

Testimony on HR 2015, The Employment Non-Discrimination Act of 2007

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Good morning, Chairman Andrews and members of the committee. I am an economist and the research director of the Williams Institute on Sexual Orientation Law and Public Policy at UCLA, and I also direct the Center for Public Policy and Administration at the University of Massachusetts Amherst. I have studied employment discrimination based on sexual orientation, race, and gender for more than fifteen years and have published two books and numerous studies on this topic.

Today I am here to speak to you about HR 2015, the Employment Non-Discrimination Act of 2007. As you know, this bill would outlaw discrimination in hiring and other employment decisions based on sexual orientation and gender identity. I want to make three main points to document the need for this legislation.

First, decades of social science research have demonstrated that employment discrimination against lesbian, gay, bisexual, and transgender (LGBT) Americans occurs in workplaces across the country. This evidence comes from many different methods of studying discrimination, including self-reported experiences on surveys, official complaints of discrimination in states that already ban it, experiments to measure the treatment of LGBT job applicants, and comparisons of wages earned by LGBT people and heterosexual people. Together these sources provide ample evidence that employment discrimination based on sexual orientation and gender identity is a serious problem in the United States.

Many academic researchers and community groups have surveyed lesbian, gay, bisexual, and transgender individuals. I have reviewed more than 35 such studies that have been conducted over the last two decades. Each survey documents numerous experiences of being fired, being denied a job, or some other form of unequal treatment in the workforce that stemmed from these individuals' sexual orientation or gender identity.

Two fairly recent national surveys of random samples of the LGB population give the clearest overall picture of sexual orientation-related discrimination. In 2000, a survey by the Kaiser Family Foundation found that 18% of LGB people living in urban areas reported employment discrimination. Heterosexuals surveyed in a companion study agree that LGB people are vulnerable: more than three-quarters of heterosexuals surveyed by the Kaiser Family Foundation believed that LGB people commonly experience employment discrimination. More recently, a 2005 survey by Dr. Gregory Herek found that 16% of lesbians and gay men and 5% of bisexual people reported having experienced employment discrimination. A quarter of LGB people disagreed with a statement asserting that most employers in their areas would hire openly LGB people if they are qualified for the job. Numerous local community surveys of nonrandom samples of LGBT people find that sexual orientation discrimination is also commonly reported in those areas.

Similar national studies have not been conducted related to discrimination based on gender identity, unfortunately. However, eleven recent local surveys of transgender people have found that at least 20% and as many as 57% report having experienced some form of employment discrimination.

A different source of data supports the finding that discrimination based on sexual orientation is common, and perhaps as common as other kinds of discrimination. The GAO has collected the numbers of sexual orientation discrimination complaints in states that outlaw such treatment. The GAO reported that the number of complaints is relatively small compared with the overall level of complaints filed at state agencies. However, my colleague William Rubenstein has shown that in the 1990's the annual rate of complaints was 3 per 10,000 LGB people on average in these states (assuming that LGB people are 5% of the U.S. population). That figure is quite similar to the number of sex discrimination complaints per woman (nine per 10,000 women) and race-related complaints per person of color (8 per 10,000). In other words, LGB people are about as likely to file discrimination complaints as are people in groups that are currently protected against discrimination under federal law.

Another method of identifying the extent of discrimination is to create experiments in which some people are coded as LGB on a resume when they apply for a real or hypothetical job, and their experience is compared with that of an otherwise identical heterosexual applicant. Three such studies in the United States found evidence of unequal treatment of gay applicants in a variety of job situations.

An additional way that economists and sociologists look for evidence of discrimination is to compare the earnings of people who have different personal characteristics, such as sexual orientation, but the same productive characteristics. If there is a wage difference after controlling for all of the factors that we reasonably expect to influence wages, such as education and experience, then most of us would conclude that discrimination is likely the reason for the wage gap for the disadvantaged group.

We now have more than a decade of research and twelve studies that compare earnings by sexual orientation in the United States. All twelve studies show a significant pay gap for gay men when compared to heterosexual men who have the same productive characteristics. Depending on the study, gay and bisexual men earn from 10% to 32% less than similarly qualified heterosexual men. Lesbians generally earn the same as or more than heterosexual women, but lesbians earn less than either heterosexual or gay men.

The studies showing wage gaps also lead to my second main point: sexual orientation discrimination results in economic harm to LGB people, reducing their earnings by thousands of dollars. We have no similar studies related to gender identity, but the studies I mentioned earlier show that transgender people report very low incomes, often below the poverty line.

Discrimination hurts, but nondiscrimination laws appear to help. Two very recent and as-yet unpublished studies by my UCLA colleagues find that state-level nondiscrimination laws reduce this wage gap for gay men and lesbians when compared with heterosexual men. These studies drew on data from the 2000 Census and found that gay men and lesbians earned 2-4% higher wages when they lived in states with sexual orientation nondiscrimination laws.

My third and final point is that America's businesses are also likely hurt by the direct and indirect effects of discrimination in the workplace. Economists and businesses have long argued that businesses will be most successful when they recruit, hire, and retain employees on the basis of talent, not personal characteristics that have no impact on an employee's ability to perform a job well.

Beyond that most basic reason to forbid discrimination, the evidence suggests that employers would also gain in other ways if ENDA were passed. Numerous studies from various academic disciplines suggest that LGBT workers will be healthier and more productive workers if they have legal protection from discrimination.

The key link here is between discrimination and disclosure of one's sexual orientation or gender identity. Many studies have demonstrated that discrimination keeps LGBT workers from revealing their sexual orientation in the workplace. Although having experienced discrimination directly is a powerful reason for some to "stay in the closet," many studies show that LGBT people who fear discrimination are also less likely to reveal their sexual orientation to co-workers and supervisors.

Employers have a stake in these individual decisions, since disclosure has potentially positive benefits to LGBT workers' well-being and job performance. Studies find that people who have come out report lower levels of anxiety, less conflict between work and personal life, greater job satisfaction, more sharing of employers' goals, higher levels of satisfaction with their co-workers, more self-esteem, and better physical health.

On the flipside, when fear of discrimination causes LGBT employees to conceal their sexual orientation or gender identity, employers experience negative costs along with LGBT people themselves. The time as well as social and psychological energy that is required to maintain a hidden identity would, from an employer's perspective, be better used on the job.

As in the case of wage gaps, nondiscrimination policies can improve the workplace climate and influence choices about disclosure and concealment. Several studies have found higher levels of disclosure in workplaces when employers have their

own non-discrimination policies that include sexual orientation. And one study found that LGBT people who live in places covered by a nondiscrimination law had higher levels of disclosure than those in unprotected locations.

Perhaps the best evidence that nondiscrimination policies are good for business comes from the fact that many companies have voluntarily adopted such a policy. The most recent tally shows that 88% of the Fortune 500 companies have added sexual orientation to their nondiscrimination policies, and 25% have added gender identity. Despite that progress, only 17% of American workers are employed by companies with those policies, leaving a big hole in the legal protections provided for millions of other workers.

To sum up, decades of research show that discrimination based on sexual orientation and gender identity exists in our nation's workplaces. This discrimination hurts LGBT people in their paychecks and in their health and workplace experiences. Our nation's employers would be better off with an LGBT workforce that no longer fears discrimination. Passing the Employment Non-Discrimination Act would serve to benefit both employees and employers.