

*Assessing Resources  
Benefitting the LGBT Community  
in Greater Jacksonville*

**EMPLOYMENT & WORKPLACE SUPPORTS**

KBT & Associates  
Jacksonville, Florida  
May 2013

## Introduction

When it comes to work and the workplace, most Americans think that all groups -- including lesbian, gay, bisexual and transgender individuals -- enjoy legal protection against discrimination. A 2011 poll by the Human Rights Campaign and Greenberg Quinlan Rosner Research found 87% of likely voters believe it is illegal under federal law to fire someone for being gay.<sup>1</sup>

But that is not the case.

Today there are approximately 8 million adults in the U.S. who identify as lesbian, gay, bisexual or transgender.<sup>2</sup> Yet no federal law prevents employment discrimination against LGBT individuals. In 29 states, there is no state law prohibiting discrimination based on sexual orientation. And in 34 states, there is no state law preventing discrimination based on gender identity.

Consequently, LGBT workers, and LGBT individuals who are seeking work, are vulnerable to, and very often victims of, workplace discrimination that can cost them income, opportunity for advancement and even employment itself.

A recent nationwide survey showed that among all LGBT employees, more than one out of four had experienced some form of discrimination at work. Among LGBT employees who are "out at work," the ratio rises to more than one in three. Among transgender individuals, three out of four report experiencing discrimination at work.<sup>3</sup>

How do states and communities work to reduce and eliminate workplace discrimination against LGBT employees and prospective employees? What type of resources and supports are available to LGBT workers? And what are employers doing to improve workplace conditions for LGBT employees?

In this report, we examine the landscape for LGBT workers and prospective workers nationally and in greater Jacksonville: What are the existing legal protections? What are the ways in which the greater Jacksonville business community is supporting LGBT employees? And what are the opportunities for philanthropy to be a supporter or agent of change in this space?

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<sup>1</sup> Even in states without anti-discrimination laws, 75% think it is illegal under state law to fire someone for being gay or lesbian.

<sup>2</sup> Gates, Gary; *How Many People Are Lesbian, Gay, Bisexual and Transgender?*, The Williams Institute; 2011.

<sup>3</sup> Sears, Brad, and Mallory, Christy; *Documented Evidence of Employment Discrimination & Its Effects on LGBT People*; Williams Institute; July 2011.

## The Legal Foundation

The foundation for modern-day anti-discrimination law is found in Title VII of the Civil Rights Act of 1964, which states:

*It shall be an unlawful employment practice for an employer -*

*(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's **race, color, religion, sex, or national origin**; or*

*(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's **race, color, religion, sex, or national origin**.*<sup>4</sup>

The law further states that it shall be unlawful for employers to retaliate against an applicant or employee who asserts his or her rights under the law.

Under the law, these prohibitions apply to all private employers with at least 15 employees, the federal government, state governments and their political subdivisions and agencies, employment agencies, labor organizations and joint labor-management committees and other training programs.<sup>5</sup>

In 1964, the authors of the Civil Rights Act perhaps could not have anticipated some of the classes of employees and prospective employees that would face discrimination in the future -- among them, older employees facing age discrimination, now protected by the Age Discrimination in Employment Act (passed in 1967); disabled employees, now protected by the Americans with Disabilities Act (passed in 1990); and, of course, lesbian, gay, bisexual and transgender employees and prospective employees, for whom no overarching federal anti-discrimination protection exists today.

The absence of such law does not reflect a lack of effort.

On May 14, 1974, U.S. Reps. Bella Abzug and Edward I. Koch, both Democrats from New York, supported by leaders of the National Gay Task Force, introduced the Equality Act of 1974, "a sweeping federal bill to ban discrimination against lesbians, gay men, unmarried persons and women in employment, housing and public accommodations. Abzug and Koch's bill stands as the first-ever national legislative proposal to end discrimination against lesbians and gay men."<sup>6</sup>

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<sup>4</sup> U.S. Code (*emphasis added*)

<sup>5</sup> Ibid.

<sup>6</sup> National Gay and Lesbian Task Force

Proponents of the day thought the timing was right: the preceding decade had seen not only passage of the landmark civil rights legislation, but also of the Equal Rights Amendment banning discrimination on account of sex. What proponents did not anticipate, however, was the persistent and well-organized resistance to the LGBT community, and the AIDS epidemic, which diverted attention and resources away from anti-discrimination efforts.

Today, the hope for federal LGBT anti-discrimination protection rests on ENDA -- the Employment Non-Discrimination Act -- which would provide basic protections against workplace discrimination on the basis of sexual orientation or gender identity. ENDA has been introduced in virtually every Congress since 1994,<sup>7</sup> though through the years the language has evolved to be more inclusive (gender identity protections were not added until 2007, for instance). The Act was introduced in the 112th Congress in April 2013.

#### **What ENDA Does**

- Extends federal employment discrimination protections currently provided based on race, religion, gender, national origin, age and disability to sexual orientation and gender identity.
- Prohibits employers, employment agencies, and labor unions from using an individual's sexual orientation or gender identity as the basis for employment decisions, such as hiring, firing, promotion, or compensation.
- Prohibits covered entities from subjecting an individual to different standards or treatment based on that individual's actual or perceived sexual orientation or gender identity or discriminating against an individual based on the sexual orientation or gender identity of those with whom the individual associates.
- Provides for the same procedures, and similar, but somewhat more limited, remedies as are permitted under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act.
- Applies to Congress and the federal government, as well as employees of state and local governments.

#### **What ENDA Does Not Do**

- Cover small businesses with fewer than 15 employees.
- Apply to religious organizations. Any religious entity exempt from Title VII's prohibition on religious discrimination will continue to be able to exclude gay, lesbian, bisexual and transgender employees.
- Allow preferential treatment, including quotas, based on sexual orientation or gender identity.
- Allow for a "disparate impact" claim available under Title VII of the Civil Rights Act of 1964. Therefore, an employer is not required to justify a neutral practice that may have a statistically disparate impact on sexual orientation or gender identity.
- Allow the Equal Employment Opportunity Commission (EEOC) to compel employers to collect statistics on sexual orientation or gender identity.
- Apply retroactively.

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<sup>7</sup> ENDA was not introduced in the 109th Congress -- 2005-2007.

Not all LGBT-supportive groups endorse all aspects of ENDA, with some expressing deep concerns about the reach of exemptions for religious organizations and their affiliates. The American Civil Liberties Union notes that the exemption as drafted would "extend beyond just houses of worship to hospitals and universities, for example, and encompassing medical personnel, billing clerks and others in jobs that are not directly involved in any religious function."<sup>8</sup>

## STATE PROTECTIONS

In the absence of federal protections, some states have adopted laws that prohibit discrimination against employees and prospective employees based on sexual orientation and/or gender identity. But these states are the exception rather than the rule.

Twenty-one states and the District of Columbia have legislation prohibiting discrimination based on sexual orientation.

Sixteen states and the District of Columbia have legislation prohibiting discrimination based on both sexual orientation and gender identity.

Florida has neither.

Since 2004, Equality Florida has introduced in the Florida Legislature and worked for passage of the Florida Competitive Workforce Act, which would add sexual orientation and gender identity to the state's anti-discrimination statutes. In 2013, the bill was introduced with the support of Rep. Reggie Fullwood, D-Duval County (District 13); however, it died in the Civil Justice subcommittee.

## LOCAL ANTI-DISCRIMINATION LAWS AND EFFORTS

In recent years, 26 Florida cities and counties have passed ordinances prohibiting discrimination in employment and other areas based on sexual orientation and/or gender identity. Among those are:

- Leon County (Tallahassee)
- Hillsborough County (Tampa)
- Pinellas County (St. Petersburg)
- Monroe County (Key West)
- Miami/Dade County
- Broward County (Fort Lauderdale)
- Palm Beach County (West Palm Beach)
- Orange County (Orlando)
- Volusia County (Daytona Beach)
- The City of Gainesville

The 2012 Municipal Equality Index compiled for the Human Rights Campaign rates Jacksonville 15 out of a possible 100 for its laws, policies and practices impacting the LGBT community. Jacksonville received

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<sup>8</sup> The New York Times, Beyond Basketball and Bigotry, May 10, 2103.

points for having a Human Rights Commission, for having a school system with anti-bullying policies, and for having local pro-equality efforts.

Florida communities and their rankings included:

Orlando	77
Miami	72
Tampa	66
Fort Lauderdale	62
St. Petersburg	46
Tallahassee	46
Jacksonville	15

Advocates in Jacksonville have attempted to amend the city's Human Rights Ordinance to include protections from discrimination based on sexual orientation and gender identity. The most recent effort was in 2012, when a broad alliance of community leaders supported the measure. Jacksonville City Council, however, quickly struck the gender identity protections from the proposed legislation and ultimately defeated the entire measure 10-9.

In anticipation of reintroduction of the proposed amendment, advocates have created a Straight Ally campaign, featuring testimonials by straight community leaders in support of the FRO amendment. To date, participants include the CEO of Florida Blue, the state's largest health plan; Nancy Hogshead Makar, a three-time Olympic swimmer; and Rachel Vitti, wife of the Duval County School Superintendent.

## Workplace Discrimination

In the absence of legal protections, discrimination can flourish. And that discrimination can be two-fold -- impacting an individual's ability to get a job, retain and thrive in a job; or impacting an individual's access to worker and family benefits.

### DISCRIMINATION AND ACCESS TO OPPORTUNITIES

Based on national research into the workplace experiences of LGBT individuals, anti-LGBT discrimination occurs with significant frequency.

Since 2007, the Williams Institute at the University of California School of Law,<sup>9</sup> has surveyed LGBT workers about their workplace experiences, examined the surveys of other national organizations, and analyzed findings by courts and legal scholars, by federal, state and local governments and administrative agencies.

In a summary report released in July 2011<sup>10</sup>, the Institute reported on the results of a national probability survey representative of the U.S. population, which found that:

- Of all lesbian, gay or bisexual respondents, 27% had experienced at least one form of sexual orientation-based discrimination during the previous five years; 7% had lost a job.
- Among lesbian, gay or bisexual people who are out at work, 38% had experienced discrimination during the previous five years.

Transgender respondents reported much higher rates of discrimination:

- 78% reported experiencing at least one form of harassment or mistreatment at work because of their gender identity;
- 47% had been discriminated against in hiring, promotion, or job retention.

Such discrimination has a negative impact on worker satisfaction, compensation and professional advancement.

According to the Williams Institute:

- 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

### DISCRIMINATION IN JACKSONVILLE

Locally, research into discrimination experienced by LGBT individuals in greater Jacksonville has been limited. The primary study was conducted by Jacksonville Community Council Inc. in 2009 for the Jacksonville Human Rights Commission. It documented discrimination experienced by LGBT individuals in greater Jacksonville and reported that:

- 45% of respondents said they had experienced workplace discrimination because of their sexual orientation or gender identity in the previous five years.
- 17% of respondents reported they had experienced discrimination during job interviews.

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<sup>9</sup> The Williams Institute is an independent research center at the University of California School of Law that focuses on sexual orientation and gender identity law and public policy.

<sup>10</sup> Sears, Brad, and Mallory, Christy; *Documented Evidence of Employment Discrimination & Its Effects on LGBT People*; Williams Institute; July 2011.

productivity characteristics. The wage gap identified in these studies varies between 10%-32% of the heterosexual men's earnings.

- Census data analyses show that men in same-sex couples earn less than married men in 47 states and the District of Columbia. 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.
- 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.
- The unemployment rate for transgender people of color was nearly four times the national unemployment rate.

#### DISCRIMINATION AND ACCESS TO BENEFITS

Even when LGBT individuals are employed, they may find that they are denied equal access to worker and family benefits.

"When it comes to worker and family benefits, LGBT workers face a '1-2-3 punch' that hurts their families," reports Movement Advancement Project, and an independent think tank that provides research, insight and analysis to help speed equality for lesbian, gay, bisexual and transgender (LGBT) people.<sup>11</sup>

The report cites challenges facing LGBT employees:

"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."

Even when employers opt to extend family benefits to same sex couples, the partner generally must pay taxes on the value of the benefits, which are viewed as additional income, although heterosexual partners receive the benefits tax -free.

Similarly, same-sex spouses and partners are denied Social Security benefits and may be denied continuing pension benefits.

In summer 2013, the U.S. Supreme Court issued two landmark rulings that promise to improve circumstances for LGBT individuals:

The court struck down the Defense of Marriage Act (DOMA), eliminating the federal prohibition to recognizing same-sex marriage. But the court did not go so far as to endorse or encourage same sex marriage.

The court also ruled that same sex partners were eligible for federal benefits in states where same-sex marriage is legal.

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<sup>11</sup> *A Broken Bargain: Discrimination, Fewer Benefits and More Taxes for LGBT Workers*, June 2013.

## Good for Business

For at least a decade, the mantra within big business has been that "diversity is good for business." Industry voices from *Forbes* to *Business Week* to the *Journal of Accountancy* have advocated that position. In October 2012, *The Wall Street Journal*<sup>12</sup> reported:

"Sixty-three percent of firms cited 'access to top talent' as a main driver behind their diversity and inclusion initiatives, ahead of more traditional motivations like 'fair treatment' (60%) and 'public pressure' (21%), according to a new study.

"The findings, released ... by executive search firm Egon Zehnder International, indicate that companies are taking a more 'progressive' view on workplace dynamics, says Lisa Blais, co-leader of the firm's U.S. Diversity Council.

"Instead of focusing on metrics and compliance, which she calls 'old-school' approaches, firms are recognizing the bottom-line value of fostering an open work culture. While companies have struggled to quantify the benefits of diversity, Ms. Blais says many are finding that promoting 'diversity of thought' – that is, forming teams of workers from different backgrounds – leads to better decisions, innovations and end results."

The majority of Fortune 500 companies (88%) have policies and practices that prohibit discrimination based on sexual orientation and gender identity<sup>13</sup> and many offer workplace supports and benefits to their LGBT employees.

***"The 'good for business' argument is proving an important bridge to bring folks to the issue. The world is revolving around job creation. Today, this matters."***

Florida State Rep. Joe Saunders,  
D-Orlando; Sponsor of Florida  
Competitive Workforce Act.

Earlier this year, 278 businesses and employers (including Amazon.com, Citigroup, Intel, Marriott, Nike, Pfizer, Twitter, Viacom and the Walt Disney Company) submitted a brief to the U.S. Supreme Court stating 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."

The companies argued in the 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."

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<sup>12</sup> Kwoh, Leslie, Access to Top Talent Drives Businesses' Diversity Efforts, *The Wall Street Journal*, October 25, 2012.

<sup>13</sup> *A Broken Bargain: Discrimination, Fewer Benefits and More Taxes for LGBT Workers*, June 2013.

## FLORIDA BUSINESSES RESPOND

In Florida, group of businesses have formed Equality Means Business with the intent of improving Florida's reputation as "as welcoming and inclusive place to live, work and visit." The group is comprised of major employers in Florida that have adopted comprehensive non-discrimination policies and have demonstrated their commitment to valuing and pro-actively including all employees.

Susan Arko, assistant vice president of customer service operations for Jacksonville-based CSX, serves on the advisory board and Jacksonville-based Florida Blue is a member.

In several Florida communities, chambers of commerce focusing on GLBT businesses have formed. The Tampa Bay Gay & Lesbian Chamber of Commerce is more than 20 years old. The Metropolitan Business Association of Orlando, formed in 1992, now has 250 members. GLBX, a council of the Greater Fort Lauderdale Chamber of Commerce, has 150 members.

***"We are recruiting faculty members from across the world. A certain percentage of them are going to be gay. We care about the talents – that's what we care about... Any restriction on your talent pool is insane to me, just totally insane...."***

***"Management is about selecting among options. A more diverse group presents you with more options from which to choose."***

John Delaney  
President, University of

## Jacksonville's Business Community

Jacksonville's business community is, in many respects, supportive of the LGBT community and LGBT employees.

Jacksonville is home to major offices of many large national companies such as Wells Fargo and CITI that are highly rated for their LGBT inclusiveness.<sup>14</sup>

Jacksonville is the headquarters for five companies that are included in the national Corporate Equality Index<sup>15</sup>. While three of those companies received relatively low scores, all have policies that prohibit discrimination based on sexual orientation and four of the five have policies that prohibit discrimination based on gender identity.

Blue Cross Blue Shield (Florida Blue)	Rating 100
CSX	Rating 85
Fidelity National Financial	Rating 30*
Fidelity National Information Services	Rating 15*
Winn Dixie	Rating 15*

*\*Company did not respond to survey request; rating based on publicly available data*

The First Coast Diversity Council is an independent entity that brings together the region's businesses to foster a business environment that values and effectively supports diversity and inclusion. Thirty

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<sup>14</sup> Each received a score of 100 on the 2013 Corporate Equality Index.

<sup>15</sup> The Corporate Equality Index has been prepared by the Human Rights Campaign Foundation annually since 2002. It ranks all Fortune 1000 companies and any private, for-profit company with 500 or more full-time employees in the U.S. that wishes to participate. Fortune 1000 companies that do not respond to the annual survey are rated based on publicly available data.

Jacksonville businesses are members today, with JEA, CSX, Community First Credit Union, UFHealth (Shands Jacksonville) and Deutsche Bank serving as sponsors.

Under the umbrella of the Diversity Council resides the Northeast Florida LGBT Corporate Roundtable.

The roundtable grew out of a Coming Out Day breakfast in 2007 and formally became an affinity group of the Diversity Council in 2010. The Roundtable “is dedicated to the advancement and awareness of Florida LGBT equality in the workplace,” through education and outreach, mentoring, advocacy and special events.

Currently, a dozen major public companies are members of the Roundtable, as well as the Jacksonville Electric Authority, the University of North Florida and several nonprofits.

A recent survey of Roundtable members indicated that most, but not all, had policies protecting the rights of individuals based on sexual orientation and gender identity.

## The Opportunity and Challenge for Philanthropy

As philanthropic leaders think about impacting the workplace environment for LGBT individuals, it is wise to be aware of the limited points of entry. Absent any legal mandate, employers are not required to embrace LGBT employees in the workplace. Many employers see the workplace as private space and are not always welcoming of outside initiatives.

The greatest opportunities for philanthropy likely lie in efforts to shape the local business climate and the laws that govern local businesses. Public awareness and education are key. Frequently, community influentials and opinion leaders have limited understanding of the legal challenges that confront LGBT individuals, particularly on issues of gender identity and expression. Influential organizations such as the Jacksonville Chamber, the Civic Council, Leadership Jacksonville, JCCI and other civic groups can play a leading role by ensuring that their members are well-informed and willing to share their knowledge with others.

Specific opportunities for philanthropy include:

- Supporting efforts to pass amendments to the Human Rights Ordinance that would prohibit discrimination based on sexual orientation or gender identity in Duval County. Jacksonville Community Council Inc., in its recently released JAX 2025 visioning report, advocates for “a community-wide adoption of comprehensive anti-discrimination policies that protect all citizens of Jacksonville, regardless of sexual orientation and gender identity/expression.” While philanthropy must operate within the legal limits on influencing specific legislation, it can freely support community education and awareness efforts, and efforts to educate lawmakers on the issues.
- Supporting efforts to pass the Florida Competitive Workplace Act. Again, while philanthropy must be mindful of limits on lobbying, it can freely support education efforts and it can support the organizations that work on behalf of this effort in Tallahassee.

- Supporting efforts to foster and maintain a welcoming business climate, by supporting initiatives such as Equality Means Business, the First Coast Diversity Council and the Northeast Florida LGBT Corporate Roundtable. In addition, philanthropy can encourage the Jacksonville Regional Chamber of Commerce (which was supportive of the Human Rights Ordinance amendment in 2012) to remain supportive of amending the HRO and to consider education and awareness-building initiatives for Chamber members, particularly small businesses.
- Encouraging philanthropy and the nonprofit sector to be leaders in providing a welcoming workplace. Grantmakers should ensure that their own policies and practices are in order, use their leverage to encourage nonprofit grantees to adopt similar policies and practices, and encourage employee support groups for LGBT employees of nonprofits through an entity such as the Nonprofit Center of Northeast Florida.

Across all of these efforts, it is imperative to specifically address education and awareness building around issues of gender identity and the experiences of transgender individuals in the workplace. In the City's efforts to amend the Human Rights Ordinance in 2012, the gender identity language was quickly removed from the proposed legislation. We must ensure that all segments of our community are included as we seek to improve opportunities and experiences in the workplace.