<b>Age</b>			
	18-24	19.8%	29.6%
	25-34	31.8%	37.0%
	35-44	23.3%	11.1%
	45-54	18.3%	18.5%
	55-64	5.7%	3.7%
	65 and older	1.2%)	0.0%
<b>Race/Ethnicity</b>			
	White/Caucasian	88.0%	70.4%
	Person of Color/Multiracial	12.0%	29.6%
<b>Location</b>			
	Salt Lake County	71.9%	66.7%
	Other Counties	28.1%	33.3%

The first column of Chart 2 shows that 55% of LGB respondents had earned college or post-graduate degrees, and 70% had full-time employment or were self-employed. Forty percent of LGB respondents earned more than \$40,000 per year.

The second column of Chart 2 shows that 26% of transgender respondents had earned college or post-graduate degrees, and 52% had full-time employment or were self-employed. Twenty-two percent of transgender respondents earned more than \$40,000 per year.

<b>Chart 2: Socio-Economic Characteristics of LGB and Transgender Respondents</b>		
	Lesbian, Gay, Bisexual (n=931)	Transgender (n=27)
<b>Education Level</b>		
	High School Graduate	8.4%)
	Trade/Vocational School	36.5%
	College Graduate	34.1%
	Post-Graduate or Above	21.1%)
<b>Employment Status</b>		
	Retired/On Disability	9.6%
	Unemployed	5.2%
	Part-Time	14.9%
	Full-Time	61.4%



Self-Employed	8.9%	7.4%
Income		
Less than \$20,000	28.5%	51.9%
\$20,000-\$40,000	31.2%	25.9%
\$40,000-\$75,000	26.4%	14.8%
More than \$75,000	14.0%	7.4%

### C. Findings of Employment Discrimination in Utah

The 2010 survey shows that employment discrimination based on sexual orientation and gender identity is a pervasive and persistent problem in Utah that affects many LGBT employees. Below we present both quantitative data from the survey and more qualitative answers to open-ended questions about experiences of employment discrimination.

#### 1. Quantitative Data

Chart 3 shows that 43% of all LGB respondents reported being fired, denied a job, denied a promotion, or experiencing other forms of discrimination in employment at some point in their lives.<sup>4</sup> Chart 4 indicates that even today, 26% of LGB employees continue to fear employment discrimination from current employers. Chart 5 shows that 57% of these workers have been subjected to verbal harassment in the workplace in the previous year, and 29% have experienced harassment on at least a weekly basis.

Each of these charts suggests that transgender workers may be particularly vulnerable to discrimination in employment. Sixty-six percent of transgender workers experienced being fired, denied a job, denied a promotion, or some other form of discrimination in employment, and 37% continue to fear discrimination from current employers. Sixty percent of transgender respondents were subjected to verbal harassment at work in the previous year, and 45% experienced verbal harassment on at least a weekly basis.

Chart 3

Percent Ever Fired, Denied a Job, or Not Promoted Because of Sexual Orientation or Gender Identity

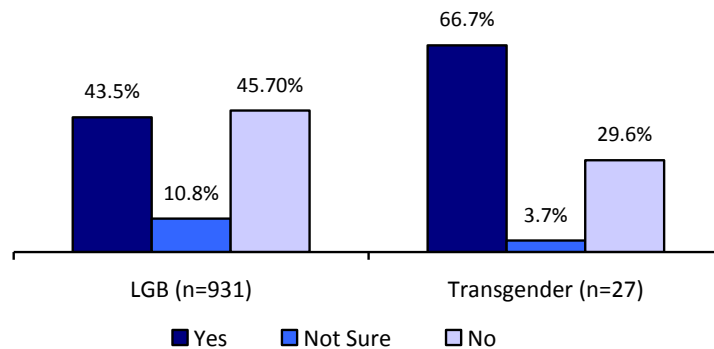


Chart 4

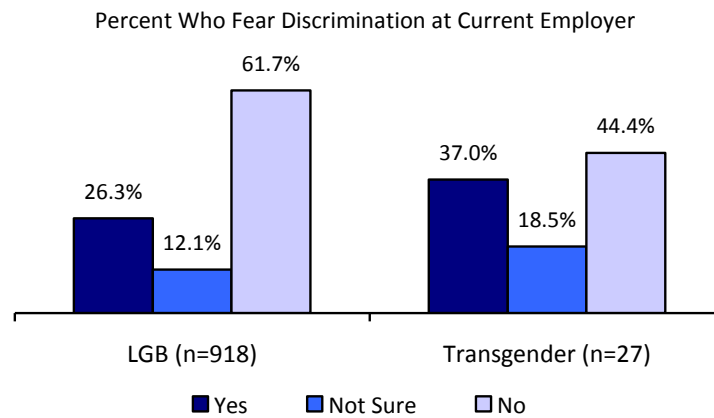


Chart 5

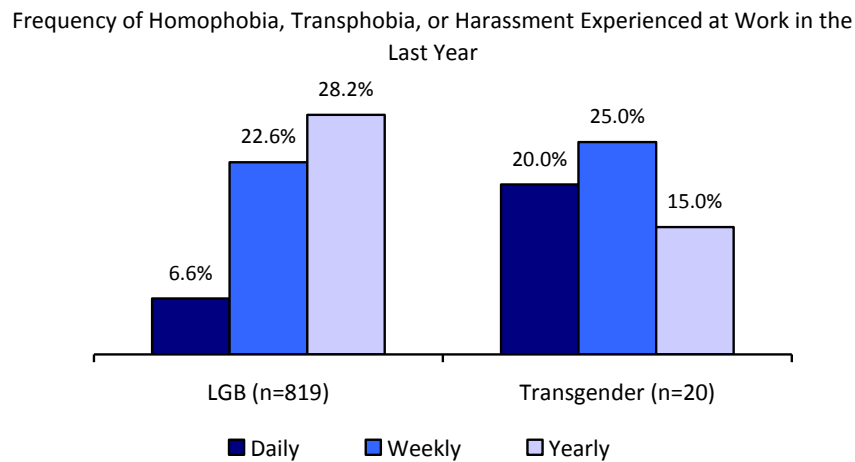


Chart 6 shows the percentages of LGBT employees (of those who previously indicated that they had experienced discrimination) that reported employment discrimination to their employers, to attorneys, to enforcement agencies, or to no one. The data indicates that employment discrimination is rarely reported to employers, attorneys, or state agencies. Nearly 70% of LGB employees and 68% of transgender employees have not reported the discrimination to anyone. Only 20% of LGB employees and 12% of transgender employees who think they have experienced discrimination have reported that experience to their employer. The low rates of reporting to public agencies or attorneys are not surprising given the absence of laws giving workers legal recourse.

Chart 6

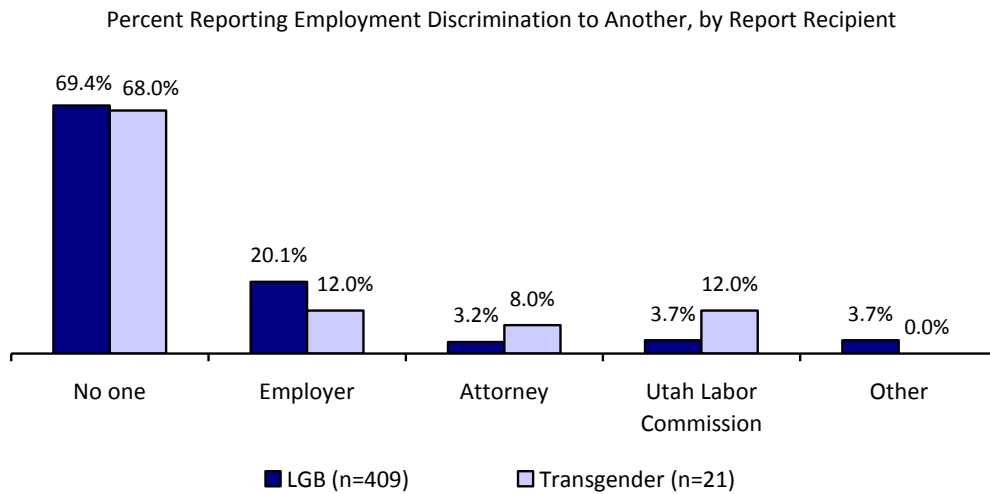
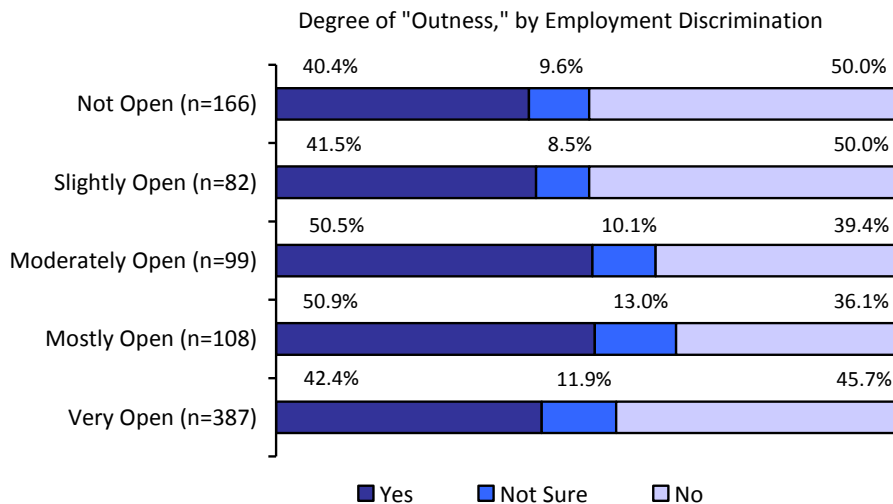



Chart 7 shows that LGB respondents have experienced consistent percentages of discrimination in the workplace, regardless of how open (or “out”) they are to supervisors. The chart connects employees’ responses to the question “Do you believe you have ever been discriminated against in employment (e.g. fired, denied a job, not promoted) due to your sexual orientation or gender identity?” with their responses to the question “How open (“out”) are you regarding your sexual orientation/gender identity with your supervisor(s)?” For example, the first line shows that of the 166 people who answered that they were not open to their supervisor, 40.4% reported that they had experienced employment discrimination, 9.6% were not sure if they had, and 50% had not. The data show that between 40% and 51% of employees reported having experienced discrimination in the workplace, suggesting that these experiences do not vary greatly based on how open the employees are about their sexual orientation or gender identity. This finding belies the popular belief that employment discrimination only happens when employees “flaunt” homosexuality at work.

Chart 7





In an Appendix to this report, we provide tables that include cross-tabulations comparing the level of employment discrimination across various personal and socio-economic characteristics. These tables demonstrate that a high percentage of LGB employees have experienced discrimination across a broad range of personal and socio-economic characteristics. The percentage of LGB workers experiencing discrimination was substantially higher among those who were unemployed (60%) and those who were high school graduates, with no other training or degree (51%), by comparison to other respondents. In addition, reports of discrimination were slightly more common among those between the ages of 35 and 64 (ranging from 43% to 54%), compared to those between the ages of 18 and 34 (ranging from 38% to 39%). Aside from these predictable differences, however, the percentage of LGB workers experiencing discrimination was similar across other variables such as sex (Male/Female), race/ethnicity (White/Persons of Color), location (Salt Lake County/Other Counties), and income levels.

## 2. Qualitative Data

In addition to the responses collected from each of the survey's specific questions about discrimination in employment, the survey invited respondents to provide more detailed accounts of the incidents of employment discrimination that they had experienced. Such qualitative responses cannot be summarized in tables or graphs, but they provide concrete support for the quantitative data and paint a more complete picture of the problem of employment discrimination in Utah. Among these responses, verbal harassment and derogatory name-calling in the workplace was often reported. Other employees gave detailed accounts of being subjected to harassment or discrimination, even though they did not discuss their sexual orientation or gender identity while at work, because a supervisor or co-workers discovered their LGBT identity second-hand. Many respondents explained that they are not out in the workplace because they have personally experienced discrimination and harassment. Some respondents reported being fired after trying to sign up a partner for domestic partner benefits. Respondents also described a broad range of disparate treatment based on sexual orientation and gender identity, such as being paid less for the same work, being asked to work longer hours, or being assigned less desirable shifts. A few respondents even indicated that they had experienced sexual harassment, sexual assault, and inappropriate physical touching by co-workers after disclosing that they were LGB or transgender.

A number of respondents have heard coworkers refer to them and others by using homophobic language such as "faggot," "dyke," and other gay slurs. One respondent reported, "I have been called a faggot at a job and told I might as well quit because he was going to make my life hell." Another respondent explained, "I had a co worker that would yell at me, swear at me, bully me"; shortly after he reported these incidents to a supervisor, he was laid off from work. Another respondent explained that because he frequently hears homophobic comments at work, "I have to keep who I am to myself or face being ostracized," and "to sit there and endure it or fake laughing it off." Another reported that the homophobia at her current employer is "so rampant" that she has decided not to disclose her bisexuality to her supervisors or coworkers.

Some respondents indicated that although they had not intended to discuss sexual orientation or gender identity at work, they had been exposed or "outed" by a supervisor or coworker, which often led to discrimination and harassment in the workplace. One respondent reported that in 2009, he was exposed by a supervisor, who made rude comments. Another explained that he was let go from his previous job after being outed by a coworker. He reported, "It was made clear to me that

homosexuality was not welcome in that field,” and, “I was not the first person this happened to.” Another respondent reported that he was outed and harassed by coworkers. After he was denied a promotion, he quit the job rather than continue to be subjected to the daily harassment.

Many respondents described specific incidents in which they had been fired, laid off, and denied promotions because they were lesbian, gay, bisexual, or transgender. In most of these instances, respondents learned of the reason for the employer’s action from supervisors or coworkers. For example, one respondent reported being laid off from a production company in Orem in 2009. When he was terminated, he was told that the official reason for his departure was “a slow economy.” After his departure, however, the company held a meeting in which his coworkers were informed that he was let go because he was gay. Because he remained close to his coworkers, they told him the real reason that he was terminated.

In other instances, respondents were never directly told of the reason for the employer’s action, but they were able to surmise it from surrounding circumstances. For example, one respondent was fired three days after receiving a raise to six figures pre-bonus. He later discovered that two days before he was terminated, his sexual orientation has been inadvertently disclosed to his supervisor by a neighbor. When he asked why he was being terminated, his supervisor answered, “You know why, and I don’t want to get into it.”

Many respondents explained that they are still afraid of discrimination at a current employer, either because they have personally experienced discrimination and harassment, or because they have heard coworkers making negative comments. One respondent reported that in 1999, he lost his job for disclosing his sexual orientation. After this experience, he explained, “I’ve kept quiet at work ever since.” Another respondent reported that she had lost her previous job when a coworker learned that she was dating a woman. In light of this experience, she decided:

“I didn’t have anything I could do about it so I found a new job and now refuse to talk about my personal life to ANY of my current coworkers. I need an income. I need this job. Until I can be guaranteed I’ll be safe this time I am not going to feel comfortable talking with people about my personal life.”

Another respondent explained:

“At work, I am not out at all. It is clear in some management circles that non-hetero sexuality is something awkward and suspicious. I do not share my orientation out of fear of losing respect from peers and subordinates. Additionally, I feel that my upward mobility would be greatly compromised if I was out.”

In addition, the qualitative responses highlighted other forms of discrimination that were not specifically addressed in the survey questions. For example, several respondents indicated that they had experienced discrimination after inquiring about antidiscrimination policies or benefits for unmarried partners. One respondent claimed that although his company offered domestic partner benefits, he was let go for no cause after trying to get them for over a year. Respondents described a broad range of disparate treatment based on sexual orientation and gender identity, such as being paid less for the same work, being asked to work longer hours, or being assigned less desirable shifts. One respondent reported that he had been “paid less than straight men in the same position and [with] less experience many times,” and has been asked to put in extra work to compensate for straight co-worker’s family duties, based on an expectation that a single person should fill in for them. A few respondents even indicated that they had experienced sexual harassment, sexual assault, and inappropriate physical touching by co-workers after disclosing that they were LGB or transgender.

## II. Existing Data on Employment Discrimination Against LGBT People

The findings of the 2010 survey are consistent with evidence available from other sources, which have consistently documented high levels of discrimination against LGBT employees across the United States.

Evidence of employment discrimination faced by LGBT people may be found in several sources. First, on national surveys, LGBT employees and their non-LGBT coworkers report experiences of discrimination in employment. Second, LGBT employees have lower earnings than non-LGBT employees, despite having similar qualifications and experience. Data collected by government agencies show that substantial numbers of LGBT people report employment discrimination. Collected together, current research and surveys of employees from around the country indicate that many LGBT people experience various forms of discrimination in employment, in Utah as well as in other states.

### A. National Survey Data

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.<sup>5</sup> 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.<sup>6</sup> Numerous local community surveys of LGBT people find that sexual orientation discrimination is also commonly reported in those areas.<sup>7</sup>

The 2008 General Social Survey, which is a recent 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.<sup>8</sup>

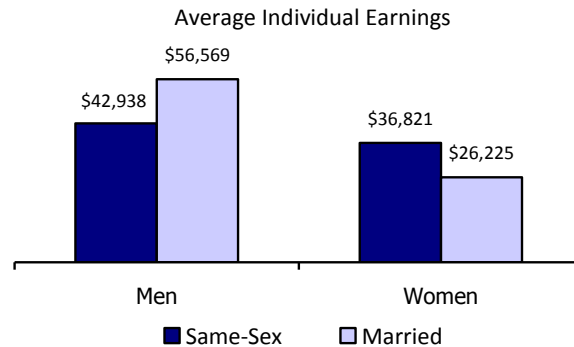
When transgender people are surveyed separately, they report similar or higher levels of employment discrimination. In 2009, the largest national survey of transgender people to date included people from every state in the U.S. The survey found that 97% of the 6,450 people surveyed had experienced harassment or mistreatment at work, and 47% had been discriminated against in hiring, promotion, or job retention because of their gender identity.<sup>9</sup> Eleven local surveys of transgender people conducted between 1996 and 2006 found that at least 20% and as many as 57% reported having experienced some form of employment discrimination.<sup>10</sup> 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.<sup>11</sup>

### B. Wage Inequity

Before the 2010 survey was conducted, very little research on the impact of discrimination against LGBT people in Utah existed. However, data from the U.S. Census allows us to examine the employment and earnings for Utahns living in same-sex couples. While it is not 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.

Census data show that men in same-sex couples in Utah earn less than men married to different-sex partners. On average, men in same-sex couples in Utah earn \$42,938 each year, significantly less than \$56,569 for men married to different-sex partners.<sup>12</sup> The median income of men in same-sex couples in

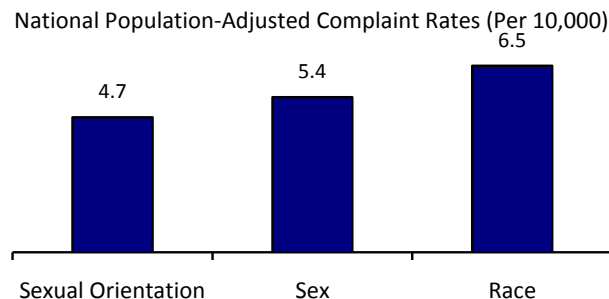
Utah is \$36,000, or 20% less than that of men married to different-sex partners (\$45,000).<sup>13</sup> Men with same-sex partners earn lower wages despite the fact that they are more likely to have a college degree than men married to different-sex partners,<sup>14</sup> a comparison that supports the possibility that people in same-sex couples are not treated equally by employers. Women in same-sex couples in Utah earn less than married men and men in same-sex couples. Women in same-sex couples earn more than married women with average yearly earnings of \$36,821 and \$26,225, respectively, at least in part because women in same-sex couples work more hours.<sup>15</sup> However, women in same-sex couples earn less than men in either kind of couple.




These findings are not unique to Utah. Analyses of national data consistently find that men in same-sex couples and gay men earn 10-32% less than similarly qualified men who are married to different-sex partners, or men who identify as heterosexual.<sup>16</sup> Surveys of transgender people find that they have high rates of unemployment and very low earnings.<sup>17</sup> A recent study suggests that the wage gap for gay men is smaller in states that implement nondiscrimination laws, suggesting that such laws curb discrimination against LGBT people.<sup>18</sup>

### C. Reports to Utah State Agencies

Evidence of employment discrimination against LGBT employees is also observed through data on the filing of discrimination complaints with state agencies. Currently, 21 states and the District of Columbia prohibit employment discrimination on the basis of sexual orientation, and 12 states and the District of Columbia also prohibit discrimination based on gender identity. A 2008 study examined complaints filed by employees in these states and found that LGB workers filed complaints at similar rates as women filing sex discrimination complaints.<sup>19</sup> In both groups, LGB people and women filed complaints at a rate of 5 complaints per 10,000 employees. Race complaints were filed at a slightly higher rate of 7 complaints per 10,000 employees who are people of color.





Although the Utah Antidiscrimination Law currently does not prohibit employment discrimination on the basis of sexual orientation or gender identity, the Utah Antidiscrimination & Labor Division began tracking complaints filed on the basis of sexual orientation or gender identity in 2007.<sup>20</sup> Between June 2007 and September 2008, the UALD reported an average of three sexual orientation and gender identity employment discrimination complaints filed per month.<sup>21</sup> The UALD no longer tracks this data.<sup>22</sup>

### **III. Assessing the Impact of Nondiscrimination Laws**

In debates about nondiscrimination laws, some claim that employees and employers would not gain significant benefits and that state enforcement agencies would be inundated with frivolous claims. Previous experience in other jurisdictions suggests otherwise. Recent estimates suggest that there are tens of thousands of LGBT people working in Utah. Numerous studies show that when LGBT workers are protected by nondiscrimination laws, they experience greater comfort in the workplace and higher productivity levels. From the perspective of employers, nondiscrimination policies increase the ability to recruit and retain qualified employees. Based on the size of the state's LGBT workforce and the rate at which discrimination complaints are typically filed, it is not likely that the passage of a nondiscrimination law would impose significant burdens or costs on state enforcement agencies.

#### **A. Impact on LGBT Employees**


Data from the 2008 American Community Survey suggest that there are between 32,000 and 43,000 lesbian, gay, and bisexual people working in Utah.<sup>23</sup> Because these instruments do not ask people if they identify as transgender, it is not possible to approximate the size of the transgender workforce from Census and National Survey of Family Growth data. However, some studies suggest that 0.25% of the population might identify as transgender.<sup>24</sup> Applying this figure to Utah's adult population of 1,886,191,<sup>25</sup> there may be over 4,700 transgender individuals living in Utah. Data suggest that the LGBT people in Utah are racially and ethnically diverse, live throughout the state, and actively participate in Utah's economy.<sup>26</sup>

Several studies from various academic disciplines suggest that LGBT workers will enjoy greater job satisfaction and be more productive workers if they have legal protection from discrimination.<sup>27</sup> Without legal protection, employees are not confident enough to be themselves in the workplace.<sup>28</sup> Researchers have found that the negative effects of this discomfort include stress, anxiety, lowered performance, and an increased desire to leave the job.<sup>29</sup>

#### **B. Impact on Utah Employers**

Currently, Salt Lake City, Salt Lake County, West Valley City, Park City, Summit County, Taylorsville, Logan, Murray, Moab, and Grand County already prohibit employment discrimination on the basis of sexual orientation and gender identity by local ordinance.<sup>30</sup> Utah State University, University of Utah, and Weber State University have policies against employment discrimination based on sexual orientation.<sup>31</sup> Several other cities and counties are currently considering measures to prohibit sexual orientation and gender identity employment discrimination.<sup>32</sup> Additionally, several Utah-based private corporate employers have adopted policies prohibiting discrimination based on sexual orientation and/or gender identity, among them Ameritech Library Services, Corel/Word Perfect Corp., Franklin





Covey, Gastronomy Inc., and Parr Brown Gee & Loveless, and Zions Bank.<sup>33</sup> Finally, many national and international corporations with large local offices, such as Goldman Sachs, American Express, Adobe and E-Bay, have adopted policies that prohibit discrimination on these grounds.

These Utah 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.<sup>34</sup> 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.

### **C. Impact on State Agencies**

Some question whether a sexual orientation and gender identity anti-discrimination law would create an increased burden on government agencies. However, a 2008 national study of data from 1999-2007 estimated that for every 10,000 LGB workers, there are approximately 5 complaints filed on the basis of sexual orientation per year.<sup>35</sup> Using our estimate of the number of LGB people working in Utah (32,000-43,000), we predict that in a given year, approximately 16 to 22 LGB workers would file a complaint alleging sexual orientation discrimination. This estimate is consistent with the Utah Antidiscrimination & Labor Division's data on actual complaints of sexual orientation and gender identity discrimination filed in the absence of a state law—approximately 3 per month.<sup>36</sup> Given these numbers, there is no evidence that expanding employment protections to LGBT people would encumber the services of existing agencies. 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.

Currently, there are not enough data to do a similar analysis of gender identity discrimination complaints. However, complaints of discrimination based on gender identity were collected from two states and the District of Columbia. The data obtained support the position that passing protections for gender identity in employment will not result in a flood of complaints to enforcement agencies—6 complaints were filed with the District of Columbia in 2006, 4 complaints were filed with Oregon from 2003 through 2006, and 2 complaints were filed with Rhode Island from 2006 through 2007.<sup>37</sup>

### **Conclusion**

The 2010 survey shows that employment discrimination is a pervasive and persistent problem for Utah's LGBT workforce. Nearly half of LGBT employees reported that they have experienced discrimination in employment, and nearly one-third continue to fear discrimination from current employers. These results confirm what had previously been established by national surveys, U.S. Census data, and reporting from state agencies. Passing an antidiscrimination law in Utah would have a beneficial impact on Utah employees and employers, without imposing any significant burdens or costs on the state's enforcement agencies.

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Acknowledgements: The authors thank Brad Sears and Jody L. Herman for their thoughtful reviews, and Equality Utah for supplying the data.

## Appendix: Employment Discrimination Reported by LGBT Respondents -- Personal and Socio-Economic Characteristics

(n=939)	Percentage “Yes”	Number reporting “Yes”
<b>Gender</b>		
Female	40.0%	146
Male	45.1%	240
FTM	72.7%	8
MTF	62.5%	10
Intersex	33.3%	1
Other	41.7%	5
<b>Age</b>		
18-24	38.4%	71
25-34	39.5%	118
35-44	46.3%	101
45-54	54.1%	93
55-64	42.6%	23
65 and older	36.4%	4
<b>Race/Ethnicity</b>		
White/Caucasian	44.4%	367

Person of Color/Multiracial	38.1%	43
Location		
Salt Lake County	44.2%	297
Other Counties	42.3%	113

**Table 10: Employment Discrimination -- Socio-Economic Characteristics**

(n=939)	Percentage "Yes"	Number reporting "Yes"
Education Level		
High School Graduate	50.6%	41
Trade/Vocational School	42.7%	146
College Graduate	42.5%	136
Post-Graduate or Above	44.4%	87
Employment Status		
Retired/On Disability	48.3%	43
Unemployed	59.6%	31
Part-Time	33.8%	47
Full-Time	42.5%	245
Self-Employed	53.0%	44
Income		
Less than \$20,000	42.5%	114
\$20,000-\$40,000	43.3%	127
\$40,000-\$75,000	44.1%	109
More than \$75,000	45.8%	60

<sup>1</sup> In addition, the survey asked the following questions about housing discrimination and verbal abuse: "Do you believe you have ever been evicted or denied housing due to your sexual orientation or gender identity?"; "To whom, if anyone, did you report being evicted or denied housing?"; "Do you fear being evicted from your current residence?"; "Do you believe you have ever been a victim of verbal abuse as a result of your sexual orientation or gender identity?"; and "To whom, if anyone, did you report the verbal abuse?" Because this report is focused on the issue of employment discrimination, it does not address information collected in response to these questions.

<sup>2</sup> There were 15 respondents in the category, "Race: Other, Please Specify." The answers were as follows: "1/8 Native American," "all other," "Irish and American Indian/Mexican/Italian"; "BIRACIAL"; "European - greek"; "Homo Sapien"; "Human"; "Iranian-American"; "Japanese?/ Spanish"; "Middle Eastern"; "Romani"; "asian and native american"; "biracial"; "mixed"; "race is a social construct."

<sup>3</sup> Because "sexual orientation" and "gender identity" were presented as two distinct characteristics, there is some overlap between LGB respondents and transgender respondents. In Tables 1 and 2, both columns include twenty-one individuals who identified as both LGB and transgender.

<sup>4</sup> Tables 3 through 5 report the percentage answering "Yes," "Not Sure," and "No" as a percentage of all individuals who answered the question, rather than all individuals who responded any of the survey questions.

<sup>5</sup> M.V. Lee Badgett, Holning Lau, Brad Sears & Deborah Ho, the Williams Institute, Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination Executive Summary (June 2007), available at <http://www.law.ucla.edu/williamsinstitute/publications/Bias%20in%20the%20Workplace.pdf>.

<sup>6</sup> Gregory M. Herek, Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States: Prevalence Estimates from a National Probability Sample, 24 J. INTERPERSONAL VIOLENCE 54, 54-74 (2009).

<sup>7</sup> See Badgett et al., supra note 5.

<sup>8</sup> Analysis conducted by The Williams Institute, unpublished (2009).

<sup>9</sup> National Center for Transgender Equality & the National Gay and Lesbian Task Force, National Transgender Discrimination Survey: Preliminary Findings 1 (Nov. 2009), available at [http://transequality.org/Resources/NCTE\\_prelim\\_survey\\_econ.pdf](http://transequality.org/Resources/NCTE_prelim_survey_econ.pdf).

<sup>10</sup> Badgett et al., supra note 5.

<sup>11</sup> Transgender Law Center, The State of Transgender California (Mar. 2009), available at <http://www.transgenderlawcenter.org/pdf/StateofTransCAFINAL.pdf>.

<sup>12</sup> Jody L. Herman, Christy Mallory, M.V. Lee Badgett & Gary J. Gates, the Williams Institute, Census Snapshot: Utah 2 (September 2010).

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Badgett et al., supra note 5.

<sup>17</sup> Id.; The State of Transgender California, supra note 11.

<sup>18</sup> Gary J. Gates, The Impact of Sexual Orientation Anti-discrimination Policies on the Wages of Lesbians and Gay Men (April 2009), available at <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2009-010/PWP-CCPR-2009-010.pdf>.

<sup>19</sup> Christopher Ramos, M.V. Lee Badgett & Brad Sears, Evidence of Employment Discrimination on the Basis of Sexual Orientation and Gender Identity: Complaints Filed with State Enforcement Agencies, 1999-2007 (Nov. 2008), available at <http://www.law.ucla.edu/williamsinstitute/pdf/PACR.pdf>

<sup>20</sup> Salt Lake City Human Rights Commission, Discrimination Report 22 (July 2009), available at <http://www.slcgov.com/mayor/divHR/extra/discrimination2009.pdf>.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> We computed this range by first estimating the number of LGB people in the U.S. workforce (4,720,323-6,293,831, which is 3%-4% of the U.S. workforce). Next we assume that the same percentage of LGB workers live in Utah as the percentage of same-sex couples living in Utah (0.68%). In other words, we multiply the U.S. workforce by 3% and 4% and then multiply that figure by 0.0068. Multiplying the percentage of the country's same-sex couples that live in Utah (.68%) by the estimated number of LGB people in the U.S. workforce. The U.S. workforce total for 2008 is 157,345,776 (2008 ACS Table S2301: Employment Status). Percentage of same sex couples calculated from U.S. Census Bureau, 2008 American Community Survey, Unmarried Partner Households by Sex of Partners, B11009. The 3%-4% range is based on findings from the 2002 National Survey of Family Growth and the 2008 General Social Survey (See Gary J. Gates, the Williams Institute, Same-sex Couples and the Gay, Lesbian, Bisexual Population: New Estimates from the American Community Survey, p. 11, apx. 1 (Oct. 2006), available at <http://www.law.ucla.edu/williamsinstitute/publications/SameSexCouplesandGLBpopACS.pdf>; Gary J. Gates, the Williams Institute, Sexual Minorities in the 2008 General Social Survey: Coming Out and Demographic Characteristics, p. i (Sept. 2010).)

<sup>24</sup> The Human Rights Campaign, Transgender Population and the Number of Transgender Employees, available at <http://www.hrc.org/issues/9598.htm>.

<sup>25</sup> U.S. Census Bureau, 2008 American Community Survey, Universe: Population 18 Years and Over: Total, Utah, B15001

<sup>26</sup> Adam P. Romero, Clifford J. Rosky, M.V. Lee Badgett & Gary J. Gates, the Williams Institute, Census Snapshot: Utah 1 (June 2008), available at <http://www.law.ucla.edu/williamsinstitute/publications/UtahCensusSnapshot.pdf>.

<sup>27</sup> Nancy E. Day & Patricia Schoenrade, *Staying in the Closet Versus Coming Out: Relationships Between Communication About Sexual Orientation and Work Attitudes*. 50 PERSONNEL PSYCHOL.147 (1997); Jeanine M. Driscoll et al., *Lesbian Identity and Disclosure in the Workplace: Relation to Occupational Stress and Satisfaction*, 48 J. OF

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<sup>28</sup> Employees who have been discriminated against or fear discrimination often hide their sexual orientation in the workplace. LAMBDA LEGAL & DELOITTE FIN. ADVISORY SERV. LLP, 2005 WORKPLACE FAIRNESS SURVEY 4 (2006), available at <http://data.lambdalegal.org/pdf/641.pdf>; TASK FORCE ON DIVERSITY IN THE PROFESSION, MINN. STATE BAR ASS'N, 2005 SELF-AUDIT FOR GENDER & MINORITY EQUITY: A RESEARCH STUDY OF MINN. LAW FIRMS, NON-FIRM EMPLOYERS AND INDIVIDUAL LAWYERS 8 (2006), available at <http://www.ncbp.org/2009/Handouts-2-09/1B/2005%20Self-Audit%20for%20Gender%20and%20Minority%20Equity%20Report.pdf>.

<sup>29</sup> Nancy E. Day & Patricia Schoenrade, *Staying in the Closet Versus Coming Out: Relationships Between Communication About Sexual Orientation and Work Attitudes*. 50 PERSONNEL PSYCHOL. 147 (1997); Martin P. Levine & Robin Leonard, *Discrimination Against Lesbians in the Work Force*, 9 SIGNS: JOURNAL OF WOMEN IN CULTURE AND SOCIETY 700 (1984); George Kronenberger, *Out of the Closet*, 70 PERSONNEL JOURNAL 40 (1991); Michelle Neely Martinez, *Recognizing Sexual Orientation is Fair and Not Costly*, HR MAGAZINE, June, 1993, at 66; NATIONAL DEFENSE RESEARCH INSTITUTE OF THE RAND CORPORATION, RAND, SEXUAL ORIENTATION AND U.S. MILITARY PERSONNEL POLICY: OPTIONS AND ASSESSMENT (1993); Alistair D. Williamson, *Is This the Right Time to Come Out?* 71 HARV. BUS. REV. 18 (1993).

<sup>30</sup> Utah, Salt Lake City Code §§ 2.53.035, 10.04 (2009) (prohibiting discrimination in city's private sector and local government employment); Utah, Salt Lake County Code § 2.08.110 (2009) (prohibiting discrimination in county government employment); Michael Aaron, *West Valley City Passes Non-Discrimination Ordinances*, QSALT LAKE, June 10, 2010, available at <http://gsaltlake.com/2010/06/10/west-valley-city-passes-non-discrimination-ordinances/> (discussing the passage of West Valley City's ordinance which has not yet been codified); Six Down, Four to Go, SALT LAKE TRIBUNE, June 17, 2010, available at <http://blogs.sltrib.com/lgbt/archive.php> (discussion of Summit County and Logan ordinances); Associated Press, *Taylorsville Passes LGBT Anti-Discrimination Ordinance*, KSL.COM, Aug. 5, 2010, available at <http://www.ksl.com/?nid=148&sid=11872009>.

<sup>31</sup> Human Rights Campaign, Employer Database, [http://www.hrc.org/issues/workplace/search.asp?form=private\\_quick\\_search.aspx](http://www.hrc.org/issues/workplace/search.asp?form=private_quick_search.aspx) (last visited Mar. 9 2010).

<sup>32</sup> Taylorsville, Murray, and Ogden. Rosemary Winters, *Gay-Rights Push Spreading Out to Other Locales*, SALT LAKE TRIBUNE, Feb. 11, 2010, available at [http://www.sltrib.com/news/ci\\_14384305](http://www.sltrib.com/news/ci_14384305).

<sup>33</sup> Human Rights Campaign, supra note 31.

<sup>34</sup> Gail Robinson & Kathleen Dechant, *Building a Business Case for Diversity*, 11 THE ACADEMY OF MANAGEMENT EXEC. (1993-1995) 21 (1997); Elizabeth A. Deitch, Adam Barsky, Rebecca M. Butz, Suzanne Chan & Arthur P. Brief, *Subtle Yet Significant: The Existence and Impact of Everyday Racial Discrimination in the Workplace*, 56 HUMAN RELATIONS 1299 (2003).

<sup>35</sup> Ramos et al., supra note 19.

<sup>36</sup> Salt Lake City Human Rights Commission, *Discrimination Report*, supra note 20.

<sup>37</sup> Ramos et al., supra note 19.