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**Documenting Discrimination on the Basis of Sexual Orientation
and Gender Identity in State Employment**

Title

Surveys of LGBT Public Employees and Their Co-Workers

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Chapter 10: Surveys of LGBT Public Employees and Their Co-Workers

In 2007, the Williams Institute published a study summarizing dozens of surveys about LGBT people's experiences of discrimination conducted from the mid-1980s to 2007.¹ This report did not distinguish between private and public employees. Among the report's key findings were:

- Since the mid-1990s, fifteen studies found that 15% to 43% of LGB respondents experienced discrimination in the workplace-- 8% to 17% were fired or denied employment, 10% to 28% were denied a promotion or given negative performance evaluations, 7% to 41% were verbally/physically abused or had their workplace vandalized, and 10% to 19% reported receiving unequal pay or benefits.
- When transgender individuals were surveyed separately, they reported similar or higher levels of employment discrimination. In six studies conducted between 1996 and 2006, 20% to 57% of transgender respondents reported having experienced employment discrimination at some point in their life. More specifically, 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.
- When surveyed, many heterosexual co-workers also report witnessing sexual orientation discrimination in the workplace. These studies revealed

¹ LEE BADGETT, DEBORAH HO, AND BRAD SEARS, THE WILLIAMS INSTITUTE, BIAS IN THE WORKPLACE: CONSISTENT EVIDENCE OF SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION (2007).

that 12% to 30% of respondents in certain occupations, such as the legal profession, have witnessed antigay discrimination in employment.

This section summarizes a large body of survey data, with samples drawn from across the nation and covering a range of occupational classifications, that provides compelling evidence that discrimination against LGBT state government employees, as well as other public sector workers, is serious, pervasive and continuing. The more than 80 surveys summarized in this section also indicate that there is no reason to believe that the level of employment discrimination based on sexual orientation and gender identity by state employers and local employers is any different than the level of discrimination by private employers.

This section is divided into six parts. The first five sections provide data from 1) general surveys of LGBT people that include public employees; 2) surveys of LGBT education professionals; 3) surveys of judges and lawyers; 4) surveys of public safety officers; and 5) surveys of heterosexual employees asking if they have witnessed sexual orientation and gender identity discrimination in the workplace. Despite the high levels of discrimination reported in these surveys, the final section summarizes research that indicates that employment discrimination against LGBT people is likely under-reported because many LGBT workers remain closeted in the workplace to avoid such discrimination, and many select into jobs and workplaces where they are less likely to encounter such discrimination.

Some of the main findings of this section include:

- One in five LGB state, local, and federal employees in the 2008 General Social Survey reported some type of employment discrimination.

- A 2009 survey of 646 transgender employees, 11% of whom were public sector employees, revealed that 70% had experienced workplace discrimination directly related to their gender identity.
- In the spring of 2009 a survey including 1,902 LGBT faculty and employees from state public colleges and universities from across the country found that almost one in five (19%) responded that during the past year they had “personally experienced exclusionary, intimidating, offensive,” “hostile,” and/or “harassing” behavior that had “interfered with their ability to work or learn on campus.” Over 70% of these respondents, representing 257 LGBT public employees at state institutions, said that this treatment was due to their “sexual identity.”
- In a 2008 survey of 514 high, middle, and elementary school teachers, over half felt unsafe at work because they were LGBT, 35% feared losing their job if “outed” to an administrator, and 27% had been harassed within the prior year.
- In the 2002-2003 study conducted by the American Bar Foundation, 37% of LGBT state and local public employees with law degrees reported being verbally harassed in the workplace and more than one in four experienced some other type of discrimination.
- In a 2009 survey of LGBT public safety officers published in *Police Quarterly*, 22% reported experiencing discrimination in promotions, 13% in hiring, and 2% reported being fired because of their sexual orientation or gender identity.

- A Kaiser Family Foundation survey found that 76% of heterosexuals thought LGBT people experienced discrimination “often” or sometimes” in applying or keeping jobs.
- A 2008 Out & Equal survey reported that 36% of lesbians and gay men were closeted at work.

A. General Surveys of LGBT Employees That Include State and Other Employees

1. 2008 General Social Survey– Sexual Orientation Module

In 2008, the highly respected General Social Survey (GSS) found that one in five LGB government employees reported employment discrimination, including being fired and workplace harassment.

The GSS is a bi-annual survey conducted by the National Opinion Research Center at the University of Chicago. The GSS is designed to provide information on the structure and development of American society. The GSS contains a standard ‘core’ of demographic and attitudinal questions, plus topics of special interest. In the 2008 GSS, the core included a sexual orientation identity question and a module of questions for those who indicated a gay, lesbian, or bisexual (GLB) sexual orientation or who reported having had same-sex sexual partners. Of the 2,023 respondents surveyed in the 2008 GSS, 85 individuals who either identified as GLB or reported having same-sex sexual partners completed this module. Of that group, 21 individuals said that they were “employed by the federal, state, or local, government.” Among the 21 government employees who identified as GLB or reported same-sex sexual partners, more than one in five reported some type of employment discrimination based on their sexual orientation

(or perceived sexual orientation) at some point in their career—17% reported being fired because of their sexual orientation, 13% reported being denied a promotion or receiving a negative job evaluation, and 20% reported being harassed verbally or in writing on the job because they are gay, lesbian or bisexual. Unfortunately, the GSS data does not allow us to determine if the discrimination occurred during their government employment or a prior job, although it is reasonable to assume that at least some of this discrimination did occur during government employment.²

2. 2005 National Lambda Legal and Deloitte Financial Advisory Services Survey

A national survey conducted by Lambda Legal and Deloitte Financial Advisory Services LLP in 2005, which included public sector employees, further revealed extensive employment discrimination against LGBT workers or those perceived to be LGBT. The study is larger than any other poll of LGBT people in the workplace that has been conducted in the preceding decade. The sample included 1,205 respondents, 5% of whom identified their occupation as “government services” described on the questionnaire as “government, military, police, fire, sanitation, etc.”³ The sample had 13 other options for employment category, several of which would have encompassed both public and private sector employees; examples include “education and library services” and “legal profession” which ranked second and third largest percentage-wise (15% and 12% of the sample, respectively). Respondents came from across the United States with 26% from the West (Alaska, California, Hawaii, Nevada, Oregon, and Washington), 24%

² Special analyses conducted by Gary J. Gates, PhD, Williams Institute, UCLA School of Law, using the 2008 General Social Survey.

³ LAMBDA LEGAL & DELOITTE FINANCIAL SERVICES LLP, 2005 WORKPLACE FAIRNESS SURVEY (Apr. 2006), *available at* <http://data.lambdalegal.org/pdf/641/pdf>.

from the Northeast (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont), 17% from the Midwest (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin) 9% from the South Central region (Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas), 13% from the South (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee), 7% from the Mid-Atlantic region (Washington, D. C., Delaware, Maryland, Pennsylvania, Virginia, and West Virginia), and 5% from the Mountains (Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming).

Of all respondents, 39% reported experiencing some form of discrimination or harassment related to their sexual orientation in the workplace within the past five years, and 11% reported frequent workplace discrimination or harassment. Additionally, 19% of respondents had experienced barriers to promotion because of their sexual orientation.

3. 2009 Transgender Law Center Survey

A March, 2009 report released by the Transgender Law Center assessing the economic health of the transgender community in California revealed that the passage of a non-discrimination law has not ended gender identity discrimination.⁴ California has prohibited employment discrimination on the basis of gender identity by statute since 2004⁵, yet discrimination against transgender employees remains common. Of 646 transgender respondents to the survey, 70% had experienced workplace discrimination directly related to their gender identity. More than 11% of the respondents were public sector employees. An earlier study by the National Center for Lesbian Rights and the

⁴ TRANSGENDER LAW CENTER, STATE OF TRANSGENDER CALIFORNIA (Mar. 2009), *available at* <http://www.transgenderlawcenter.org/pdf/StateofTransCAFINAL.pdf>.

⁵ CAL. GOV. CODE §§ 12926(p), 12949.

Transgender Law Center had similar results, and featured an anecdote from a San Francisco area public school teacher who transitioned in the late 1990's. After transitioning, she was unable to secure a teaching position in any of several school districts to which she applied.⁶ She was subsequently turned down for a federal position immediately after disclosing of her transgender status—and after two days and multiple hours of screening.

4. 2002 It's Time Illinois Survey

A study of discrimination cases filed on the basis of gender identity produced by a non-profit organization - It's Time, Illinois - revealed that employment discrimination was the most common form levied against gender non-conforming people (36.67% of complaints filed). One of the examples included in the published report consisted of portions of a complaint filed by a state government employee.⁷ The employee, a pre-operative male to female transgender individual, was constantly harassed on the job because of her gender status. Her union steward refused to take up her grievance because the steward "didn't agree with it."⁸

5. 1984 Levine and Leonard Survey

Martin P. Levine and Robin Leonard published a study in 1984 focused specifically on the unique workplace discrimination experiences facing lesbian employees in public and private sectors. The study included a total of 203 women recruited through social networks, known lesbian social venues, and professional/political

⁶ SHANNON MINTER & CHRISTOPHER DALEY, NATIONAL CENTER FOR LESBIAN RIGHTS & TRANSGENDER LAW CENTER, TRANS REALITIES: A LEGAL NEEDS ASSESSMENT OF SAN FRANCISCO'S TRANSGENDER COMMUNITIES (2003), *available at* <http://www.transgenderlawcenter.org/tranny/pdfs/Trans%20Realities%20Final%20Final.pdf>.

⁷ BETH PLOTNER, MIRANDA STEVENS-MILLER, AND TINA WOOD-SIEVERS, IT'S TIME ILLINOIS..., 6TH REPORT ON DISCRIMINATION AND HATE CRIMES AGAINST GENDER VARIANT PEOPLE (2002), *available at* www.itstimeil.org.

⁸ *Id.* at 16.

organizations; the data are not separated by type of employer.⁹ Nearly 25% of the women surveyed reported actual instances of formal (institutionalized decisions and procedures taken by supervisors) and informal (harassment and other unofficial conduct taken by supervisors and coworkers) job discrimination. The most common experiences reported were having been fired, forced to resign, or not hired as a result of disclosing sexual orientation.

B. Education Professionals

1. 50+ Campus Climate Surveys of State Colleges and Universities

There are over fifty surveys of public colleges and universities from the mid 1980s to the present that attempt to measure the “campus climate” for LGBT faculty and students. Most of these specifically survey and report results for faculty, staff, and administrators, including questions about harassment and discrimination while working at universities and colleges. Since 2003, professor and researcher Susan R. Rankin of Pennsylvania State University has conducted a number of these campus climate assessments measuring the discrimination and hostility faced by campus community members in order to make strategic recommendations to schools for improving the environment for minority groups. Since the inception of Rankin’s campus climate surveys, a number of public colleges and universities have chosen to measure their individual climates based on Rankin’s model, often commissioning Rankin & Associates to conduct the surveys, for the same purpose.

⁹ Martin P. Levine & Robin Leonard, *Discrimination Against Lesbians in The Work Force*, 9 JOURNAL OF WOMEN AND CULTURE 700 (1984).

The overall conclusion is consistent: these studies, without a doubt the largest amount of survey data that exists of discrimination against LGBT state employees of any kind, show that public colleges and universities are often unwelcoming, hostile, and even dangerous environments for LGBT employees and students. These surveys document substantial problems at state colleges and universities in every area of the United States, as illustrated in the summaries that follow.

In the spring of 2009, a group of researchers led by Professor Rankin conducted a national survey to assess the state of higher education for LGBT students, faculty and staff. From February to June of 2009, 5,149 LGBT participants from across the country responded to their survey including 1,902 LGBT employees of public colleges and universities. Almost one in five of these LGBT employees of these state institutions (19%) responded that during the past year they had “personally experienced exclusionary, intimidating, offensive,” “hostile,” and/or “harassing” behavior that had “interfered with their ability to work or learn on campus.” Over 70% of these respondents, 257 LGBT employees at state institutions said that this treatment was due to their “sexual identity.”¹⁰

Also in 2009, Professor Rankin conducted a meta-analysis of campus climate studies she has conducted from 2006-2009. Her analysis included assessments conducted at 41 state colleges and universities from across the country. In these 41 assessments from state schools, 282 respondents identified as “lesbian, gay, bisexual, transgender or queer” (LGBTQ) faculty or employees. When asked if they had observed “unfair, unjust, or discriminatory practices” at their institutions, 29% of these state employees said they had observed such practices in terms of hiring; 16% in terms of “employment-related

¹⁰ Rankin, S., Frazer, S, Weber, G., Blumenfeld, W. (in process, 2009). *The State Of Higher Education for LGBT People*.

disciplinary actions ...up to and including firing;” and 29% had observed such practices related to “behavior, procedures, or employment practices related to promotion.”¹¹

In 2003, Rankin with the Policy Institute of the National Gay and Lesbian Task Force published a report assessing the “Campus Climate” for LGBT people in colleges and universities across the country that included data on employment discrimination.¹² The study profiled survey results from 14 schools, including 10 public colleges and universities. Of the 1,669 surveys completed, 85% were from respondents at state public schools. The state schools included three from the Southwest, one from the Midwest, three from the Mideast, two from the Northwest, and one from the Northeast.¹³

Results of the comprehensive study revealed pervasive employment discrimination against faculty, staff, and administrators. In the previous year, 27% of faculty, staff, and administrators had concealed their sexual orientation to avoid discrimination. In addition, nearly one-quarter of the employees -- 19% of staff and 27% of faculty-- had been harassed due to their sexual orientation or gender identity within the previous year.¹⁴ Two-thirds of these employees reported that this harassment occurred while they were working at their college or university job.¹⁵

When asked whether they had been “denied a university/college employment or promotion due to their sexual orientation or gender identity within the past year,” 20 respondents (2% of faculty, staff, administrators and 1% of students) responded that they had. These percentages are high considering the time period was confined to just the

¹¹ SUSAN R. RANKIN AND DANIEL MERSON, NATIONAL CAMPUS CLIMATE PROJECT (publication in process 2009).

¹² SUSAN R. RANKIN, THE POLICY INSTITUTE OF THE NATIONAL GAY AND LESBIAN TASK FORCE, CAMPUS CLIMATE FOR GAY, LESBIAN, BISEXUAL, AND TRANSGENDER PEOPLE: A NATIONAL PERSPECTIVE (2003), available at http://www.who.edu/cms/files/CampusClimate_23425.pdf.

¹³ *Id.* at 16.

¹⁴ *Id.* at 32.

¹⁵ *Id.*

prior year, so most individuals who had been terminated in the prior year probably would not have received the survey to begin with, and this particular question was the most unanswered question on the survey. Fifty percent of the faculty and staff respondents and 45% of the students failed to answer this question even though it was the fourth question on the survey instrument. In the words of one state employee surveyed, “We need to improve the professional climate so LGBT employees don’t feel threatened to lose their job because of their sexual orientation. Often times I keep my mouth shut or don’t rock the boat so that I don’t fear for my job.”¹⁶

The results of other campus climate surveys conducted at individual state colleges and universities further shed light on state-sponsored employment discrimination based on sexual orientation and/or gender identity:

- The 2005 Oregon State University Campus Climate Assessment prepared by Rankin & Associates revealed that of all sexual orientation or gender identity harassment on campus, 42% of the incidents occurred while the victim was working at a university job.¹⁷
- A campus climate survey of the University of Illinois-Urbana-Champaign conducted by Rankin & Associates in 2006 found that 9% of the 1,230 employees, 2,538 students, and 159 “other” respondents had been victims of harassment due to sexual orientation and/or gender identity and one third had witnessed such harassment.¹⁸ Of the LGB respondents of color, 6% often feared

¹⁶ Id. at 26.

¹⁷ RANKIN & ASSOCIATES CONSULTING, OREGON STATE UNIVERSITY: CAMPUS CLIMATE PROJECT (Jan. 2005), *available at* http://oregonstate.edu/diversity/reports/OSU_Climate_Report.pdf.

¹⁸ RANKIN & ASSOCIATES CONSULTING, UNIVERSITY OF ILLINOIS AT URBANA-CAMPAIGN: CAMPUS CLIMATE PROJECT EXECUTIVE SUMMARY (May 2006), *available at* <http://www.odos.uiuc.edu/lgbt/downloads/lgbtcampusclimatefinalreport.pdf>.

for their personal safety because of their sexual orientation or gender identity and additional 4% concealed their sexual orientation or gender identity to avoid intimidation.

- A 2005 survey of faculty and staff attitudes toward gay colleagues and students produced by the President's Commission on LGBT Issues at the University of Maryland contained several responses hostile to LGBT employees. One university employee wrote, "Safe? Yes, until you force your special brand of mental illness upon me! Comfortable? I hope you are uneasy knowing you are a distinct minority. Welcoming? Probably, to the well behaved" and "The LGBT community has forced the rest of the nation to acknowledge and submit to their deviant behaviors."¹⁹
- The 2004 Rankin & Associates survey of the University of California-Riverside found that 19% of the LGBTQ respondents (82% students and 18% employees) feared for their safety on campus and 16% had experienced harassment due to sexual orientation and/or gender identity. Four percent of all respondents had experienced physical assault because of their sexual orientation and/or gender identity.²⁰
- Similarly, Rankin's 2002 Campus Climate Assessment of the University of Missouri found that 21.9% of staff and 30% of faculty had experienced

¹⁹ LAURA NICHOLS & LAURA SCOTT, UNIVERSITY OF MARYLAND, CAMPUS CLIMATE FOR LESBIAN, GAY, BISEXUAL, TRANSGENDER (LGBT) FACULTY AND STAFF (Oct. 17, 2005), *available at* <http://www.president.umd.edu/PCLGBTI/aboutus/lgbt%20final%20report.pdf>.

²⁰ RANKIN & ASSOCIATES CONSULTING, LGBT CAMPUS CLIMATE ASSESSMENT: UC-RIVERSIDE (2004), *available at* <http://out.ucr.edu/pdf/Survey2004.pdf>.

harassment on campus due to their sexual orientation or gender identity. Of all respondents to the Missouri survey, 84% were LGBT.²¹

- In 1998, Virginia Tech surveyed 2,648 salaried faculty members working at least half time and found that more than 50% of the gay, lesbian, and bisexual faculty members reported unfair treatment or harassment in the workplace.²²
- In a 1995 survey of 1,161 respondents at the University of Illinois-Chicago, 42% reported verbal harassment and 15% reported negative effects on job advancement due to their sexual orientation or gender identity. Four percent reported pressure to be silent about, or felt threatened with exposure of, their sexual orientation or gender identity²³
- In a 1994 survey of 366 respondents at the University of Wisconsin-Milwaukee, 67% reported verbal harassment and 8% reported negative effects on job advancement due to their sexual orientation or gender identity.²⁴
- In a 1992 survey of 600 faculty and staff at the University of Arizona, 12% indicated they had experienced verbal harassment and 35% said they had experienced negative effects on their job advancement due to their sexual orientation or gender identity.²⁵
- In two surveys at Pennsylvania State University conducted in 1994 and 1987 that included 1,078 faculty respondents, 72% reported verbal harassment.²⁶

²¹ SUSAN R. RANKIN, CAMPUS CLIMATE ASSESSMENT FOR LESBIAN, GAY, BISEXUAL, & TRANSGENDER PERSONS (May 2002) (on file with the Williams Institute).

²² OFFICE OF MULTICULTURAL AFFAIRS, VIRGINIA TECH, THE FACULTY ASSESSMENT OF CAMPUS CLIMATE (1998), available at <http://www.dsp.multicultural.vt.edu/climate/>.

²³ *Id.* at 11.

²⁴ *Id.*

²⁵ *Id.* at 10 and n. 20.

²⁶ *Id.*

- In a 1993 survey of 682 respondents at California State University-Chico, 23% reported verbal harassment due to their sexual orientation or gender identity.²⁷
- In a 1992 survey at Michigan State University that included 63 members of the faculty, 35% of the faculty members reported verbal harassment due to their sexual orientation or gender identity. In addition, 41% of the faculty members reported pressure to be silent about, or felt threatened with exposure of, their sexual orientation or gender identity²⁸²⁹
- In a 1991 survey of 1,004 respondents at the University of Colorado-Boulder, 23% reported verbal harassment and 30% reported negative effects on job advancement due to their sexual orientation or gender identity.³⁰
- In a 1990 survey of 773 respondents at University of California-Santa Cruz, 2% reported verbal harassment and 3% reported pressure to be silent about, or felt threatened with exposure of, their sexual orientation or gender identity.³¹
- In a 1990 survey at the University of Oregon that included 514 faculty members, 57% of the faculty respondents reported pressure to be silent about, or felt threatened with exposure of, their sexual orientation or gender identity.³²
- In a 1987 survey of 51 respondents at the University of Illinois-Emory, 67% reported verbal harassment due to their sexual orientation or gender identity.³³
- In a 1987 survey of 92 respondents at the University of Illinois-Urbana, 58% reported verbal harassment and 88% reported negative effects on job

²⁷ *Id.* at 10.

²⁸ *Id.* at 11.

²⁹ *Id.*

³⁰ *Id.* at 10.

³¹ *Id.* at 10.

³² *Id.*

³³ *Id.* at 10.

advancement due to their sexual orientation or gender identity.³⁴ Ninety-one percent also reported pressure to be silent about, or felt threatened with exposure of, their sexual orientation or gender identity³⁵

- In a 1985 survey of 445 respondents at the University of Massachusetts Amherst, 45% reported verbal harassment due to their sexual orientation or gender identity and 29% reported pressure to be silent about, or felt threatened with exposure of, their sexual orientation or gender identity.³⁶

2. Surveys of Specific Types of Academic Professionals

In addition to the campus climate surveys conducted at state institutions, another set of studies has documented discrimination among certain types of faculty and academic professionals, such as anthropologists, historians, and student affairs professionals. While these surveys cover faculty and administrators at public and private colleges and universities, many, if not most, of those surveyed are employees at state institutions. The surveys include:

- In 2002, the *Journal of Homosexuality* published a study of LGB education faculty and researchers from colleges and universities across the country.³⁷ Half of the 104 respondents were employed by public colleges and universities. Public college and university faculty reported their work environments to be more hostile than their private sector counterparts, with 30% of public institution faculty reporting an intolerant or hostile workplace, compared to less than 15% of such reports from private institution faculty members. Public institution faculty also

³⁴ *Id.*

³⁵ *Id.* at 11.

³⁶ *Id.*

³⁷ James T. Sears, *The Institutional Climate for Lesbian, Gay and Bisexual Education Faculty*, 43 JOURNAL OF HOMOSEXUALITY 11 (2002).

reported hearing more homophobic remarks on campus than those employed by private schools.

- According to a 1999 survey, 26% of LGB anthropologists surveyed reported experiencing employment discrimination because of their sexual orientation; an additional similar percentage indicated that they were unsure whether adverse employment actions against them were a result of such discrimination.³⁸
- A 1995 survey of the members of the Sociologists' Lesbian and Gay Caucus yielded responses indicating high rates of discrimination against faculty sociologists based on sexual orientation in state colleges and universities. All faculty in the study self-identified as lesbian, gay, or bisexual and 84% had disclosed their sexual identity to their department chair.³⁹ Public sector employees, demarcated in the study as faculty members of state universities and state/community colleges, totaled 61% of the faculty respondents (55% and 6%, respectively). Of the total faculty pool, nearly 55% had experienced some form of employment discrimination because of their sexual orientation.
- According to a 1995 survey, only 31% of Political Science department chairs thought their institutions would find it “acceptable” to identify as gay or lesbian in the classroom.⁴⁰

³⁸ COMMITTEE ON LESBIAN, GAY, BISEXUAL, AND TRANSGENDER ISSUES IN ANTHROPOLOGY, AMERICAN ANTHROPOLOGICAL ASSOCIATION, FINAL REPORT 10 (1999).

³⁹ Verta Taylor & Nicole C. Raeburn, *Identity Politics as High-Risk Activism: Career Consequences for Lesbian, Gay, and Bisexual Sociologists*, 42 SOCIAL PROBLEMS 252 (May 1995).

⁴⁰ Committee on the Status of Lesbians and Gays in the Profession of the American Political Science Association, *Report on the Status of Lesbians and Gays in the Political Science Profession*, 18 POLITICAL SCIENCE AND POLITICS 561-72 (1995).

- In a 1994 survey of 249 GLB student affairs professionals, 26% reported jobs discrimination. Of those who disclosed their sexual orientation during their job search, 42% reported discrimination.⁴¹
- Results of a survey distributed to members of the American Anthropological Association registered for its annual meeting in 1994 revealed that employment discrimination based on sexual orientation or gender identity frequently occurs in state colleges and universities. Of the 4,000 AAA members who received the survey, 528 returned the questionnaire, almost all of whom were university faculty and graduate students.⁴² The respondent pool, as determined by self-identification, consisted of 373 heterosexuals, 52 lesbians, 33 gay men, 51 bisexuals, 2 transgender people, and 14 “others”. Results indicate that 30% of the lesbian respondents, 44% of the gay male respondents, and 4% of the bisexual respondents had personally experienced instances of discrimination in the workplace because of their sexual orientation, with sizeable percentages reporting that they were unsure whether they had experienced employment discrimination. Because few respondents were employed in the private sector, these survey results indicate a high prevalence of employment discrimination based on sexual orientation in state-run academic institutions.
- Similarly, a 1993 study conducted by the Committee on Women Historians found that employment discrimination against professional historians based on sexual orientation was a continuing problem, despite the adoption of an American

⁴¹ James M. Croteau & Mark von Denstion, *A National Survey of Job Search Experiences of Lesbian, Gay, and Bisexual Student Affairs Professionals*, 35 JOURNAL OF COLLEGE STUDENT DEVELOPMENT 440-45 (Jan. 1994).

⁴² Commission on Lesbian and Gay Issues in Anthropology, *The Survey of AAA Membership Regarding Lesbian/Gay Issues in Anthropology: A Preliminary Report*, 18 SOLGAN 6 (1994).

Historians Association policy against discrimination based on sexual orientation.⁴³ Of the 130 historians in the survey pool, 39% were tenured professors. (The report does not specify the total number of professionals in public sector employment).⁴⁴ Of all respondents, 43% reported having experienced some form of discrimination in the workplace because of their sexual orientation. More specifically, 16.9% of the total reported discrimination in promotion and tenure and 20% in hiring. The authors concluded that discrimination occurred at “large, cosmopolitan research universities” as well as at other locations.⁴⁵

- In 1992, 43% percent of sociologists reported experiencing discrimination. Among those who both had disclosed their sexual orientation and were working to improve the situations of LGBT individuals, 71% reported some type of employment discrimination.⁴⁶

3. 2008 National Survey K-12 Teachers

At the 2008 Annual Conference of the American Educational Research Association, four academics presented their findings from what they identified as the first “major quantitative research study” of K-12educators.⁴⁷ An effort was made to reach LGBT educators by snowballing, email, letters, websites, attendance at conferences, and phone calls. The sample consisted of 514 teachers from all disciplines and instructional

⁴³ AMERICAN HISTORICAL ASSOCIATION, STATEMENT ON DISCRIMINATION AND HARASSMENT IN ACADEMIA (May 1991), *available at* <http://www.historians.org/governance/pd/DiscriminationAndHarassment.cfm>.

⁴⁴ Committee on Women’s Historians, American Historical Association, *Report on the Lesbian and Gay Historians Survey*, PERSPECTIVES, Apr. 1993, *available at* <http://www.historians.org/perspectives/issues/1993/9304/9304AHA2.cfm> (last modified Aug. 21, 2007).

⁴⁵ *Id.*

⁴⁶ Taylor & Raeburn, *supra* note 39, at 252.

⁴⁷ NANCY J. SMITH, TIFFANY WRIGHT, COLE REILLY, & JENNIFER ESPOSITO, A NATIONAL STUDY OF LGBT EDUCATORS’ PERCEPTIONS OF THEIR WORKPLACE CLIMATE (2006), *available at* http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/3d/9d/f7.pdf.

levels, counselors, and librarians from public, charter, private, parochial, and technical schools throughout all fifty states and Washington D.C. who filled out an online survey. Of the 242 participants who chose to self-identify their sexual orientation, 88 identified as lesbian, 81 identified as gay, and 28 identified as bisexual. Of the 272 participants who indicated a self-identified gender, 3 were transgender.

The LGBT professionals reported that they perceive their workplaces as troubling, unsafe, and unsupportive, describing the school climate as homophobic, racist, sexist, and transphobic. Thirty-five percent feared losing their job if outed to an administrator and 53% feared losing their job if outed to students. Almost half of respondents reported not being out to anyone at work or only to a few people at their school.

Of all respondents, 86% reported hearing homophobic comments in school; 58% had heard homophobic comments from other educational professionals and 20% have heard administrators make homophobic comments. Additionally, nearly half reported that they felt unsafe at work because of they identify as LGBT. Twenty-seven percent experienced harassment during the preceding year and 59% of those harassed did not report it. Thirty-five percent of respondents had property stolen or deliberately damaged. Many of the professionals reported working where there are no civil protections and few received benefits equal to those of their heterosexual colleagues.

C. Lawyers and Judges

1. 2002 - 2003 American Bar Foundation Study

The After the JD Study, conducted by the American Bar Foundation, surveyed nearly 4,500 lawyers recently admitted to the bar.⁴⁸ The first wave of the study was conducted in 2002 and 2003. Respondents were asked about their sexual orientation and gender identity, place of employment, and their experiences in the workplace, among other questions.

An analysis of the first wave of respondents shows that 4% of individuals working for state or local governments, including in the judiciary, identify as lesbian, gay, bisexual, or transgender.⁴⁹ When comparing incidents of discrimination among state and local government employees, 37% of LGBT employees reported that they had “experienced demeaning comments or other types of harassment” compared to 17% of non-LGBT employees.⁵⁰ One in five LGBT state and local employees with JDs reported that “a client request[ed] someone other than you to handle a matter.”⁵¹ Only 7% of non-LGBT state and local employees indicated that this had happened to them. More than one in four (26%) LGBT employees experienced some other form of discrimination (than a demeaning comment, being passed over for a desirable assignment, or having a client request another attorney) compared to one in ten of the non-GLBT employees.⁵²

2. 1998 California State Judiciary Survey

⁴⁸ NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION AND THE AMERICAN BAR FOUNDATION, *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* (2004), available at <http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf>.

⁴⁹ E-mail from Richard Sander, UCLA School of Law, to Naomi G. Goldberg, the Williams Institute (Sept. 2, 2009 15:09:00 PST) (on file with the Williams Institute).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

In 1998, the Sexual Orientation Fairness Subcommittee of the Judicial Council of the State of California surveyed 1,525 California state court employees.⁵³ Of all respondents, 64 self-identified as lesbian, gay, or bisexual. Of the LGB respondent pool, 20% reported employment discrimination based on sexual orientation while employed by the court. The report also explored beliefs regarding sexual orientation of all court employees surveyed. The authors found that 57.9% believed that it was better for gay, lesbian, and bisexual employees not to be open about their sexual orientation at work, 17.3% thought it was more difficult for an LGB person to secure a job than a heterosexual person, 13.4% believed a gay or lesbian sexual orientation could be used to debase the credibility of an employee, and 9.8% believed that anti-gay prejudice is common at work.

3. 2001 New Jersey State Judiciary Survey

A report by the New Jersey Supreme Court, released in 2001, mirrors many of the findings from the California state court employee survey. Because nearly 70% of the respondents to the New Jersey survey were court employees, generalizations can be formed from the data about the New Jersey state judiciary as an employer. Of the 2,594 survey respondents in New Jersey, 7% self-identified as lesbian, gay, or bisexual.⁵⁴ Of the 7% who self-identified as gay, lesbian, or bisexual, 78% had heard a judge or supervisor make a derogatory joke/statement about homosexuals. Of all respondents, 30% reported hearing such comments in the workplace. Sixteen percent of gay and lesbian workers and 2% of all New Jersey court employees heard a co-worker,

⁵³ SEXUAL ORIENTATION FAIRNESS SUBCOMMITTEE, JUDICIAL COUNCIL OF THE STATE OF CALIFORNIA, SEXUAL ORIENTATION FAIRNESS IN THE CALIFORNIA COURTS (2001).

⁵⁴ NEW JERSEY SUPREME COURT, FINAL REPORT OF THE TASK FORCE ON SEXUAL ORIENTATION ISSUES (Jan. 2, 2001).

supervisor, or judge criticize an employee or applicant for openly expressing a gay or lesbian sexual orientation, and 21% of all gay and lesbian employees and 1% of all employees stated that someone in their office had been asked to conceal his or her sexual orientation.

4. 2006 Minnesota State Bar Association Survey

In 2006, the Minnesota State Bar Association published a Self-Audit for Gender and Minority Equity. Thirteen percent of the 880 respondents to the individual portion of the survey worked in the government or the courts and 6% of all respondents self-identified as gay, lesbian, or bisexual.⁵⁵ Of the LGB respondents, 84% reported bias in legal workplaces as a major or moderate problem, and 21% reported that they had been denied employment, equal pay, benefits, promotion, or another employment-related opportunity within the past five years because of their sexual orientation. Two-thirds (67%) of heterosexual respondents and 71% of LGB respondents agreed that it would be more difficult for an applicant to be hired as an attorney if people thought he/she were LGB. Additionally, 4% of LGB respondents reported that they had been physically threatened by a co-worker or another employee within the last five years because of their sexual orientation, and 16% had been verbally harassed.

5. 1993 New York State Bar Association Survey

In 1993, a Subcommittee of the Association of the Bar of the City of New York conducted a survey in order to uncover rates of sexual orientation and gender identity discrimination in legal employment in New York. The survey was returned by 229

⁵⁵ TASK FORCE ON DIVERSITY IN THE PROFESSION, MINNESOTA STATE BAR ASSOCIATION, 2005 SELF-AUDIT FOR GENDER AND MINORITY EQUITY: A RESEARCH STUDY OF MINNESOTA LAW FIRMS, NON-FIRM EMPLOYERS AND INDIVIDUAL LAWYERS (Sept. 2006), *available at* <http://www.ncbp.org/2009/Handouts-2-09/1B/2005%20Self-Audit%20for%20Gender%20and%20Minority%20Equity%20Report.pdf>.

attorneys and legal workers, 97% of whom self-identified as LGB.⁵⁶ Eleven percent of all respondents worked in a government agency and an additional 2% were employed in a court system. Forty percent of all respondents reported awareness of discriminatory attitudes or treatment in the workplace, and 70% did not include any employment history or membership in LGBT organizations for fear that they might be discriminated against in the hiring process. Fifty-four percent believed that their sexual orientation affected their ability to succeed in the legal profession. One respondent said of court personnel, “Court officers, at least in criminal court, are notoriously homophobic. I have overheard many offensive comments from both them and other court personnel. I have also seen homophobic cartoons posted behind courtrooms. Court officers and other court personnel also routinely discriminate against people with AIDS.”⁵⁷

D. Public Safety Officers: 2009 Police Quarterly Survey

In 2009, *Police Quarterly* published a report on employment discrimination against gay and lesbian police officers.⁵⁸ The survey respondent pool included 66 officers who attended the 11th Annual International Conference of Gay & Lesbian Criminal Justice Professionals. Attendees of the conference came from 16 states and represented 23 law enforcement agencies. The majority of officers in attendance considered themselves gay or lesbian; 84% reported being out to everyone in their lives, including co-workers and supervisors. Officers reported that they had experienced several adverse employment actions based on their sexual orientation including, but not limited to, discrimination in promotion (22%), evaluations (16%), discipline (13%),

⁵⁶ Committee on Lesbian and Gay Men in the Legal Profession, *Report on the Experience of Lesbians and Gay Men in the Legal Profession*, 48 REC. ASS’N B. CITY N.Y. 843 (1993).

⁵⁷ *Id.* at 860.

⁵⁸ Roddrick Colvin, *Shared Perceptions Among Lesbian and Gay Police Officers: Barriers and Opportunities in the Law Enforcement Work Environment*, 12 POLICE QUARTERLY 86 (2009).

hiring (8%), and firing (2%). Significant percentages of officers also reported the existence of factors which contributed to a generally hostile environment such as frequent homophobic comments (67%) and social isolation (48%).

**E. Heterosexual Employees Perceptions of LGBT Employment
Discrimination**

Most of the above cited statistics focus on perception of discrimination by LGBT employees. In addition, a number of studies have found that heterosexual co-workers of LGBT employees recognize that discrimination is occurring on the basis of sexual orientation or gender identity in the workplace. For example, in the general public component of the Kaiser Family Foundation survey, 76% of all respondents reported that they thought LGBT people experienced discrimination “often” or “sometimes” in applying for or keeping a job.⁵⁹ In a parallel study to the 2003 Campus Climate report which included heterosexual respondents, discrimination or harassment was predicted to be very likely or likely against gay men by 60% of respondents, against lesbians by 54% of respondents, against bisexual people by 38% of respondents, and against transgender people by 71% of respondents.⁶⁰ Among heterosexual respondents to the Minnesota State Bar Association survey, 67% thought it would be harder to be hired if prospective employers thought the interviewee was LGBT. In the same group, 23% believed that LGBT attorneys were treated differently than heterosexual attorneys in the practice of law, while another 32% were not certain.⁶¹

**F. Indicators that Surveys Underreport The Level of Employment
Discrimination Against LGBT People**

⁵⁹ THE KAISER FAMILY FOUNDATION, INSIDE-OUTL A REPORT ON THE EXPERIENCES OF LESBIANS, GAYS AND BISEXUALS IN AMERICA AND THE PUBLIC’S VIEWS ON ISSUES AND POLICIES RELATED TO SEXUAL ORIENTATION (Nov. 2001), *available at* <http://www.kff.org/kaiserpolls/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=13875>.

⁶⁰ Rankin, *supra* note 12.

⁶¹ 2005 SELF-AUDIT FOR GENDER AND MINORITY EQUITY: A RESEARCH STUDY OF MINNESOTA LAW FIRMS, NON-FIRM EMPLOYERS AND INDIVIDUAL LAWYERS, *supra* note 55.

Several researchers have reported statistics indicating that discrimination rates against LGBT employees are or could be higher than the data from self-reported surveys reflect. They have suggested that this discrepancy is the result of two factors:

- First, a significant percentage of responding employees conceal their sexual orientation at work, and
- Second, a phenomenon known as “job-tracking” channels LGBT employees into job categories with “accepting” environments where they are less likely to experience employment discrimination.

As to the first, employees who are “closeted,” or have chosen to conceal their sexual orientation or gender identity at work, tend to experience and report less employment discrimination based on sexual orientation and/or gender identity than openly LGBT employees. Closeting remains common. A 1984 article reported that 77% of lesbians surveyed were partially or totally closeted at work.⁶² Nearly a quarter of a century later, this figure had decreased, but still remains high. The 2008 Out & Equal survey reported that 36% of lesbians and gays were closeted at work. A 2001 Kaiser Family Foundation study found almost exactly the same result, reporting that 37% of LGB employees were not open about their sexual orientation to their bosses.⁶³ James Croteau attributed the fairly common choice among employees to remain closeted at work to fear or anticipation that the employee would experience discrimination if his or

⁶² Levine & Leonard, *supra* note 9.

⁶³ HARRIS INTERACTIVE, OUT & EQUAL WORKPLACE ADVOCATES, OUT & EQUAL WORKPLACE CULTURE REPORT: SURVEY OF WORKPLACE ATTITUDES 2002-2008 (2008), *available at* http://outandequal.org/documents/OE_workplace_culture_report.pdf; THE KAISER FAMILY FOUNDATION, INSIDE-OUTL A REPORT ON THE EXPERIENCES OF LESBIANS, GAYS AND BISEXUALS IN AMERICA AND THE PUBLIC’S VIEWS ON ISSUES AND POLICIES RELATED TO SEXUAL ORIENTATION, *supra* at note 59.

her sexual orientation were known.⁶⁴ From his review of several studies designed to map sexual orientation discrimination in the workplace, Croteau concluded that respondents who were more open about their sexual identity at work in fact reported higher percentages of discrimination.

A study of gay, lesbian, and bisexual sociologists published by Verta Taylor and Nicole C. Raeburn in 1995 supports Croteau's conclusion. In their study, Taylor and Raeburn analyzed whether there was a disparity in workplace treatment between those LGB employees who were labeled "activists" (respondents who have engaged in various forms of political resistance on their campuses) and those labeled "non-activists" (those who may be out at work but do not have a history of political action).⁶⁵ The surveys showed that 71% of activists had experienced discrimination in the workplace because of their sexual orientation compared to 36% of non-activists. Taylor and Raeburn concluded that the strategies employed by the "activists" in an attempt to negotiate what it meant to be "a gay sociologist" made them easily recognizable targets of exclusionary practices and discrimination by the dominant group.

In addition to studies which have sought to link higher rates of discrimination against "out" and/or politically active employees, several studies have asked "closeted" LGB employees why they have chosen to conceal their sexual orientation in the workplace. Anecdotal reports and survey statistics in these studies indicate that LGB employees fear or anticipate that discrimination will occur if they disclose their sexual orientation to their co-workers or supervisors. Levine and Leonard found that more than

⁶⁴ James M. Croteau, *Research on the Work Experiences of Lesbian, Gay, and Bisexual People: An Integrative Review of Methodology and Findings*, 48 JOURNAL OF VOCATIONAL BEHAVIOR 195, 198 (2002).

⁶⁵ Taylor & Raeburn, *supra* note 39.

60% of lesbians surveyed in their 1984 study worried that they would face adverse employment actions if they did not remain closeted on the job.⁶⁶ Eleven years later, Croteau and Lark found that 44% of LGB college student-affairs professionals anticipated the same.⁶⁷

As recently as 2005, 70% of closeted LGB respondents to the Lambda Legal and Deloitte Financial Advisory survey revealed that they had chosen not to disclose their sexual orientation because they feared risk to employment security or hostility and harassment in the workplace.⁶⁸ Of LGBT attorney respondents to the Minnesota State Bar Association survey in 2005, 70% stated that they had hidden their sexual orientation at some point in the course of their professional careers due to concern that revealing such would lead to adverse employment consequences.⁶⁹ In the same survey, 71% of LGBT respondents and 67% of heterosexual respondents agreed that it would be harder to get hired as an attorney if a person was thought to be LGBT. One employee respondent to the 2003 Campus Climate Assessment stated that there was a “need to improve the professional climate so that LGBT employees don’t feel threatened to lose their job because of their sexual orientation. Often times I keep my mouth shut or don’t rock the boat so that I don’t fear for my job.”⁷⁰ The studies by Croteau and Taylor and Raeburn indicate that these employees’ fears are legitimate.

Several studies also allude to a phenomenon referred to as “job tracking” in which LGB job candidates avoid the prospect of employment discrimination by seeking out

⁶⁶ Levine & Leonard, *supra* note 9.

⁶⁷ James M. Croteau & Julianne S. Lark, *On Being Lesbian, Gay or Bisexual in Student Affairs: A National Survey of Experiences on the Job*, 32 NASPA JOURNAL 189 (1995).

⁶⁸ 2005 WORKPLACE FAIRNESS SURVEY, *supra* note 20.

⁶⁹ 2005 SELF-AUDIT FOR GENDER AND MINORITY EQUITY: A RESEARCH STUDY OF MINNESOTA LAW FIRMS, NON-FIRM EMPLOYERS AND INDIVIDUAL LAWYERS, *supra* note 16.

⁷⁰ Rankin, *supra* note 12.

positions only in fields or with employers that have a record of supporting diversity in sexual orientation or by self-employing. One woman interviewed in the Levine and Leonard study said of her employment situation, “It is very difficult to work where you cannot be yourself. Instead of accepting this compromise, I chose to adjust my career to my lifestyle. I now own two gay businesses.”⁷¹ The same study reported that other women sought employment in fields traditionally tolerant of sexual diversity, including the arts, beauty, fashion, or firms run by lesbians or gay men. The Lambda Legal and Deloitte Financial Advisory Services Study revealed a similar sentiment: 54% of LGBT employees stating that when deciding where to work, whether the employer promotes fairness and equality through its policies and practices was a “critical factor.” Of respondents not “out” at work, 62% reported working for employers that failed to promote workplace equality through policies and practices.⁷²

The absence of legal protection from discrimination powerfully reinforces closeting and job tracking. The result is that fewer employment opportunities are effectively available to LGBT workers than to their heterosexual counterparts simply because of their sexual orientation and/or gender identity.

Conclusion

Self-report survey data demonstrate serious, pervasive, and continuing discrimination against public sector LGBT employees. Data indicate that discrimination occurs across the spectrum of government employment—from nationally recognized universities to courthouses to law enforcement units. Hostility and discrimination facing public sector LGBT employees is not only visible to those who identify as or are

⁷¹ Levine & Leonard, *supra* note 9, at 707.

⁷² 2005 WORKPLACE FAIRNESS SURVEY, *supra* note 20.

perceived to be LGBT, but has also been recognized by their heterosexual co-workers. Surveys reveal that many LGBT employees remain closeted at work due to fear of discrimination or feel that they must take jobs in “accepting environments” in order to avoid discrimination, suggesting that the actual rate of employment discrimination is or could be higher than reported. These surveys also indicate that the level of discrimination on the basis of sexual orientation and gender identity by state and local employers is any different than that of private employers.