

Workplace Discrimination Against Lesbian, Gay, Bisexual, and Transgender Americans
U.S. Commission on Civil Rights
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Testimony of Ilona Turner, Legal Director, Transgender Law Center

Members of the U.S. Commission on Civil Rights:

Thank you for the opportunity to present this testimony addressing workplace discrimination against transgender and gender nonconforming individuals. Transgender Law Center is a national organization that was founded in 2003 to serve the transgender community, with programs in law, health, economic justice, and leadership development. Our mission is to change law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression. Our legal helpline receives more than 2,500 requests for information and assistance annually from transgender and gender nonconforming people and their families around the nation.

Our testimony today falls broadly into two parts: (1) the prevalence of discrimination and resultant poverty among transgender and gender non-conforming people, and (2) a summary of current employment nondiscrimination protections for transgender and gender nonconforming people, and the need for more explicit nondiscrimination laws at both the state and the federal level.

I. Pervasive Discrimination Leads to Poverty Among Transgender and Gender Nonconforming Individuals.

A transgender person is someone whose gender identity – their innate sense of being male or female, or something else – does not match the sex they were assigned at birth. “Gender nonconforming” is a term used to describe a person who is perceived to have gender-related characteristics and/or behaviors that do not conform to traditional or societal expectations. According to a recent study by the UCLA Williams Institute, between 0.3% and 0.5% of Americans identify as transgender.¹ This means that there are between 700,000 and one million transgender adults living across the nation. Transgender people live and work in every state, have families, work hard to earn a living, pay taxes, and serve their communities and their country.² Like other groups, transgender people are racially and ethnically diverse.³ Many transgender

¹ GARY J. GATES, THE WILLIAMS INSTITUTE, HOW MANY PEOPLE ARE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER? 5 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

² MOVEMENT ADVANCEMENT PROJECT ET AL, UNDERSTANDING ISSUES FACING TRANSGENDER AMERICANS 1 (2015), *available at* <http://www.lgbtmap.org/file/understanding-issues-facing-transgender-americans.pdf>.

³ *Id.*

people are also parents. One survey found that 38% of respondents reported being a parent, with transgender parents of color having even higher rates of parenting.⁴

Unfortunately, transgender people experience high rates of discrimination in many areas of life, including employment, health, housing, public accommodations, and education. This vulnerability is exacerbated for transgender people who are also members of other vulnerable communities, such as being a person of color; undocumented; living with HIV/AIDS; or a senior or youth.

Employment Discrimination

In the largest national survey of the transgender community to date, in 2011, a shocking 90% of survey respondents said that they either directly experienced harassment or mistreatment at work, or felt forced to take protective actions to avoid harassment that negatively impacted their careers or well-being, such as concealing their transgender status.⁵ Forty-seven (47%) percent of respondents reported suffering an adverse employment action, such as losing their job or being denied a promotion or being fired, because of their gender identity or gender expression.⁶ Forty-four percent (44%) of survey respondents reported that they were not hired as a result of being transgender or gender non-conforming.⁷ Survey respondents experienced unemployment at twice the rate of the general population, with rates for people of color up to four times the national unemployment rate.⁸

A 2008 survey of transgender people across California, conducted by Transgender Law Center, revealed similar findings.⁹ Almost 50% of respondents reported that they had experienced some loss of employment either directly as a result of their gender identity or as a possible result of their gender identity, and 67% stated that they had experienced some form of workplace harassment or discrimination directly related to their gender identity.¹⁰ These findings are especially significant because California has strong nondiscrimination laws that prohibit discrimination based upon gender identity and expression. The survey showed, however, that many transgender people did not pursue legal action in response to the discrimination they experienced, either because they did not know about the law, or did not know how to get legal help.¹¹ These findings demonstrate the urgent need to educate both workers and employers about their rights and obligations under the law.

Employment discrimination has a number of tragic consequences: not only does it deprive transgender people and their families of the economic means of self-sufficiency, but it removes a

⁴ JAIME M. GRANT ET AL, NATIONAL CENTER FOR TRANSGENDER EQUALITY & NATIONAL GAY AND LESBIAN TASK FORCE, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 90 (2011), *available at* http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

⁵ *Id.* at 51.

⁶ *Id.*

⁷ *Id.* at 53.

⁸ *Id.* at 55.

⁹ E. HARTZELL ET AL, TRANSGENDER LAW CENTER, THE STATE OF TRANSGENDER CALIFORNIA: RESULTS FROM THE 2008 CALIFORNIA TRANSGENDER ECONOMIC HEALTH SURVEY, 2008, *available at* <http://transgenderlawcenter.org/wp-content/uploads/2012/07/95219573-The-State-of-Transgender-California.pdf>.

¹⁰ *Id.* at 9.

¹¹ *Id.* at 10.

primary means through which additional social benefits are procured – both tangible benefits such as health insurance, retirement savings, education savings programs, continuing education, and job training and professional development; and intangible benefits that are nevertheless significant such as self-confidence and interaction with co-workers. Only 18 states and the District of Columbia currently have laws that explicitly prohibit employment discrimination based upon gender identity or expression.¹²

Economic insecurity has an intergenerational cost as well, with the children of unemployed or underemployed parents facing barriers to education and employment. Economic discrimination can result in higher rates of criminalization and incarceration, as transgender people are forced to partake in alternative or street economies to survive and to support their families.¹³ Finally, economic discrimination against transgender people leads to further challenges, both economic and non-economic, as it is difficult for a person without a job to find and pay for stable and affordable housing or health care—or to find new employment. In sum, workplace discrimination and harassment has negative consequences far beyond unemployment and underemployment: it destabilizes the well being of the transgender individual, their family, and their community, and our country as well.

Discrimination in Housing

Transgender people also face high rates of discrimination in housing. Nineteen percent (19%) of national survey respondents reported various forms of direct housing discrimination, such as having been refused a home or apartment or being evicted because of their gender identity and/or expression. Nineteen percent (19%) also reported being homeless at some point in their lives.¹⁴ Homeless and marginally-housed transgender people face additional discrimination when they try to access temporary housing. Fifty-five percent (55%) of national survey respondents reported being harassed (such as being refused housing among people of the same gender identity) by staff members at temporary shelters,¹⁵ and 29% were denied accommodations at such shelters entirely.¹⁶ A disturbingly high number, 22%, were sexually assaulted by residents or staff at temporary housing shelters.¹⁷ Given these barriers to permanent and temporary housing, it is not surprising that transgender people have rates of homelessness almost twice the rate of the general public (almost 2% of respondents were currently homeless as opposed to 1% of the general population).¹⁸

The U.S. Department of Housing and Urban Development (HUD) issued guidance and regulations in recent years that provide transgender people with limited protections from housing discrimination. However, no federal statute explicitly prohibits evicting someone, refusing to rent to someone, or refusing to loan to someone because of gender identity/ expression.

¹² MOVEMENT ADVANCEMENT PROJECT, LGBT EQUALITY MAPS: EMPLOYMENT NON-DISCRIMINATION LAWS (2015), http://www.lgbtmap.org/equality-maps/non_discrimination_laws/employment.

¹³ JAMIE M. GRANT ET AL, *supra* note 4, at 64.

¹⁴ *Id* at 112.

¹⁵ *Id* at 117.

¹⁶ *Id* at 116.

¹⁷ *Id* at 118.

¹⁸ *Id* at 107.

Similarly, only 18 states and D.C. have clear laws prohibiting housing discrimination on the basis of gender identity, covering only 39% of Americans.¹⁹

Discrimination in Public Accommodations

It is not uncommon for transgender people to be refused service, harassed, or otherwise denied equal access to businesses, restaurants, and public facilities. This is especially true when the public accommodation is sex-specific, such as a restroom or locker room. More than half (53%) of national respondents reported being verbally harassed or disrespected in a place of public accommodation.²⁰ Frighteningly, eight (8%) percent of respondents reported being physically attacked or assaulted in places of public accommodation.²¹ Respondents of color generally experienced higher rates of abuse in public accommodations than their white peers. African American respondents endured much higher rates of physical assault in places of public accommodation than others transgender people (22%).²² Another study found that transgender people who reported discrimination in public accommodations were nearly twice as likely to have physical and emotional health problems as a result.²³ Only 17 states and D.C. prohibit discrimination in public accommodations on the basis of gender identity, covering just 36% of Americans.²⁴

Discrimination in Health Care

Doctors' offices, hospitals, clinics, and insurance companies are a subset of public accommodations in which transgender people frequently face discrimination or other bars to access.²⁵ In addition to basic health care needs, many transgender people require medical care as part of the gender transition process, with treatments such as hormone replacement therapy, psychotherapy, and gender conforming surgeries. Studies show that regardless of the type of medical care sought, transgender people face significant discrimination and barriers to accessing care. Discrimination can take the form of doctors or health care professionals refusing to provide care outright or providing poor care; higher rates for health insurance; denial of coverage for sex-specific care that insurance companies view as not "matching" the gender on the person's records (such as a Pap smear for a transgender man); and insurance plans that categorically exclude health services when sought for the purpose of gender transition. Transgender people also frequently have to educate their health care providers as to what their health needs are.²⁶ Rather than face such persistent discrimination, transgender people often postpone or delay getting medical care, even when urgent. As a result, they have higher overall negative health outcomes, including much higher rates of HIV infection, smoking, drug and alcohol use, and suicide attempts than the general population.²⁷

¹⁹ MOVEMENT ADVANCEMENT PROJECT, LGBT EQUALITY MAPS: HOUSING NON-DISCRIMINATION LAWS (2015), http://www.lgbtmap.org/equality-maps/non_discrimination_laws/housing.

²⁰ JAMIE M. GRANT ET AL, *supra* note 4, at 126.

²¹ *Id* at 127.

²² *Id*.

²³ SL REISNER ET AL., THE FENWAY INST., DISCRIMINATION AND HEALTH IN MASSACHUSETTS: A STATEWIDE SURVEY OF TRANSGENDER AND GENDER NONCONFORMING ADULTS (2014), available at <http://fenwayfocus.org/wp-content/uploads/2014/07/The-Fenway-Institute-MTPC-Project-VOICE-Report-July-2014.pdf>.

²⁴ MOVEMENT ADVANCEMENT PROJECT, LGBT EQUALITY MAPS: PUBLIC ACCOMMODATIONS NON-DISCRIMINATION LAWS (2015), http://www.lgbtmap.org/equality-maps/non_discrimination_laws/public-accommodations.

²⁵ JAMIE M. GRANT ET AL, *supra* note 4, at 74.

²⁶ *Id* at 76.

²⁷ *Id* at 80-83.

Currently only nine states (California, Washington, Oregon, Colorado, Illinois, Massachusetts, Connecticut, Vermont, New York) and the District of Columbia have laws prohibiting discrimination in private insurance contracts. The Affordable Care Act prohibits sex discrimination in hospitals and other health programs or facilities receiving federal financial assistance, including health plans purchased with federal subsidies or on the federal health exchange.²⁸ That provision should extend to discrimination against transgender or gender nonconforming people, although further clarification of the scope of that protection from agencies and courts would be helpful.

In 2014 the U.S. Department of Health and Human Services determined that Medicare's former categorical exclusion of coverage for transition-related surgery, regardless of medical need, was invalid.²⁹ Nonetheless, the majority of state Medicaid programs either categorically exclude treatment for gender transition procedures, or are silent as to whether they are covered.

Discrimination in Educational Settings

At every educational level, from grade school to college, transgender people report facing alarming rates of discrimination and harassment. Given the correlation between lack of education and barriers to economic advancement (and, ultimately, other negative outcomes such as homelessness, illness, and even suicide), denial of equal educational opportunities for transgender young people is cause for grave concern. Transgender and gender nonconforming students experience alarmingly high rates of verbal harassment and physical assault and many students report feeling unsafe at school. A staggering 89% of transgender students report being harassed at school,³⁰ 44% report being physically assaulted,³¹ and 12% being sexually assaulted.³² As with other areas of discrimination, transgender and gender nonconforming students of color experienced higher rates of harassment, discrimination, and abuse.³³

The harassment was so severe that it led nearly one-sixth of transgender survey respondents to leave school in grades K-12 or in higher education settings—placing them at a much lower earning power capacity than their peers who complete their education. Transgender and gender nonconforming students were also suspended and expelled at rates higher than other students, frequently for defending themselves against harassment and abuse. This commonly leads to involvement in the criminal justice system; as many as 300,000 LGBT youth are incarcerated each year nationally, more than 60% of whom are LGBT youth of color.³⁴

²⁸ 42 U.S.C. § 18116.

²⁹ *National Coverage Determination 140.3, Transsexual Surgery*, DAB No. 2576 (H.H.S. May 30, 2014), available at <http://www.hhs.gov/dab/decisions/dabdecisions/dab2576.pdf>.

³⁰ EMILY A. GREYTAK ET AL, GAY, LESBIAN AND STRAIGHT EDUCATION NETWORK, HARSH REALITIES: THE EXPERIENCES OF TRANSGENDER YOUTH IN OUR NATION'S SCHOOLS 18 (2009), available at <http://glsen.org/sites/default/files/Harsh%20Realities.pdf>.

³¹ *Id.*

³² JAMIE M. GRANT ET AL, *supra* note 4, at 36.

³³ JAMIE M. GRANT ET AL, *supra* note 4, at 35.

³⁴ JEROME HUNT AND AISHA MOODIE-MILLS, CENTER FOR AMERICAN PROGRESS, THE UNFAIR CRIMINALIZATION OF GAY AND TRANSGENDER YOUTH 1 (2012), available at https://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf.

Despite this pervasive mistreatment in school, respondents reported considerably higher rates of educational attainment than the general population, with 47% receiving a college or graduate degree, compared with only 27% of the general population.³⁵ This is an encouraging development, but one that has not yet paid economic dividends. National survey results showed that at each level of educational attainment, respondents had considerably lower incomes than the general population. Overall, respondents were four to five times more likely to have a household income of less than \$10,000/year at each educational level, including college.³⁶

Profiling by Law Enforcement

Another systemic factor that serves to perpetuate the marginalization of transgender people is the frequent interactions of with law enforcement. Many transgender people report being stopped by police simply because they are transgender. Over half of the transgender people surveyed in a 2011 study reported having interacted with a police officer.³⁷ A 2003 study conducted by Transgender Law Center and the National Center for Lesbian Rights found that one in four respondents in San Francisco said they had experienced discrimination when interacting with law enforcement officials.³⁸ In New York City, 59% of transgender people said that they had been stopped by the police.³⁹ Nearly one in six transgender people report having been incarcerated and almost half of all black transgender people report being incarcerated at some point in their lives.⁴⁰

Transgender women of color report experiencing widespread police profiling because of the intersection of their gender identity and race. Many say they have been stopped by police officers while moving about their daily lives and report being questioned about their destination and purpose because police officers assume they are engaging in sex work. A report issued by Amnesty International found disproportionate targeting by police of transgender women as sex workers, concluding that biased assumptions that transgender women are sex workers often plays a significant role in an officer's decision to stop and arrest transgender women.⁴¹ Because of educational and employment barriers discussed above, many transgender women do engage in sex work to meet their economic needs. Sixteen percent of respondents to the National Transgender Discrimination Survey reported resorting some sort of underground employment to survive. Eleven percent had engaged in sex work.⁴² In comparison, it is estimated that 1% of non-transgender women in the U.S. have engaged in sex work.⁴³ The pervasive interaction of

³⁵ JAMIE M. GRANT ET AL, *supra* note 4, at 39.

³⁶ *Id* at 43.

³⁷ *Id* at 159.

³⁸ SHANNON MINTER & CHRISTOPHER DALEY, NATIONAL CENTER FOR LESBIAN RIGHTS & TRANSGENDER LAW CENTER, *TRANS REALITIES: A LEGAL NEEDS ASSESSMENT OF SAN FRANCISCO'S TRANSGENDER COMMUNITIES 3* (2003), available at <http://www.nclrights.org/wp-content/uploads/2013/07/transrealities0803.pdf>.

³⁹ MAKE THE ROAD NEW YORK, *TRANSGRESSIVE POLICING, POLICE ABUSE OF LGBTQ COMMUNITIES OF COLOR IN JACKSON HEIGHTS 16* (2012), available at http://www.maketheroad.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf.

⁴⁰ JAMIE M. GRANT ET AL, *supra* note 4, at 163..

⁴¹ AMNESTY INTERNATIONAL USA, *STONEWALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE U.S. 16* (2005), available at <http://www.streetwiseandsafe.org/wp-content/uploads/2011/01/StonewalledAI.pdf>.

⁴² JAMIE M. GRANT ET AL, *supra* note 4, at 65.

⁴³ Gloria Lockett, *Black Prostitutes and AIDS*, in *THE BLACK WOMEN'S HEALTH BOOK*, 189 (Evelyn C. White, ed., 1994).

transgender people with law enforcement furthers the likelihood that they will be arrested or convicted, making it more likely that they will be subjected to harassment and sexual violence in prisons and jails,⁴⁴ and making it even harder for them to obtain employment once released.

Cumulative Effect of Discrimination: Poverty Among Transgender Americans

As a direct consequence of such widespread and consistent discrimination, an astounding number of transgender people live in dire poverty: Fifteen percent of national survey respondents reported a household income under \$10,000/year, nearly four times the rate of this category for the general population.⁴⁵ Those who lost a job due to bias lived at this level of poverty at six times the rate of the general population.⁴⁶ The findings were similar among California survey respondents, who were twice as likely to live below the poverty line as a member of the general population, with nearly a quarter of respondents earning less than \$10,400 annually, and less than half employed full time.⁴⁷

The long-term consequences of widespread bias and discrimination in employment, health, housing, public accommodations, and education are stark. Transgender people have been deprived of equality and dignity for no reason other than their gender identity or expression, and are vulnerable to a host of social ills, including a staggeringly high rate of attempted suicide. Forty-one percent of respondents in the national survey reported attempting suicide, compared to 1.6% of the general population, with rates rising for those who lost a job due to bias (55%), were harassed or bullied in school (51%), had low household income, or were the victim of physical assault (61%) or sexual assault (64%). Clearly a stronger response is needed to protect our community from pervasive discrimination and its dire consequences.

II. Despite Advances in Courts and Federal Agencies, Explicit Nondiscrimination Laws Are Critically Needed.

While laws cannot solve all societal ills, they can be an important mechanism both to educate employees and employers about their rights and obligations, and to provide redress for individuals who experience egregious instances of discrimination. Transgender and gender nonconforming people have found significant sources of protection under existing nondiscrimination laws that prohibit sex discrimination. However, to truly benefit from those legal protections, explicit statutes must be enacted to make sure the law is clear to everyone, including employers, workers, and courts.

Title VII of the Civil Rights Act of 1964 makes it unlawful for employers to discriminate on the basis of an individual's ... sex. 42 U.S.C. § 2000e-2(a) (prohibiting discrimination by private employers and by state and local governments); 42 U.S.C. § 2000e-16(a) (providing that personnel actions by federal agencies “shall be made free from any discrimination based on ...

⁴⁴ One California study found that 59% of incarcerated transgender women had experienced sexual assault while incarcerated and that transgender prisoners were 13 times more likely to be sexually assaulted than non-transgender prisoners. VALERIE JENNESS, *TRANSGENDER INMATES IN CALIFORNIA’S PRISONS: AN EMPIRICAL STUDY OF A VULNERABLE POPULATION* 14 (2009), available at <http://ucicorrections.seweb.uci.edu/files/2013/06/Transgender-Inmates-in-CAs-Prisons-An-Empirical-Study-of-a-Vulnerable-Population.pdf>.

⁴⁵ JAMIE M. GRANT ET AL, *supra* note 4, at 22.

⁴⁶ *Id* at 66.

⁴⁷ E. HARTZELL ET AL, *supra* note 9, at 9.

sex”). Following the Supreme Court’s decision in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), courts have recognized that Title VII’s prohibition of discrimination because of “sex” necessarily also bars discrimination based on “sex stereotyping” – that is, the perceived failure of an individual to conform to stereotypically male or female gender norms. Most courts to consider that issue in the last 15 years have therefore concluded that transgender employees are therefore protected from discrimination under Title VII.⁴⁸ For example, in 2011 the Eleventh Circuit noted that “since the decision in *Price Waterhouse*, federal courts have recognized with near-total uniformity” that transgender employees can find protection under sex discrimination laws.⁴⁹

In one particularly noteworthy 2012 decision, *Macy v. Holder* – a case brought by Transgender Law Center – the U.S. Equal Employment Opportunity Commission (“EEOC”) ruled that for the purposes of Title VII, discrimination based on “sex” includes discrimination based on gender identity, gender transition, and transgender status.⁵⁰ The EEOC left no doubt that from any viewpoint, discrimination against a transgender worker is always a form of sex discrimination:

When an employer discriminates against someone because the person is transgender, the employer has engaged in disparate treatment “related to the sex of the victim.” . . . This is true regardless of whether an employer discriminates against an employee because the individual has expressed his or her gender in a non-stereotypical fashion, because the employer is uncomfortable with the fact that the person has transitioned or is in the process of transitioning from one gender to another, or because the employer simply does not like that the person is identifying as a transgender person. In each of these circumstances, the employer is making a gender-based evaluation, thus violating the Supreme Court’s admonition that “an employer may not take gender into account in making an employment decision.” *Price Waterhouse*, 490 U.S. at 244.⁵¹

Federal employees and contractors are unequivocally protected from workplace discrimination and harassment as a result of a series of recent executive branch decisions and determinations. In 2011, the U.S. Office of Personnel Management declared that the federal government’s policy of providing workplaces free from harassment and discrimination based upon sex included discrimination based upon gender identity, and it issued guidance for working with transgender federal employees.⁵² The 2012 *Macy* decision from the EEOC, discussed above, applies directly to federal agencies.⁵³ In June 2014, President Obama issued Executive Order 13672, which explicitly prohibited discrimination based upon gender identity and sexual orientation in both federal employment and government contracting. In December 2014, the U.S. Department of Labor released regulations to enforce the order. Also in December 2014, U.S. Attorney General Eric Holder issued a memo to the Department of Justice affirming that Title VII’s prohibition against sex discrimination includes discrimination based on transgender status, as well as

⁴⁸ See, e.g., *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Finkle v. Howard County, Maryland*, 12 F. Supp. 3d 780 (D. Md. 2014).

⁴⁹ *Glenn*, 663 F.3d at 1318 n.5.

⁵⁰ *Macy v. Holder*, EEOC Appeal No. 0120120821 (Apr. 20, 2012).

⁵¹ *Id.*

⁵² Available at <http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/>.

⁵³ *Macy v. Holder*, EEOC Appeal No. 0120120821 (Apr. 20, 2012).

discrimination “because an employee’s gender identification is of a particular sex, or because the employee is transitioning, or has transitioned to another sex.”⁵⁴

Despite these developments, for the majority of the private-sector workforce, there is no guarantee that these rights will be respected or that transgender employees will be entitled to fair treatment in court. While the EEOC often mediates discrimination claims between employers and employees, and EEOC attorneys can prosecute employers in court, courts are not strictly bound to follow its interpretation of the law. In other words, a private employer that does not agree with an EEOC decision can refuse to abide by it, in which case the employee or EEOC must pursue the case in federal court. And despite the very strong trend of recent court decisions, some outlier courts may still suggest that transgender people cannot find protection under laws that prohibit discrimination based on sex.⁵⁵

Only 19 states currently have clear laws prohibiting employment discrimination on the basis of gender identity or expression, and there is no federal law that explicitly states that an employer may not discriminate based upon an individual’s gender identity, gender expression, and/or transgender status. As a recent report from the Movement Advancement Project and Transgender Law Center concludes, a number of steps need to be taken to safeguard the rights of all transgender workers (not just federal employees and contractors).⁵⁶ These include the following:

- Congress and state lawmakers should pass legislation to explicitly prohibit employment discrimination based upon gender identity and expression.
- State and local governments should implement similar legal protections, especially because state and local ordinances often apply to small employers for whom the majority of Americans work.
- In places where employment nondiscrimination laws exist, regulations should be implemented to provide clear guidance to employers regarding their obligations, and to employees regarding their rights. This is because transgender people are subjected to unique forms of discriminatory and demeaning treatment that may not be understood as such by non-transgender people, such as being repeatedly and intentionally referred to by incorrect gender pronouns, being required to dress as the sex with which they do not identify, being denied medical leave for care related to gender transition, being denied restroom access, or being provided with an insurance policy that excludes coverage for care otherwise available to non-transgender people.

⁵⁴ Available at <http://www.justice.gov/opa/pr/attorney-general-holder-directs-department-include-gender-identity-under-sex-discrimination>

⁵⁵ Compare *Schroer v. Billington*, 577 F. Supp. 2d 293, 308 (D.D.C. 2008) (holding that the employer’s refusal to hire Schroer after being advised that she planned to change her sex was literally discrimination “because of ... sex”), with *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1222 (10th Cir. 2005) (holding that Title VII does not protect transgender employees on the basis of their transgender status, and that it only extends protection to transsexual employees “if they are discriminated against because they are male or because they are female.”).

⁵⁶ MOVEMENT ADVANCEMENT PROJECT ET AL, *supra* note 2, available at <http://www.lgbtmap.org/file/understanding-issues-facing-transgender-americans.pdf>.

- Federal agencies such as the DOJ, EEOC, and the Department of Labor should educate employers and employees about existing protections and adopt guidelines for private employers to comply with federal protections.
- Job training programs should be inclusive and specifically address the needs of transgender and gender nonconforming workers. Pilot programs specifically for transgender job-seekers exist in some cities, such as San Francisco and Los Angeles, and should be replicated elsewhere.⁵⁷
- Federal and state lawmakers should pass legislation to prohibit discrimination in public accommodations based upon gender identity and expression. Unlike employment (Title VII), education (Title IX), health (the nondiscrimination provisions of Section 1557 of the Affordable Care Act), and housing, there is no federal law prohibiting discrimination in public accommodations based upon either sex or gender identity. Protection from discrimination and harassment in employment is incomplete and illogical without similar protection from discrimination in public accommodations – for example, it would be unlawful to fire a transgender person who worked at a store, but not to deny them service if they were a customer.

Conclusion

Transgender and gender nonconforming people are subjected to systematic inequality and bias in nearly every area of public life. In the states and cities where legal protections do exist, they are often subject to attempts to repeal or circumscribe them.⁵⁸ Of all the numerous areas in which our communities are subjected to inequality, widespread employment discrimination is among the most costly for society, as it can deny transgender and gender nonconforming people their very means of survival. The government can and should do much more to protect our communities from this pervasive harm.

We thank the Commission for your attention to this important issue.

⁵⁷ The Transgender Economic Employment Initiative provides assistance to transgender job-seekers in the San Francisco Bay Area (<http://www.teeisf.org/>); the Transgender Economic Empowerment Project provides similar resources to transgender people in Los Angeles (<http://www.lalgbtcenter.org/teep>).

⁵⁸ See, e.g., Mike Wynn, *Transgender Bathroom Bill Passes Ky Senate*, THE COURIER-JOURNAL (March 1, 2015), available at <http://www.courier-journal.com/story/news/politics/ky-legislature/2015/02/27/transgender-bathroom-bill-passes-kentucky-senate/24130083/>.