

Justice at Work

What to do if you encounter discrimination based on gender identity or expression or sexual orientation on the job.

Everyone is entitled to work in an environment that respects the dignity and rights of its staff. Unfortunately, workplace concerns are one of the top reasons people call Lambda Legal's HelpDesk. As far as American society has moved ahead in attitudes about fairness for LGBT people and people living with HIV, discrimination can still mar our experience on the job.

Only thirteen states and the District of Columbia currently prohibit employment discrimination on the basis of gender identity or expression or sexual orientation. Eight more states have bans limited to sexual orientation (see Lambda Legal's interactive map, "In Your State," at lambdalegal.org). Until the Employment Nondiscrimination Act (ENDA) now before Congress passes, there are no federal protections for most LGBT workers in the private sector. Public employees, except for those in the military or in intelligence positions, may fare somewhat better. Some companies voluntarily adopt a nondiscrimination policy that includes gender identity or expression and/or sexual orientation; however, an employee is often limited to internal remedies. Check your company's personnel manual for its nondiscrimination statement and the grievance procedures available to you.

If you are being harassed or discriminated against, report the matter to human resources or your supervisor.

Since these initial meetings may be in person or over the telephone, an e-mail or a short note can be helpful to document that a discussion on the topic took place. If no action is taken, make sure your next report is *in writing*, that is, a formal complaint. A written charge of discrimination is sometimes enough to prompt a serious—in many cases favorable and apologetic—response from management. With smaller companies where the person

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responsible for the abuse may also be the authority to whom you have to report it, you may want to open a dialogue directly with your boss or with the head of the company.

If you're thinking of proceeding to legal actions like mediation or litigation, take steps beforehand to establish a record showing your attempts to resolve the issue through the proper channels (it is important to pursue the administrative remedies available to you). Print out emails and memoranda and keep them in a safe place at home. If you are fired, you may not have an opportunity to retrieve these things, especially if they are still in an electronic format.

Demonstrating bias against you may depend on a standard of comparison. Are you treated differently from other employees in a similar situation? You may have experienced a "toxic work environment," a general atmosphere of offensive humor and innuendo severe enough to interfere with the performance of your job. Sometimes discrimination escalates to sexual or physical harassment or violence. As stressful as your situation may feel, remember that there is help available to you, and that others who have been in your shoes have found ways to speak up, fight back if possible, move on when necessary and grow stronger through the experience. **L**

FOR ADDITIONAL HELP:

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