

A BROKEN BARGAIN

Discrimination, Fewer Benefits and More Taxes for LGBT Workers

Executive Summary

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movement advancement project



HUMAN RIGHTS CAMPAIGN

Center for American Progress



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With a foreword by



SMALL BUSINESS MAJORITY

Partners

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Movement Advancement Project

The Movement Advancement Project (MAP) is an independent think tank that provides rigorous research, insight and analysis that help speed equality for LGBT people. MAP works collaboratively with LGBT organizations, advocates and funders, providing information, analysis and resources that help coordinate and strengthen their efforts for maximum impact. MAP also conducts policy research to inform the public and policymakers about the legal and policy needs of LGBT people and their families. For more information, visit www.lgbtmap.org.

Center for American Progress

The Center for American Progress (CAP) is a think tank dedicated to improving the lives of Americans through ideas and action. CAP combines bold policy ideas with a modern communications platform to help shape the national debate. CAP is designed to provide long-term leadership and support to the progressive movement. CAP's policy experts cover a wide range of issue areas, and often work across disciplines to tackle complex, interrelated issues such as national security, energy, and climate change. For more information, visit www.americanprogress.org.

Human Rights Campaign

The Human Rights Campaign (HRC) seeks to improve the lives of LGBT Americans by advocating for equal rights and benefits in the workplace, ensuring families are treated equally under the law and increasing public support among all Americans through innovative advocacy, education and outreach programs. HRC works to secure equal rights for LGBT individuals and families at the federal and state levels by lobbying elected officials, mobilizing grassroots supporters, educating Americans, investing strategically to elect fair-minded officials and partnering with other LGBT organizations. For more information, visit www.hrc.org.

This report was developed in partnership with:

Freedom to Work

Freedom to Work is a national organization dedicated to the notion that all Americans deserve the freedom to build a successful career without fear of harassment or discrimination because of their sexual orientation or gender identity. For more information, visit www.freedomtowork.org.

National Partnership for Women & Families

The National Partnership for Women & Families works to promote fairness in the workplace, reproductive health and rights, access to quality affordable health care, and policies that help women and men meet the dual demands of work and family. For more information, visit www.nationalpartnership.org.

National Center for Transgender Equality

The National Center for Transgender Equality is a national social justice organization devoted to ending discrimination and violence against transgender people through education and advocacy on national issues of importance to transgender people. For more information, visit www.transequality.org.

Out & Equal Workplace Advocates

Out & Equal Workplace Advocates (Out & Equal) is the world's largest nonprofit organization specifically dedicated to creating safe and equitable workplaces for LGBT people. Out & Equal believes that people should be judged by the work they do, not by their sexual orientation or gender identity. For more information, visit www.outandequal.org.

Service Employees International Union

Service Employees International Union (SEIU) is an organization of 2.1 million members primarily focused in three sectors: healthcare, property services, and public services. SEIU is committed to building a fair economy, providing workers a voice on the job, fighting for equality and ensuring that all working people can live with dignity. For more information, visit www.seiu.org.

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EXECUTIVE SUMMARY

The Broken Bargain for LGBT Workers

The basic American bargain is that people who work hard and meet their responsibilities should be able to get ahead. This basic bargain is not just an idea—it is embedded in laws that promote equal access to jobs and that protect workers from unfair practices.

For workers who are lesbian, gay, bisexual and transgender (LGBT), this bargain is broken. Instead of having a fair chance to get ahead, LGBT workers and their families often are held back by bias, fewer workplace benefits, and higher taxes.

Employers who value diversity and who understand that it gives them a competitive advantage can take some steps to ease the burden of unfair treatment of LGBT workers and their families, but they can't fix the broken bargain on their own. The reason: unequal treatment of LGBT workers under the law.

First, no federal law provides explicit nondiscrimination protections for LGBT workers, and fewer than half of states have laws that protect workers based on sexual orientation and gender identity/expression. Second, LGBT workers may do the same job as their coworkers, yet be denied equal access to worker and family benefits—as well as family tax relief.

The combination of job discrimination, fewer benefits and higher taxes leaves many LGBT workers in a vulnerable position that threatens their ability to provide for themselves and their families. If fairness and equality are part of America's basic workplace bargain, this bargain is clearly broken for LGBT workers.

A Portrait of the LGBT Workforce

The U.S. workforce includes an estimated 5.4 million LGBT workers:

- **LGBT workers are geographically dispersed.** Same-sex couples live in 93% of all U.S. counties. As many as 4.3 million LGBT people live in states with no state laws providing employment protections based on sexual orientation or gender identity/expression.
- **LGBT workers are racially and ethnically diverse.** One in three LGBT respondents (33%) in a 2012 Gallup poll identified as people of color, compared to 27% of non-LGBT individuals. The LGBT

workforce, like the overall U.S. workforce, also includes a significant number of immigrants.

- **LGBT workers are raising children in significant numbers.** New analyses show that 37% of LGBT adults have had a child, while a recent MAP analysis of three different data sources suggests that between 2.0 and 2.8 million American children are being raised by LGBT parents. This makes family benefits important to LGBT and non-LGBT workers alike.
- **LGBT workers have varying levels of education.** Recent polls show that Americans with lower education levels are more likely to identify as LGBT than college graduates and those who have post-graduate degrees. In contrast, census data show a higher probability that individuals in same-sex couples have at least a bachelor's degree. Similarly, the 2011 National Transgender Discrimination Survey found that transgender respondents had much higher levels of educational attainment than the population as a whole.
- **LGBT workers experience unemployment at an equal or higher rate than other workers.** A 2009 state-level survey in California found that 14% of lesbian, gay and bisexual adults were unemployed, compared to 10% of heterosexual adults. Among transgender workers in the U.S., unemployment rates are twice the rate of the population as a whole, with rates for transgender people of color reaching as high as four times the national unemployment rate.
- **LGBT workers in the U.S. are at higher risk of poverty than other workers.** Among the hardest-hit by the broken bargain for LGBT workers are those who are parents, together with their children. Married or partnered LGBT individuals raising children are twice as likely to have household incomes near the poverty line compared to married or partnered non-LGBT parents. In addition, transgender people are nearly four times more likely to have a household income under \$10,000 per year than the population as a whole (15% vs. 4%).

The Broken Bargain for LGBT Workers

Despite the fact that LGBT workers face high rates of discrimination, federal lawmakers and most states have not enacted laws aimed expressly at prohibiting discrimination against LGBT workers.

Additionally, when it comes to worker and family benefits, LGBT workers face a “1-2-3 punch” that hurts their families:

- First, couples have to be married, and workers must have a legal parent-child relationship with their children, in order to access most family benefits and tax relief.
- Second, most states prevent same-sex couples from marrying and/or have no mechanisms for some LGBT parents to create legal ties to the children they are raising—making it impossible for many LGBT families to qualify for family benefits.
- Third, even when LGBT workers can legally marry a same-sex partner, the Defense of Marriage Act (DOMA) prevents the federal government from recognizing their marriages. (A legal challenge to DOMA’s discriminatory treatment of married couples is currently before the United States Supreme Court. However, even if the Supreme Court requires the federal government to recognize married same-sex couples, the federal government still will not be required to recognize the majority of same-sex couples who are denied marriage).

If fairness and equality are part of America’s basic workplace bargain, this bargain is clearly broken for LGBT workers.

Fixing the Broken Bargain for LGBT Workers

This report organizes the inequities LGBT workers face into two overarching problems:

1. Job discrimination without legal protection makes it **harder for LGBT workers to find and keep a good job**; and
2. LGBT workers **receive fewer benefits and pay more taxes, which puts LGBT workers and their families at risk**.

Many of the access or equity gaps that affect LGBT workers also disproportionately affect low-income workers broadly, workers with unmarried heterosexual partners, workers of color, and workers who live with and support family members who are not a spouse or legal child, such as an uncle providing care for a nephew.

Fixing the broken bargain will require government and employers to address multiple barriers to equal and fair treatment for LGBT and other workers, as outlined below.

Discrimination Without Legal Protection Makes It Harder to Find and Keep a Good Job

Barrier #1: Bias and Discrimination in Recruitment and Hiring. LGBT workers can put their job prospects at risk if they disclose that they are LGBT while looking for work.

Barrier #2: On-the-Job Inequality and Unfairness. An LGBT employee may be in a workplace that is blatantly hostile, one that condones anti-gay jokes and slurs, and/or one where employers look the other way and allow a discriminatory climate to flourish.

Barrier #3: Wage Gaps and Penalties. In addition to job and workplace discrimination, LGBT employees face wage disparities that make it harder for them to provide for themselves and their families.

Barrier #4: A Lack of Legal Protections. Only 21 states and the District of Columbia have laws prohibiting discrimination in employment based on sexual orientation. Transgender workers facing workplace discrimination may seek federal legal recourse by filing a complaint with the Equal Employment Opportunity Commission (EEOC), but only 16 states and the District of Columbia explicitly prohibit discrimination based on gender identity/expression.

Fewer Benefits and More Taxes Put LGBT Workers and Their Families at Risk

Barrier #5: Unequal Access to Health Insurance Benefits. Under federal and most state laws, most employers can extend family health benefits to married opposite-sex couples yet deny same-sex couples the same coverage. When employers electively offer family coverage to LGBT workers, most of them have to pay thousands of dollars in extra taxes on the value of the family coverage, although heterosexual workers get the same benefits tax-free. In addition, exclusions in health insurance often deny transgender workers access to both basic healthcare and transition-related care.

Barrier #6: Denial of Family and Medical Leave. Because the federal government does not legally recognize the marriages of same-sex couples under the Defense of Marriage Act (DOMA), LGBT employees do not have equal access to federally mandated unpaid leave to provide care for same-sex spouses or partners. Only about one-fifth of states provide equal access to unpaid leave for same-sex couples under state leave laws. In addition, employers may deny transgender workers leave for transition-related care.

THE BROKEN BARGAIN

FOR LGBT WORKERS



HARDER TO FIND & KEEP A GOOD JOB

Legal discrimination makes it harder to find a good job, succeed, and provide for self and family.



WORK JUST AS HARD

Once working, LGBT workers do the same job but...



GET FEWER BENEFITS

...are often unfairly denied individual and family benefits...



PAY MORE TAXES

...and pay more income tax on the same salary.

LGBT WORKERS CAN BE LEGALLY REFUSED JOBS OR UNFAIRLY FIRED BY DISCRIMINATORY EMPLOYERS

HETEROSEXUAL

LGBT

JOB DISCRIMINATION

Protected from hiring bias?



X

Protected from on-the-job discrimination?



X

Protected from wage discrimination?



X

(Protections are sporadic and inadequate)

LGBT WORKERS AND THEIR FAMILIES LEFT VULNERABLE

HETEROSEXUAL

LGBT

EQUAL ACCESS TO:

UNEQUAL BENEFITS

Health benefits?



X

Medical leave?



X

Retirement benefits?



X

Death and disability benefits?



X

LGBT WORKERS CAN BE DENIED FAMILY TAX RELIEF

HETEROSEXUAL

LGBT

UNEQUAL TAXES

Tax relief for family health benefits?



X

Full access to family and child-related tax credits and relief?



X

Barrier #7: Denial of Spousal Retirement Benefits.

The same-sex spouses and partners of LGBT workers are systematically denied Social Security benefits designed to protect workers' families during their retirement years. This may cost a retired same-sex couple up to \$14,484 per year and a surviving same-sex spouse or partner up to \$28,968 per year. An LGBT employee also may be unable to opt for continuing pension benefits for a same-sex spouse or partner under an employer-provided pension plan.

Barrier #8: Unequal Family Protections When a Worker Dies or Is Disabled. When an LGBT worker dies or becomes disabled, the worker's same-sex spouse—and in some cases, his or her children—will be denied Social Security disability and survivor benefits. A surviving family (spouse and two children) of a worker earning \$40,000 could lose as much as \$29,520 in annual benefits.

Barrier #9: A Higher Tax Burden for LGBT Families.

State marriage and parenting laws, combined with the federal government's lack of recognition of same-sex couples, mean that LGBT workers pay more taxes because they cannot file using the advantageous "married filing jointly" status. Consider an LGBT family with one working parent who has a taxable income of \$60,000 a year and a stay-at-home parent who has no income. The inability to file a federal tax return as a married couple costs the LGBT family \$2,902 in additional taxes. When working LGBT parents cannot form legal ties to their children, they also generally cannot claim important child-related deductions and credits such as the child tax credit, the child and dependent care expense credit, and multiple education-related deductions and credits potentially totaling thousands of dollars per year.

Barrier #10: Inability to Sponsor Families for Immigration. An LGBT worker is unable to sponsor a foreign-national spouse or partner or a partner's children for the purposes of immigration. This means American LGBT workers may need to live abroad to avoid separation from their families, while highly skilled foreign national LGBT workers may decline to come to the United States if it means they must leave their families behind.

Fixing the Broken Bargain Is Good for Business and America's Prosperity

America's most successful businesses are opposed to the current inequities for LGBT employees and are

taking independent steps to try and fix the broken bargain. Nearly nine out of 10 Fortune 500 companies (88%) provide nondiscrimination protections for their gay and lesbian employees. Additionally, in a 2013 brief submitted to the U.S. Supreme Court, 278 businesses and employers (including Amazon.com, Citigroup, Intel, Marriott, Nike, Pfizer, Twitter, Viacom and the Walt Disney Company) argued that unequal treatment of LGBT workers and their families under federal law harms businesses by:

- Creating complex and difficult compliance burdens by requiring businesses to treat married LGBT employees as single for federal taxes, payroll taxes, and certain workplace benefits—but as married for all other purposes in states that recognize same-sex couples.
- Requiring employers to implement and enforce discriminatory treatment of employees in their own companies, even when doing so goes against core corporate values and basic business sense.
- Creating an environment that makes it harder for LGBT workers to perform at their best.
- Negatively impacting the employer's ability to compete for and hire top talent.

As the U.S. companies stated in their Supreme Court brief, "If external forces—such as discrimination on the basis of sexual orientation in the laws of the states where we operate—block us from recruiting, hiring, and retaining the very best employees, we will be unable to achieve the success that each of us is capable of achieving with a workforce of the best and brightest employees."

Recommendations

The report offers detailed recommendations for action by the federal, state and local governments, as well as employers. The following is a summary of these recommendations:

Reducing Barriers to Finding and Keeping Good Jobs.

- **Pass nondiscrimination laws and policies.** Federal, state and local governments should pass nondiscrimination laws/ordinances that include explicit protections for LGBT workers on the basis of sexual orientation and gender identity/expression. Employers can also adopt nondiscrimination policies for their workplaces.

- **Increase wage discrimination protections.** The federal government should expand existing legal protections against wage discrimination to include protections for sexual orientation and gender identity/expression.
- **Ensure effective and swift discrimination claims processing.** For example, the federal government should address the backlog of discrimination cases before the EEOC, while private employers and unions should institute clear and effective grievance systems.
- **Foster diverse and inclusive workplaces.** Government and private employers should put in place policies and procedures that foster welcoming and inclusive workplaces and encourage diversity.
- **Ensure transgender workers can update the gender marker on their identity documents.** A physician's letter, not proof of surgery, should be used as a standard for changing gender on identity documents.
- **Increase data collection on LGBT workers.** Federal, state, and local governments should increase data collection and research on LGBT workers, including demographics, income, benefits, experiences of discrimination, and more.
- **Provide equal access to individual and family medical leave.** Federal and state medical leave laws should allow transgender workers to take needed individual medical leave—and allow workers to take leave to care for a same-sex partner or spouse.
- **Provide equal access to spousal retirement benefits.** The federal government should broaden Social Security's definition of spouse to allow a same-sex partner to access spousal and survivor benefits. Policymakers also should change federal law to ensure same-sex partners/spouses can access pension survivor benefits and are equally taxed on inherited retirement plans.
- **Provide equitable economic protections when a worker dies or is disabled.** A same-sex partner/spouse and his or her children should be able to access Social Security survivor and disability benefits in the same manner as the spouse and children of a non-LGBT worker.
- **Revise the IRS tax code to provide equitable treatment for LGBT workers.** The Internal Revenue Service (IRS) should create a designation of "permanent partner," who would be treated as a spouse for the purposes of the tax code. The IRS also should allow not just legal parents but also those who act as parents to claim a "qualifying child" on their tax filing.

Providing Equal Access to Individual and Family Benefits.

- **Recognize the families of LGBT workers.** States should allow same-sex couples to marry and ensure that parentage laws allow LGBT parents to be legally recognized as parents. The federal government should recognize married same-sex couples to allow equal access to worker benefits, Social Security, immigration, federal family tax relief and more.
- **Advance equal access to individual and family health insurance benefits.** The federal and state governments should amend health insurance laws to ensure coverage parity and nondiscrimination protections for transgender health plan enrollees. State and federal lawmakers also should ensure that LGBT families have health insurance on equal terms with other families, including eliminating unfair taxation of these benefits.
- **Provide pathways to immigration and citizenship for binational LGBT families.** Congress should pass legislation such as the Uniting American Families Act (UAFAs), which would add the category "permanent partner" to the list of family members entitled to sponsor a foreign national for U.S. immigration.

To the extent that all levels of government (and more employers) adopt policies that ensure fair and equal treatment for LGBT workers, America will make great strides in its ongoing effort to build a fair and inclusive society where everyone who works hard has a chance to succeed, get ahead, and provide for themselves and their families.

Note About This Report

Both condensed and full versions of this report, entitled *A Broken Bargain: Discrimination, Fewer Benefits and More Taxes for LGBT Workers*, are available online at www.lgbtmap.org/lgbt-workers or through any of the co-author or partner websites.

The report incorporates information that was current as of May 15, 2013. For legal updates, please see the Movement Advancement Project's Equality Maps at www.lgbtmap.org/equality-maps.



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