

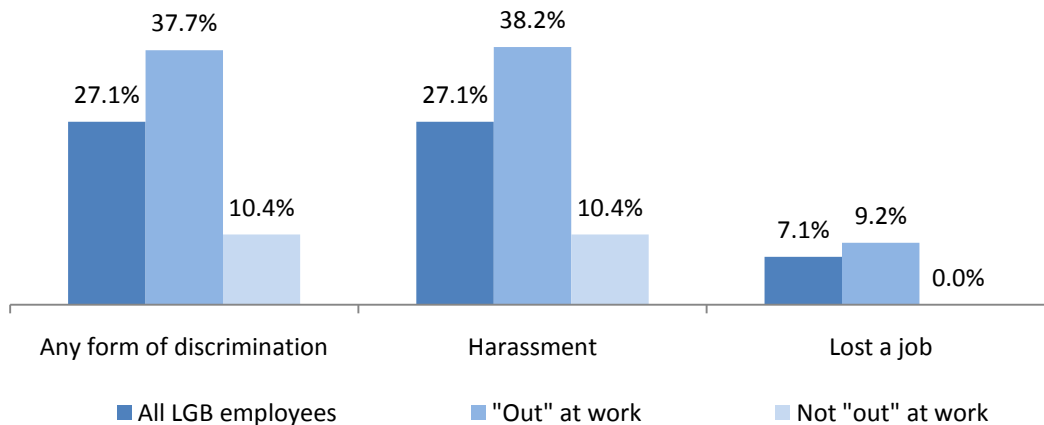


Documented Evidence of Employment Discrimination & Its Effects on LGBT People

Executive Summary

Although sexual orientation and gender identity have no relationship to workplace performance,¹ during the past four decades a large body of research using a variety of methodologies has consistently documented high levels of discrimination against lesbians, gay men, bisexuals and transgender (LGBT) people at work. Evidence of discrimination has been reviewed and summarized in two recent reports by the Williams Institute at UCLA School of Law: a 2009 report focused on discrimination in the public sector² and a 2007 report focused on employment discrimination in the private sector³. This review excerpts key findings from those reports and updates those findings with results from recent studies. In addition, it presents for the first time, data documenting discrimination against LGB employees from the 2008 General Social Survey (GSS), a national probability survey representative of the U.S. population.

Discrimination Based on Sexual Orientation during the Five Years Prior to the Survey, General Social Survey, 2008



The evidence of discrimination in this report has been gathered from a variety of sources, including: scientific field studies of LGBT and non-LGBT employees and controlled experiments; findings by courts and legal scholars; findings by federal, state, and local governments; and complaints of discrimination filed with administrative agencies. This report also summarizes research showing the negative impacts of discrimination against LGBT people in terms of health, wages, job opportunities, productivity in the workplace, and job satisfaction.

In sum, this research shows that widespread and continuing employment discrimination against LGBT people has been documented in scientific field studies, controlled experiments, academic

journals, court cases, state and local administrative complaints, complaints to community-based organizations, and in newspapers, books, and other media. Federal, state, and local courts, legislative bodies, and administrative agencies and have acknowledged that LGBT people have faced widespread discrimination in employment. Research shows that discrimination against LGBT people has negative impact in terms of health, wages, job opportunities, productivity in the workplace, and job satisfaction.

Specific findings include:

LGBT people and their non-LGBT coworkers consistently report having experienced or witnessed discrimination based on sexual orientation or gender identity in the workplace.

- As recently as 2008, the GSS, a national probability survey representative of the U.S. population, found that of LGB respondents, 27% had experienced at least one form of sexual orientation-based discrimination during the five years prior to the survey. More specifically, 27% had experienced workplace harassment and 7% had lost a job.
- The GSS found that among LGB people who are open about their sexual orientation in the workplace, an even larger proportion, 38%, experienced at least one form of discrimination during the five years prior to the survey.
- Not surprisingly, more than one-third of LGB respondents to the GSS reported that they were not out to anyone at work, and only 25% were out to all of their co-workers.
- Consistent with the findings from the GSS, several other national probability surveys and local and national non-probability surveys of LGBT employees and their non-LGBT coworkers indicate widespread and persistent employment discrimination on the basis of sexual orientation and gender identity.

When surveyed separately, transgender respondents report even higher rates of employment discrimination and harassment than LGB people.

- As recently as 2011, 78% of respondents to the largest survey of transgender people to date reported experiencing at least one form of harassment or mistreatment at work because of their gender identity; more specifically, 47% had been discriminated against in hiring, promotion, or job retention.
- Consistently, 70% of transgender respondents to a 2009 California survey and 67% of transgender respondents to a 2010 Utah survey reported experiencing employment discrimination because of their gender identity.

Widespread and continuing employment discrimination against LGBT people has been documented in court cases, state and local administrative complaints, complaints to community-based organizations, academic journals, newspapers, books, and other media. Federal, state, and local administrative agencies and legislative bodies have acknowledged that LGBT people have faced widespread discrimination in employment.

Discrimination and fear of discrimination can have negative effects on LGBT employees in terms of wages, job opportunities, mental and physical health, productivity, and job satisfaction.

- Studies consistently show that gay men earn significantly less than their heterosexual counterparts.
- Census data analyses confirm that in nearly every state, men in same-sex couples earn less than men in heterosexual marriages.

- Several studies show that large percentages of the transgender population are unemployed or have incomes far below the national average.
- Other studies show that discrimination, fear of discrimination, and concealing one's LGBT identity can negatively impact the well-being of LGBT employees, including their mental and physical health, productivity in the workplace, and job satisfaction.

I. Research Has Documented Widespread and Persistent Workplace Discrimination against LGBT People

A. Surveys of LGBT Employees & Their Non-LGBT Co-Workers

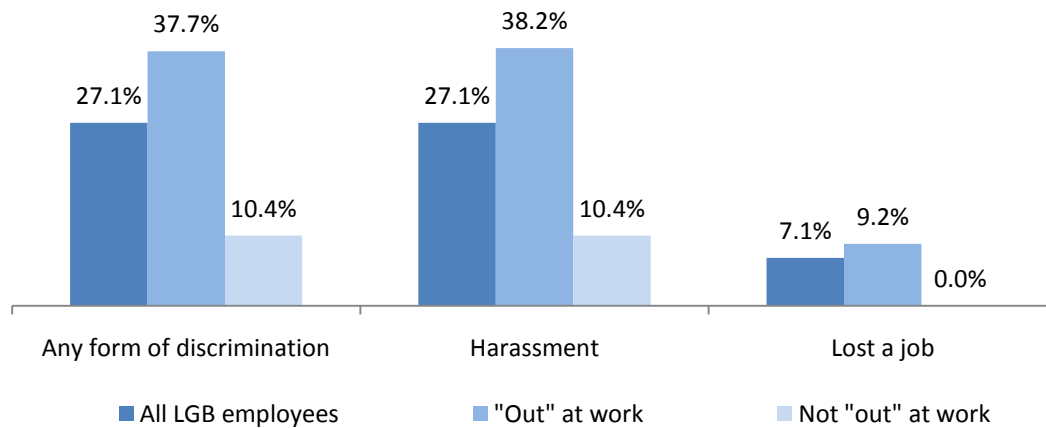
In the last decade, several surveys using probability samples representative of the U.S. population, including the General Social Survey, have shown that a large proportion of LGBT people experience discrimination in the workplace because of their sexual orientation and/or gender identity.

The 2008 General Social Survey (GSS), conducted by the National Opinion Research Center at the University of Chicago, has been a reliable source for monitoring social and demographic changes in the U.S. since 1972. The 2008 GSS marks the first time that survey participants were asked about their sexual orientation, and included a module of questions about the experience of coming out, relationship status and family structure, workplace and housing discrimination, and health insurance coverage.⁴ Eighty sexual minority respondents completed all or some of the module questions, including 57 LGB-identified respondents and 23 respondents who were non-LGB identified, but reported having same-sex sexual partners in the past.⁵ The results presented in this report are based only on the responses provided by LGB-identified individuals.

Results from the 2008 GSS include:

- 42% of the nationally representative sample of LGB-identified people had experienced at least one form of employment discrimination because of their sexual orientation at some point in their lives and 27% had experienced such discrimination during the five years prior to the survey.⁶
- Harassment was the most frequently reported form of sexual orientation-based discrimination by respondents who were open about being LGB in the workplace (35% reported ever having been harassed, 27% had been harassed within the five years prior to the survey), followed by losing a job (16% reported ever having lost a job, 7% had lost a job within the five years prior to the survey).⁷
- One third (33%) of LGB employees are not open about being LGB to anyone in the workplace.⁸
- Only 5.8% of bisexuals are open about their sexual orientation to all of their co-workers.⁹
- Of respondents who reported that they were open in the workplace about being LGB, 56% had experienced at least one form of employment discrimination because of their sexual orientation at some point in their lives, and 38% had experienced employment discrimination within the five years prior to the survey.¹⁰
- In comparison, of LGB respondents who reported that they were *not* open in the workplace about being LGB, 10% had experienced at least one form of sexual orientation-based discrimination within the five years prior to the survey.¹¹
- 25% of LGB-identified respondents who were employed by federal, state, or local government reported having experienced employment discrimination because of their sexual orientation during the five years prior to the survey.¹²

Figure 1: Discrimination Based on Sexual Orientation during the Five Years Prior to the Survey, General Social Survey, 2008



Results from other recent surveys using probability samples representative of the U.S. population include:

- 18% of LGB respondents to a survey conducted in 2000 had experienced employment discrimination in applying for and/or in keeping a job because of their sexual orientation.¹³
- 10% of LGB respondents to a survey conducted in 2007 were fired or denied a promotion because of their sexual orientation.¹⁴
- 58% percent of LGB respondents to a survey conducted in 2009 reported hearing derogatory comments about sexual orientation and gender identity in their workplaces.¹⁵

Because there are few nationally representative surveys that gather data on employment discrimination against LGBT people, it is useful to look at results from national and local non-probability surveys for a more complete picture of the experiences of LGBT employees. Consistent with the nationally representative surveys, recent national and local non-probability surveys reveal a pattern of discrimination against LGBT people. Results from recent non-probability national surveys of LGBT people show the following:

- In 2005, 39% of LGBT respondents to a national survey had experienced employment discrimination at some point during the prior five-year period.¹⁶
- In 2009, 19% of LGBT staff and faculty surveyed at colleges and universities across the country reported that they had “personally experienced exclusionary, intimidating, offensive,” “hostile,” and/or “harassing” behavior on campus—in the year prior to interview alone.¹⁷
- In 2009, 44% of LGBT respondents to a national survey reported having faced some form of discrimination at work.¹⁸
- In 2010, 43% of LGB people surveyed in Utah reported that they have experienced discrimination in employment; 30% had experienced some form of workplace harassment on a weekly basis during the previous year.¹⁹
- In 2010, 27% of LG people surveyed in Colorado reported that they had experienced employment discrimination.²⁰

- In 2010, 30% of LGBT people surveyed in South Carolina reported that they had experienced employment discrimination based on their sexual orientation or gender identity.²¹

Table 1: Results of Recent Non-probability Surveys Measuring Employment Discrimination against LGBT People (2005-2010)

Study	Year(s) Data Collected	Population	Method	% Reporting Discrimination/Harassment
Lambda Legal & Deloitte Financial Advisory Services LLP (2005)	2005	LGBT people in U.S. (n = 1,205)	Non-probability sample	39% five-years period
Rankin, S. <i>et al.</i> (2010)	2009	LGBT faculty and staff in U.S. (n = 1,902)	Non-probability sample	19% one-year period
Out & Equal (2009)	2009	LGBT people in U.S. (n = 238)	Non-probability sample	44% over the lifetime
One Colorado (2010)	2010	LGBT people in Colorado (n = 4,600)	Non-probability sample	27% over the lifetime (LG only)
SC Equality (2010)	2010	LGBT people in South Carolina (n = 1000+)	Non-probability sample	30% over the lifetime
Rosky, C. <i>et al.</i> (2011)	2010	LGB people in Utah (n = 931)	Non-probability sample	43% over the lifetime

LGBT respondents were asked more specific questions about the type of discrimination they had experienced in nine non-probability studies. Results range among the studies indicating that:

- 8% to 17% were fired or denied employment on the basis of their sexual orientation;
- 10% to 28% were denied a promotion or given negative performance evaluations;
- 7% to 41% were verbally/physically abused or had their work space vandalized; and
- 10% to 19% reported receiving unequal pay or benefits.²²

Even higher percentages of transgender people report experiencing employment discrimination or harassment. When transgender respondents were surveyed separately in six non-probability

studies conducted between 1996 and 2006, the percentage reporting employment discrimination based on gender identity ranged from 20% to 57%.²³ Among the studies, rates of discrimination by type were within the following ranges:

- 13% to 56% were fired;
- 13% to 47% were denied employment;
- 22% to 31% were harassed; and
- 19% were denied a promotion based on their gender identity.²⁴

Results from more recent non-probability surveys are consistent with results from the older studies:

- A 2009 survey of transgender individuals in California revealed that 70% of respondents reported having experienced workplace discrimination related to their gender identity.²⁵
- In 2010, 67% of transgender respondents to a survey of LGBT Utahns reported that they had experienced discrimination in employment; 45% had experienced some form of workplace harassment on a weekly basis during the previous year.²⁶
- In 2010, 52% of transgender respondents from Colorado reported that they had experienced discrimination in employment.²⁷
- As recently as 2011, 78% of respondents to the largest survey of transgender people to date reported experiencing at least one form of harassment or mistreatment at work because of their gender identity; more specifically, 47% had been discriminated against in hiring, promotion, or job retention.²⁸
- Of respondents to the 2011 survey (above) from Massachusetts, 76% experienced harassment, mistreatment, or discrimination in employment. More specifically, 20% had lost a job, 39% were not hired for positions they had applied for, and 17% were denied promotions.²⁹

Table 2: Results of Recent Non-probability Surveys Measuring Employment Discrimination against Transgender People (2005-2010)

Study	Year(s) Data Collected	Population	Method	% Reporting Discrimination/Harassment
Transgender Law Center (2009)	2005	Transgender people in California (n = 646)	Non-probability sample	70% over the lifetime
One Colorado (2010)	2010	LGBT people in Colorado (n = 4,600)	Non-probability sample	52% of over the lifetime (transgender only)
Rosky, C. <i>et al.</i> (2011)	2010	Transgender people in Utah (n = 27)	Non-probability sample	67% over the lifetime

Grant, J. <i>et al.</i> (2011)	2008-009	Transgender people in U.S. (n = 6,450)	Non-probability sample	78% had experienced at least one form of harassment or mistreatment 47% discriminated against in hiring, promotion, or job retention
Herman, J. (2011)	2008-2009	Transgender people in Massachusetts	Non-probability sample	76% over the lifetime

These findings are also supported by surveys of the heterosexual co-workers of LGB people who reported witnessing sexual orientation discrimination in the workplace. Across these studies, 12% to 30% of heterosexual respondents in occupations, such as the legal profession, reported having witnessed anti-gay discrimination in employment.³⁰

B. Controlled Experiments

In controlled experiments, researchers change the environment to create scenarios that allow comparisons of the treatment of LGB people with treatment of heterosexuals. For example, these experiments have included sending out matched resumes and job applicants to potential employers with one resume or applicant indicating they are LGB and the other not. Seven out of 8 studies using controlled experiments testing employment or public accommodations settings have found evidence of sexual orientation discrimination.³¹

II. Courts, Legislatures, and Administrative Agencies Have Consistently Found a Continuing Pattern of Discrimination against LGBT People

Evaluating the research summarized above, as well as other evidence and examples of discrimination, courts, legislatures, administrative agencies, and scholars have consistently found a continuing pattern of discrimination against LGBT people.

A. Findings by Courts & Legal Scholars

A number of courts and legal scholars have acknowledged a history and pattern of discrimination against LGBT people. Every state and federal court that has substantively considered whether sexual orientation classifications should be presumed to be suspect for purposes of equal protection analysis – whatever they decided on that ultimate question – has recognized that LGBT people have faced a long history of discrimination.³² For example, in 2010, when declaring that an amendment to the California constitution limiting marriage to opposite-sex couples (Proposition 8) violated the U.S. Constitution, a district court in California found that “[g]ays and lesbians have been victims of a long history of discrimination,” and that “[p]ublic and private discrimination against gays and lesbians occurs in California and in the United States.”³³ In 2009, the California Supreme Court determined that classifications based on sexual orientation, including marriage restrictions, should be subject to heightened scrutiny under the equal protection clause of the California Constitution in part because “sexual orientation is a characteristic...that is associated with a stigma of inferiority and second-class citizenship, manifested by the group’s history of legal and social disabilities.”³⁴ Similarly, in 1995, the Sixth

Circuit concluded, “[h]omosexuals have suffered a history of pervasive irrational and invidious discrimination in government and private employment, in political organization and in all facets of society in general, based on their sexual orientation.”³⁵ In all, 19 state and federal courts have concluded, in 26 judicial opinions, that LGBT people have faced a history of discrimination in determining whether classifications based on sexual orientation should receive heightened scrutiny under equal protection clauses of the federal and state constitutions.³⁶ Dozens of legal scholars have reached the same conclusion.³⁷

Additionally, in July 2011 the Ninth Circuit cited a history of discrimination against gay and lesbian people in its decision to lift its stay of a district court ruling that held the military’s Don’t Ask, Don’t Tell policy unconstitutional under the First Amendment and the due process clause of the U.S. constitution.³⁸

B. Findings by Federal, State, and Local Governments

The federal government, as well as many state and local governments, have concluded that LGBT people have faced widespread discrimination in employment.

The Executive Branch of the federal government has recently acknowledged a history of discrimination against gay and lesbian people. In 2011, U.S. Attorney General Eric H. Holder, Jr. issued a statement that the President had concluded that classifications based on sexual orientation should receive heightened scrutiny for purposes of equal protection analysis, in part, “because of a documented history of discrimination” against LGB people.³⁹ In a letter to Congress accompanying the statement, Holder explained that the Executive Branch would take the position that sexual orientation classifications should receive heightened scrutiny in pending cases considering the constitutionality of the Defense of Marriage Act (DOMA) “[f]irst and most importantly, [because] there is, regrettably, a significant history of purposeful discrimination against gay and lesbian people, by governmental as well as private entities.”⁴⁰ In accordance with this determination, the Department of Justice submitted a brief in July 2011 in a case pending in U.S. District Court, *Golinski v. U.S. Office of Personnel Management*, explaining the Obama Administration’s conclusion that the DOMA unconstitutionally discriminates based on sexual orientation.⁴¹ In its analysis, the DOJ pointed to a “long and significant history of purposeful discrimination” by federal, state, and local governments, and by private parties.⁴²

In at least eight states, an Executive Order, statute, and/or an official document of a law-making body includes a specific finding of employment discrimination based on sexual orientation or gender identity. In at least five other states, government commissions that have undertaken studies of employment discrimination have also issued findings of sexual orientation and gender identity discrimination in their reports.⁴³ For example, the legislative findings in New York’s Sexual Orientation Non-Discrimination Act include the statement, “[M]any residents of this state have encountered prejudice on account of their sexual orientation, and that this prejudice has severely limited or actually prevented access to employment, housing, and other basic necessities of life, leading to deprivation and suffering.”⁴⁴ And, in 2007, the Iowa Civil Rights Commission said in support of an amendment adding sexual orientation and gender identity to the state anti-discrimination statute: “We no longer wish to see our children, neighbors, co-workers, nieces, nephews, parishioners, or classmates leave Iowa so they can work, prosper, live or go out to eat. Our friends who are gay or lesbian know the fear and pain of hurtful remarks,

harassment, attacks, and loss of jobs or housing simply because of their sexual orientation or gender identity.”⁴⁵

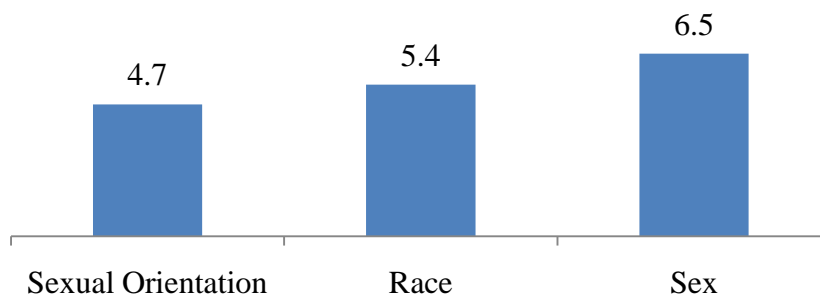
C. Administrative Complaints & Other Documented Examples of Discrimination

i. Administrative Complaints

Data from states that currently prohibit workplace discrimination on the basis of sexual orientation and/or gender identity demonstrate the continuing existence of discrimination against LGBT people and those perceived to be LGBT.⁴⁶ In 2002, the United States Government Accountability Office compiled a record of 4,788 state administrative complaints alleging employment discrimination on the basis of sexual orientation or gender identity filed between 1993 and 2001.⁴⁷ In 2008 and 2009, the Williams Institute conducted two studies of administrative complaints alleging sexual orientation and/or gender identity discrimination filed with state and local enforcement agencies. The 2008 study gathered all complaints of sexual orientation and gender identity employment discrimination filed in the 20 states that then had sexual orientation and/or gender identity non-discrimination laws. The study gathered a total of 6,914 complaints filed from 1999 to 2007.⁴⁸ The 2009 study focused on employment discrimination against public sector workers, and contacted the then 20 states and 203 municipalities with sexual orientation and gender identity non-discrimination laws and ordinances. The responding states and municipalities provided a record of 560 complaints filed with state agencies from 1999 to 2007, and 128 complaints filed with local agencies from as far back as 1982, by state and local government employees.⁴⁹ Because several state and local governments did not respond, or did not have a complete record of the data, this number most likely underrepresents the number of administrative complaints filed during that period on the basis of sexual orientation and/or gender identity by public sector employees.

Two other studies by the Williams Institute demonstrate that when the number of complaints is adjusted for the population size of workers that have a particular minority trait, the rate of complaints filed with state administrative agencies alleging sexual orientation discrimination in employment is comparable to the rate of complaints filed alleging race or sex discrimination.⁵⁰

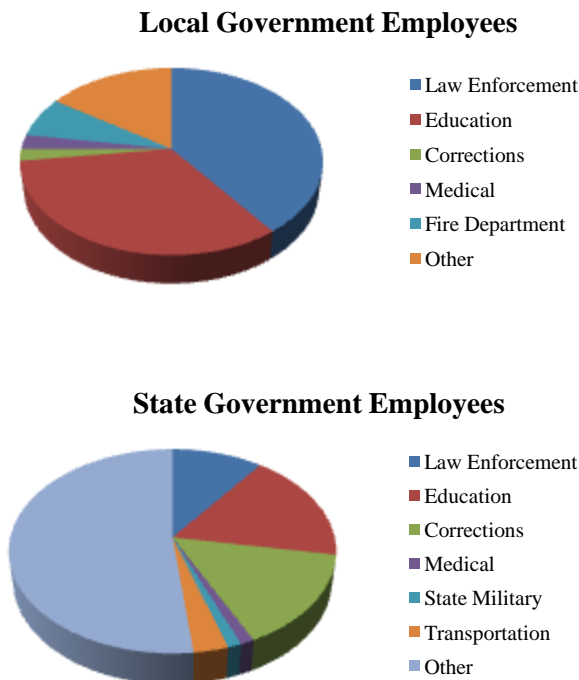
Figure 2: Anti-Discrimination Administrative Complaints for Sexual Orientation, Race, and Sex, United States (Per 10,000)



ii. Other Documented Examples of Discrimination

The 2009 Williams Institute report focused on discrimination in the public sector found more than 380 documented examples of workplace discrimination by state and local employers against LGBT people from 1980 through 2009.⁵¹ These examples had been culled from court opinions, administrative complaints, complaints to community-based organizations, academic journals, newspapers and other media, and books. The examples came from 49 of the 50 states and every branch of state government: legislatures, judiciaries, and the executive branch. Many of the workers in the examples had been subject to verbal harassment. The following is a very limited sample of what LGBT people reported having been called in the workplace: an officer at a state correctional facility in New York, “pervert” and “homo;” a lab technician at a state hospital in Washington, a “dyke;” and an employee of New Mexico’s Juvenile Justice System, a “queer.” There are countless instances of the use of “fag” and “faggot” in the report. The reported incidents frequently also included physical violence. For example, a gay employee of the Connecticut State Maintenance Department was tied up by his hands and feet; a firefighter in California had urine put in her mouthwash; a transgender corrections officer in New Hampshire was slammed into a concrete wall; and a transgender librarian at a college in Oklahoma had a flyer circulated about her declaring that God wanted her to die.⁵² Many employees reported that, when they complained about this kind of harassment and requested help, they were told that it was of their own making, and no action was taken.⁵³

Figure 3: Public Sector Employees Represented in the 380 Documented Examples of Discrimination, by Occupation, United States



iii. Indications of Underreporting

The record of discrimination in court cases, administrative complaints, and other documented examples should not be taken as a complete record of discrimination against LGBT people by state and local governments.⁵⁴ First, not all of the administrative agencies and organizations that enforce anti-discrimination laws responded to the researchers' requests.⁵⁵ Second, several academic studies have shown that state and local administrative agencies often lack the resources, knowledge and willingness to consider sexual orientation and gender identity discrimination complaints.⁵⁶ Similarly, legal scholars have noted that courts and judges have often been unreceptive to LGBT plaintiffs and reluctant to write published opinions about them, reducing the number of court opinions and administrative complaints.⁵⁷ Third, many cases settle before an administrative complaint or court case is filed. Unless the parties want the settlement to be public, and the settlement is for a large amount, it is likely to go unreported in the media or academic journals.⁵⁸ Fourth, LGBT employees are often reluctant to pursue claims for fear of retaliation or of “outing” themselves further in their workplace. For example, in a study published in 2009 by the Transgender Law Center, only 15% of those who reported that they had experienced some form of discrimination had filed a complaint.⁵⁹ Finally, numerous studies have documented that many LGBT people are not “out” in the workplace (see section II.A. *infra* for a review of research showing that many LGBT people are not out in the workplace).

III. Discrimination Has a Negative Impact on LGBT People

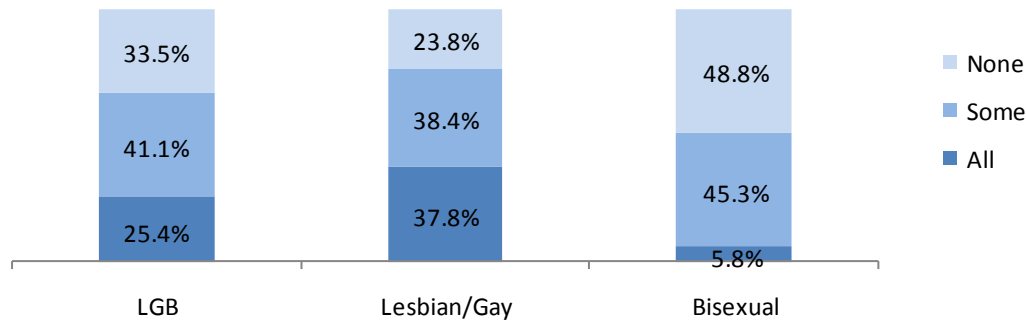
Research has documented not only the pervasiveness of sexual orientation and gender identity discrimination but also the negative impacts of discrimination on LGBT people. Because of discrimination, and fear of discrimination, many LGBT employees hide their identities, are paid less and have fewer employment opportunities than non-LGBT employees. Research has also documented that such discrimination, as the expression of stigma and prejudice, also exposes LGBT people to increased risk for poorer physical and mental health.

A. Concealing LGBT Identity in the Workplace

Numerous studies have documented that many LGBT people conceal their sexual orientation and/or gender identity in the workplace. Results from recent studies include:

- More than one-third of LGB respondents to the GSS reported that they were not out to anyone at work, and only 25% were out to all of their co-workers.⁶⁰
- Bisexual respondents to the GSS were much less likely to be out to all of their co-workers than gay and lesbian respondents (6% vs. 38% respectively).
- A 2009 non-probability survey conducted across the U.S. found that 51% of LGB employees did not reveal their LGBT identity to most of their co-workers.⁶¹
- A 2011 study found that 48% of LGBT white-collar employees were not open about their LGB identity at work.⁶²

Figure 4: How Many Co-Workers Know That You are Gay, Lesbian, or Bisexual, General Social Survey, 2008



Surveys have found that fear of discrimination is the reason many LGB employees choose to hide their LGB identity at work. Results from recent studies include:

- A 2005 national survey found that of LGB respondents who were not out at work, 70% reported that they concealed their sexual orientation because they feared risk to employment security or harassment in the workplace.⁶³
- A national probability survey conducted in 2009 found that 28% of closeted LGB employees who were not out in the workplace concealed their sexual identity because they felt that it may be an obstacle to career advancement and 17% believed they might be fired. Thirteen percent of closeted LGB respondents and 40% of transgender respondents were not open about their sexual orientation or gender identity in the workplace because they feared for their personal safety.⁶⁴
- Over 26% of LGB respondents, and 37% of transgender respondents, to a 2010 survey of LGBT people in Utah reported that they fear discrimination by their current employer.⁶⁵

The fear these respondents reported of being exposed to discrimination is in line with data showing that people who are out in the workplace are more likely to be discriminated against than people who conceal their sexual identity in the workplace (see section I.A. *supra*).

Studies have found that even in the absence of actual discrimination, staying closeted at work for fear of discrimination can have negative effects on LGBT employees. Results from recent studies include:

- A 2007 study of LGB employees found that those who most feared that they would be discriminated against if they revealed their sexual orientation in the workplace had less positive job and career attitudes, received fewer promotions, and reported more physical stress-related symptoms than those who were less fearful of discrimination.⁶⁶
- A 2011 survey of 2,800 LGBT white-collar employees showed that only one-third of those employees who were not open about their LGBT identity at work were happy in their careers. Of those employees who were open about their LGBT identity, two-thirds reported being content in the workplace.⁶⁷
- The 2011 study of white-collar employees also found that compared with employees who were out at work, employees who were not out at work were more likely to feel isolated and uncomfortable “being themselves,” were 40% less likely to trust their

- employer, and were less likely to achieve senior management status (28% who were not out had achieved senior management status, compared with 71% who were out).⁶⁸
- Among the white-collar employees who felt isolated at work, closeted employees were 73% more likely to say they planned to leave their companies within three years.⁶⁹
 - Further, closeted respondents were more likely to feel stalled in their careers and unhappy with their rate of promotion. Those LGBT employees who were frustrated with their career advancement were three times more likely to say they planned to leave their company within the next year.⁷⁰
 - Additionally, the white-collar employee respondents who were out were more likely to think that LGBT people are treated unfairly because of their LGBT identity than those who were not out (20% of those not out, compared with 5% of those who were out).⁷¹

B. Wage and Employment Disparities

Twelve studies conducted over the last decade show that gay male workers are paid less on average than their heterosexual male co-workers with the same productivity characteristics, leading researchers to attribute the disparity to different treatment of workers by sexual orientation.⁷² All of these studies show a significant pay gap for gay men when compared to heterosexual men who have the same productive characteristics.⁷³ The wage gap identified in these studies varies between 10%-32% of the heterosexual men's earnings.⁷⁴

Census data analyses show that men in same-sex couples earn less than married men in 47 states and the District of Columbia.⁷⁵ Women in same-sex couples generally earn the same as or more than women in opposite-sex marriages, but less than either coupled gay men or men in opposite-sex marriages.⁷⁶

While no detailed wage and income analyses of the transgender population have been conducted to date, six non-probability surveys of the transgender population conducted between 1999 and 2005 found that 6%-60% of respondents reported being unemployed, and 22%-64% of the employed population earned less than \$25,000 per year.⁷⁷ Transgender respondents to a 2011 national survey were unemployed at twice the rate of the general population, and 15% reported a household income of under \$10,000 per year.⁷⁸ The unemployment rate for transgender people of color was nearly four times the national unemployment rate.⁷⁹ In response to a 2010 survey, 25% of transgender respondents in Colorado reported a yearly income of less than \$10,000.⁸⁰

C. Impact on Mental and Physical Health

Research shows that experiencing discrimination can affect an individual's mental and physical health.⁸¹ The *minority stress model* suggests that prejudice, stigma, and discrimination create a social environment characterized by excess exposure to stress, which, in turn, results in health disparities for sexual minorities compared with heterosexuals.⁸²

In considering experiences both in and outside of the workplace, studies of LGB populations show that LGB people suffer psychological and physical harm from the prejudice, stigma, and discrimination that they experience. Research demonstrating the ill effects of a homophobic social environment has been recognized by public health authorities including the U.S. Department of Health and Human Services in *Healthy People 2010* and *Healthy People 2020*,

which set goals and objectives designed to improve the health of people in the United States, through health promotion and disease prevention.⁸³ Healthy People 2010 identified the gay and lesbian population, among groups targeted to reduce health disparities in the United States.⁸⁴ In explaining the reason for the inclusion of the gay and lesbian population as one of the groups requiring special public health attention, the Department of Health and Human Services noted, “The issues surrounding personal, family, and social acceptance of sexual orientation can place a significant burden on mental health and personal safety.” This conclusion was reiterated by the Institute of Medicine of the National Academies, an independent body of scientists that advises the federal government on health and health policy matters, in its recent report on *The Health of Lesbian, Gay, Bisexual and Transgender People*, where it said “LGBT people . . . face a profound and poorly understood set of . . . health risks due largely to social stigma.”⁸⁵

Research about mental and physical health outcomes of LGBT people support the minority stress model.⁸⁶ For example, a 2009 survey conducted by the Massachusetts Department of Public Health of state residents found that 83% of heterosexual respondents indicated they were in excellent or very good health compared to 78% of gay men or lesbians, 74% of bisexual respondents, and 67% of transgender respondents.⁸⁷ A number of studies have demonstrated links between minority stress factors and physical health outcomes, such as immune function, AIDS progression, and perceived physical well-being.⁸⁸ For example, studies examined the impact of concealing one’s sexual orientation as a stressor. Thus, HIV-positive but healthy gay men were followed up for 9 years to assess factors that contribute to progression of HIV (e.g., moving from asymptomatic HIV infection to a diagnosis with an AIDS defining disease, such as pneumonia). The researchers showed that HIV progressed more rapidly among men who concealed their gay identity than those who disclosed it. This was true even after the investigators controlled for the effects of other potentially confounding factors, like health practices, sexual behaviors, and medication use.⁸⁹ More recent studies, conducted in the context of availability of more effective HIV medications than were available to the men in the 1996 study, found, similarly, that concealment of gay identity was associated with lower CD4 count, a measure of HIV progression.⁹⁰

High levels of perceived discrimination or fear of discrimination among LGBT people have been linked to higher prevalence of psychiatric disorders, psychological distress,⁹¹ depression,⁹² loneliness, and low self-esteem.⁹³ And experiences of anti-gay verbal harassment, discrimination, and violence have been associated with lower self-esteem, higher rates of suicidal intention,⁹⁴ anxiety, anger, post-traumatic stress, other symptoms of depression,⁹⁵ psychological distress,⁹⁶ mental disorder, and deliberate self-harm.⁹⁷

Discrimination in the employment context specifically has been found to negatively affect the well-being of LGBT people. Results from studies focused on discrimination in the workplace include:

- LGB employees who had experienced discrimination had higher levels of psychological distress and health related-problems.⁹⁸ They also were less satisfied with their jobs and were more likely to contemplate quitting and to have higher rates of absenteeism.⁹⁹
- A 2010 study indicated that, although generally there are no differences between LGBT workers and non-LGBT workers in job performance,¹⁰⁰ if LGBT employees are afraid of discrimination or preoccupied with hiding their LGBT identity, their cognitive functioning may be impaired.¹⁰¹

- A 2009 national survey found that many LGBT employees reported feeling depressed, distracted, and exhausted, and avoided people and work-related social events as a result of working in an environment that was not accepting of LGBT people. Some employees reported that the lack of acceptance in their workplace had caused them to look for other jobs or to stay home from work.¹⁰²
- Conversely, a 2008 study found that supervisor, coworker, and organizational support for LGB employees had a positive impact on employees in terms of job satisfaction, life satisfaction, and outness at work.¹⁰³

III. Conclusion

Despite the variations in methodology, context, and time period in the studies reviewed in this report, the evidence demonstrates a consistent pattern: sexual orientation and gender identity-based discrimination are common in many workplaces across the country and in both the public and private sectors. Further, an emerging body of research shows that discrimination has negative impacts on LGBT employees both in terms of physical and emotional health, wages and opportunities, job satisfaction, and productivity.

Endnotes

¹ More than 15 federal and state courts and a number of legal scholars have concluded that sexual orientation is not related to an individual's ability to contribute to society or perform in the workplace. THE BRAD SEARS, NAN HUNTER, & CHRISTY MALLORY, WILLIAMS INST., DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION & GENDER IDENTITY IN STATE EMPLOYMENT 4-1 (2009) [hereinafter THE WILLIAMS INST., DOCUMENTING DISCRIMINATION]. Indeed, every court that has considered this criteria when determining whether sexual orientation is a suspect class has reached the same conclusion. *Id.*, at 2. For example, in 2008, the Connecticut Supreme Court found that "the characteristic that defines the members of this group—attraction to persons of the same sex—bears no logical relationship to their ability to perform in society, either in familial relations or otherwise as productive citizens. *Kerrigan v. Comm'r of Pub. Health*, 957 A.2d 407, 432 (2008) (holding that the Connecticut Constitution protects the right of same sex couples to marry). Similarly, in 2004, a justice on the Montana Supreme Court, found that "there is no evidence that gays and lesbians do not function as effectively in the workplace or that they contribute any less to society than do their heterosexual counterparts." *Snetsinger v. Mont. Univ. Sys.*, 325 Mont. 148, 162 (2004) (Nelson, J., concurring).

² THE WILLIAMS INST., DOCUMENTING DISCRIMINATION, *supra* note 1.

³ M.V. Lee Badgett, Brad Sears, Holning Lau, & Deborah Ho, *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination 1998-2008*, 84 CHI.-KENT L. REV. 559 (2009).

⁴ GARY J. GATES, THE WILLIAMS INSTITUTE, SEXUAL MINORITIES IN THE GENERAL SOCIAL SURVEY: COMING OUT AND DEMOGRAPHIC CHARACTERISTICS 1 (2010).

⁵ *Id.*

⁶ Special analyses conducted by Gary J. Gates, the William Institute, using data from the General Social Survey 2008 (2011).

⁷ *Id.*

⁸ GARY J. GATES, THE WILLIAMS INST., SEXUAL MINORITIES IN THE 2008 GENERAL SOCIAL SURVEY: COMING OUT AND DEMOGRAPHIC CHARACTERISTICS (Oct. 2010).

⁹ Special analyses conducted by Gary J. Gates, *supra* note 6.

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¹¹ *Id.*

¹² *Id.*

¹³ HENRY J. KAISER FAMILY FOUNDATION, INSIDE-OUT: A REPORT ON THE EXPERIENCES OF LESBIANS, GAYS, AND BISEXUALS IN AMERICAN AND THE PUBLIC'S VIEW ON ISSUES AND POLICIES RELATED TO SEXUAL ORIENTATION 2-3 (2001)

¹⁴ Gregory M. Herek, *Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States: A National Probability Sample*, 24 J. INTERPERSONAL VIOLENCE 54, 64 (2008).

¹⁵ HUMAN RIGHTS CAMPAIGN, DEGREES OF EQUALITY REPORT 5 (2009), *available at* http://www.hrc.org/documents/HRC_Degrees_of_Equality_2009.pdf.

¹⁶ LAMBDA LEGAL & DELOITTE FIN. ADVISORY SERV. LLP, 2005 WORKPLACE FAIRNESS SURVEY 4 (2006), *available at* <http://data.lambdalegal.org/pdf/641.pdf>.

¹⁷ SUE RANKIN, WARREN J. BLUMENFELD, GENEVIEVE N. WEBER & SOMJEN FRAZER, THE STATE OF HIGHER EDUCATION FOR LGBT PEOPLE (forthcoming 2010).

¹⁸ OUT & EQUAL, 2009 OUT & EQUAL WORKPLACE SURVEY 2 (2009), *available at* <http://outandequal.org/documents/2009Out&EqualWorkplaceSurvey.pdf>.

¹⁹ CLIFFORD ROSKY, CHRISTY MALLORY, JENNI SMITH & M.V. LEE BADGETT, EMPLOYMENT DISCRIMINATION AGAINST LGBT UTAHNS 1 (2011), *available at* <http://www3.law.ucla.edu/williamsinstitute/pdf/Utah%20Employment%20Discrimination%20PDF.pdf>.

²⁰ ONE COLORADO, A CONVERSATION WITH COLORADANS 6 (2010), *available at* http://www.one-colorado.org/wp-content/uploads/2010/10/SurveyResults_BigBook.pdf.

²¹ SOUTH CAROLINA EQUALITY, A SURVEY OF SOUTH CAROLINA'S LESBIAN, GAY, BISEXUAL, AND TRANSGENDER COMMUNITY (2010), *available at* <http://www.scequality.org/public/files/docs/SurveyFinal.pdf>.

²² M.V. Lee Badgett et al., *supra* note 3.

²³ *Id.*

²⁴ *Id.*

²⁵ TRANSGENDER LAW CENTER, STATE OF TRANSGENDER CALIFORNIA 1 (2009), *available at* <http://www.transgenderlawcenter.org/pdf/StateofTransCAFINAL.pdf>. A 2003 survey of transgender individuals in California by the same researchers yielded similar results. SHANNON MINTER & CHRISTOPHER DALEY, NATIONAL CENTER FOR LESBIAN RIGHTS & TRANSGENDER LAW CENTER, TRANS REALITIES: A LEGAL NEEDS ASSESSMENT OF SAN FRANCISCO'S TRANSGENDER COMMUNITIES 14 (2003) *available at* <http://www.transgenderlawcenter.org/pdf/StateofTransCAFINAL.pdf>.

²⁶ ROSKY ET AL., *supra* note 19.

²⁷ One Colorado, *supra* note 20.

²⁸ JAIME M. GRANT, LISA A. MOTTET, JUSTIN TANIS, JACK HARRISON, JODY L. HERMAN, AND MARA KEISLING, NATIONAL CENTER FOR TRANSGENDER EQUALITY & THE GAY AND LESBIAN TASK FORCE, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 51 (2011), *available at* http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

²⁹ JODY L. HERMAN, WILLIAMS INST., THE COST OF EMPLOYMENT DISCRIMINATION AGAINST TRANSGENDER RESIDENTS OF MASSACHUSETTS 1 (Apr. 2011), *available at* <http://www3.law.ucla.edu/williamsinstitute/pdf/MATransEmpDiscrimFINAL.pdf>.

³⁰ THE WILLIAMS INST., DOCUMENTING DISCRIMINATION at 9-25.

³¹ M.V. Lee Badgett et al., *supra* note 3.

³² *Executive Summary* to THE WILLIAMS INST., DOCUMENTING DISCRIMINATION, *supra* note 1, at 2; *Perry v. Schwarzenegger*, 704 F.Supp.2d 921 (N.D. Cal. 2010).

³³ *Perry*, 704 F.Supp.2d at 981.

³⁴ *In re Marriage Cases*, 43 Cal. 4th 757, 840 (2008).

³⁵ *Equal. Found. of Greater Cincinnati v. City of Cincinnati*, 54 F.3d 261, 264 n.1 (6th Cir. 1995) (quoting trial court findings), *vacated*, 518 U.S. 100 (1996), *cert. denied*, 525 U.S. 943 (1998).

³⁶ THE WILLIAMS INST., DOCUMENTING DISCRIMINATION, *supra* note 1, at 6-1 – 6-12:

³⁷ *Executive Summary* to THE WILLIAMS INST., DOCUMENTING DISCRIMINATION, *supra* note 1, at 2; THE WILLIAMS INST., DOCUMENTING DISCRIMINATION, *supra* note 1, at 6-13 – 6-25; *Perry v. Schwarzenegger*, 704 F.Supp.2d 921 (N.D. Cal. 2010); *In re Balas*, No. 2:22-bk-17831, 2011 Bankr. LEXIS 2157 (June 13, 2011).

³⁸ *Log Cabin Republicans v. U.S.*, Nos. 10-56634, 10-56813 (9th Cir. July 6, 2011) (order lifting stay); *Log Cabin Republicans v. U.S.*, No. CV 04-08425-VAP (C.D. Cal. Oct. 12, 2010).

³⁹ Office of Public Affairs, Department of Justice, Statement of the Attorney General on Litigation Involving the Defense of Marriage Act (Feb. 23, 2011).

⁴⁰ Letter from Eric Holder, U.S. Attorney General, to John A. Boehner, Speaker, U.S. House of Representatives, re: Defense of Marriage Act (Feb. 23, 2011).

⁴¹ Brief of Defendants at 6-13, *Golinski v. OPM*, No. C 3:10-00257-JSW (9th Cir. June 2011).

⁴² *Id.*

⁴³ *Executive Summary* to THE WILLIAMS INST., DOCUMENTING DISCRIMINATION, *supra* note 1, at 9.

⁴⁴ 2002 N.Y. Laws ch. 2, § 1.

⁴⁵ Press Release, Iowa Civil Rights Commission, Policy Statements 4 (June 19, 2007), *available at* http://www.iowa.gov/government/crc/docs/Policy_Statements.doc.

⁴⁶ In 1996, a study of data collected from state and local administrative agencies on sexual orientation employment discrimination complaints showed 809 complaints filed with state agencies in 9 states that prohibited sexual orientation discrimination by statute or executive order. See Norma M. Riccucci & Charles W. Gossett, *Employment Discrimination in State and Local Government: The Lesbian and Gay Male Experience*, 26 AM. REV. OF PUB. ADMIN. 175 (1996).

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⁴⁸ CHRISTOPHER RAMOS, M.V. LEE BADGETT, AND BRAD SEARS, THE WILLIAMS INST., EVIDENCE OF EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY: COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES 1999-2007 (2008).

⁴⁹ THE WILLIAMS INST., DOCUMENTING DISCRIMINATION, *supra* note 1, at 11-10 – 11:17.

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- ⁵⁰ The earlier study conducted in 2001, using the same methodology, found that in 6 of 10 states surveyed, the incidents of sexual orientation filings fell between the incidence of sex and race discrimination filings. In 2 other states, the prevalence of sexual orientation filings exceeded that of both race and sex and in only 2 states did sexual orientation filings fall below race and sex filings. See William B. Rubenstein, *Do Gay Rights Matter?: An Empirical Assessment*, 75 S. CAL. L. REV. 65, 65-68 (2001).
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- ⁵² *Id.*
- ⁵³ *Id.*
- ⁵⁴ *Id.* at 13-14.
- ⁵⁵ *Id.* at 14.
- ⁵⁶ *Id.*
- ⁵⁷ *Id.*
- ⁵⁸ *Id.*
- ⁵⁹ *Id.*
- ⁶⁰ GATES, *supra* note 4.
- ⁶¹ HUMAN RIGHTS CAMPAIGN, *supra* note 15.
- ⁶² SYLVIA ANN HEWLETT & KAREN SUMBERG, CENTER FOR WORK-LIFE POLICY, THE POWER OF “OUT” 1 (June 2011).
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- ⁶⁵ ROSKY ET AL., *supra* note 19.
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- ⁶⁷ HEWLETT & SUMBERG, *supra* note 62.
- ⁶⁸ *Id.*
- ⁶⁹ *Id.*
- ⁷⁰ *Id.*
- ⁷¹ *Id.*
- ⁷² *Executive Summary to THE WILLIAMS INST., DOCUMENTING DISCRIMINATION*, *supra* note 1, at 11; *The Employment Non-Discrimination Act of 2007: Hearing on H.R.2015 Before the House Comm. on Educ. and Labor and the H. Sub. Comm. on Health, Employment, Labor, and Pensions*, 110th Cong. 4 (2007) (written testimony of M.V. Lee Badgett, Research Director, The Williams Institute), *available at* <http://www.law.ucla.edu/williamsinstitute/publications/HR2015%20testimony.pdf> [hereinafter Badgett, ENDA Testimony 2007].
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- ⁷⁶ *Id.*
- ⁷⁷ M.V. Lee Badgett et al., *supra* note 3.
- ⁷⁸ GRANT ET AL., *supra* note 28.
- ⁷⁹ *Id.*
- ⁸⁰ One Colorado, *supra* note 20.
- ⁸¹ David R. Williams, Harold W. Neighbors & James S. Jackson, *Racial/Ethnic Discrimination and Health: Findings from Community Studies*, 98 AM. J. OF PUB. HEALTH S29 (2008).
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