

# An Unfulfilled Promise: Lesbian and Gay Inequality Under American Law

A National and State-by-State Snapshot

As of July 2011, the main outstanding federal policy adopted by Congress concerning lesbian and gay Americans discriminates explicitly. It is the so-called “Defense of Marriage Act” (which ignores same-sex couples’ marriages for federal law purposes and purports to allow states to do the same). Although the first gay civil rights bill was introduced in Congress more than 35 years ago, there remains no explicit federal statutory protection against sexual orientation discrimination.<sup>1</sup> Support has grown for the Employment Non-Discrimination Act, which would forbid sexual orientation and gender identity discrimination in employment; the bill was heard in committee in the prior Congress, but there is no timetable for action in this Congress.<sup>2</sup> Other bills to reduce federal discrimination against lesbian, gay, bisexual and transgender Americans would allow an employee to take unpaid leave to care for an ill domestic partner as for a heterosexual spouse,<sup>3</sup> include a domestic partner in COBRA’s requirement of temporary extension of health insurance for family members at the end of one’s employment,<sup>4</sup> permit Americans to immigrate a foreign spouse or partner,<sup>5</sup> and repeal the federal DOMA.<sup>6</sup> Like ENDA, none of these has a timetable for action in this Congress.

State	Constitutional Amendment, Law or Policy Bars Adoption	Constitutional Amendment Denies Marriage	Statute or Case Law Denies Marriage	Statute Bars Antigay Employment Discrimination	Statute Bars Antigay Public Accommodations Discrimination	Limited Status for Same-Sex Couples	Broad Status for Same-Sex Couples	Marriage for Same-Sex Couples
Alabama		•	•					
Alaska		•	•					
Arizona		•	•					
Arkansas	• <sup>7</sup>	•	•					
California		•		•	•		Domestic partnership	Only in 2008 <sup>8</sup>
Colorado		•	•	•	•	Designated beneficiary		
Connecticut				•	•			•
Delaware			•	•	•		Civil unions (as of 1/1/12)	
District of Columbia				•	•		Domestic partnership	•

<sup>1</sup> The first federal statute offering any explicit protection to LGBT people, the Local Law Enforcement Hate Crimes Prevention Act (S. 900/H.R. 1913), was signed on October 28, 2009 and allows federal investigation and prosecution of violent crime based on a victim’s actual or perceived sexual orientation or gender identity, or based on disability or gender. Congress has repealed the so-called “Don’t Ask, Don’t Tell” law precluding military service by openly gay personnel, effective upon certification by the President and top military officers, which is expected in summer of 2011.

<sup>2</sup> ENDA is pending in the House as H.R. 1397 and the Senate as S. 811.

<sup>3</sup> The Family and Medical Leave Inclusion Act is pending in the House as H.R. 2364.

<sup>4</sup> The Equal Access to COBRA Act of 2011 is pending in the Senate as S. 563 and the House as H.R. 2310.

<sup>5</sup> The Uniting American Families Act of 2011 is pending in the House as H.R.1537, and in the Senate as S. 821.

<sup>6</sup> The Respect for Marriage Act of 2011 (H.R. 1116/S. 598) now has 115 co-sponsors in the House and 25 co-sponsors in the Senate.

<sup>7</sup> Voter-approved law barring adoption or foster parenting by cohabiting, unmarried couples held unconstitutional on April 16, 2010 by state court.

<sup>8</sup> Same-sex couples who married in California in 2008 remain married after Prop 8 (11/4/08). California respects out-of-state marriages from before Prop 8, and treats later out-of-state marriages as registered domestic partnerships. Prop 8 was held unconstitutional by a federal district judge on Aug. 4, 2010; an appeal was argued to the Ninth Circuit Court of Appeals, which has certified procedural questions to the California Supreme Court.

**National Headquarters**  
120 Wall Street  
Suite 1500  
New York, NY 10005-3904  
T 212-809-8585  
F 212-809-0055

**Western Office**  
3325 Wilshire Boulevard  
Suite 1300  
Los Angeles, CA 90010-1729  
T 213-382-7600  
F 213-351-6050

**Midwest Office**  
11 East Adams  
Suite 1008  
Chicago, IL 60603-6303  
T 312-663-4413  
F 312-663-4307

**Southern Office**  
730 Peachtree Street, NE  
Suite 1070  
Atlanta, GA 30308-1210  
T 404-897-1880  
F 404-897-1884

**South Central Office**  
3500 Oak Lawn Avenue  
Suite 500  
Dallas, TX 75219-6722  
T 214-219-8585  
F 214-219-4455

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Florida		•	•					
Georgia		•	•					
Hawaii			•	•	•	Reciprocal beneficiary	Civil unions (as of 1/1/12)	
Idaho		•	•					
Illinois			•	•	•		Civil unions	
Indiana			•					
Iowa				•	•			•
Kansas		•	•					
Kentucky		•	•					
Louisiana		•	•					
Maine			•	•	•	Domestic partnership		
Maryland			•	•	•	Domestic partnership		Respects foreign
Massachusetts				•	•			•
Michigan	•	•	•					
Minnesota			•	•	•			
Mississippi	•	•	•					
Missouri		•	•					
Montana		•	•					
Nebraska	•	•	•					
Nevada		•		•	•		Domestic partnership	
New Hampshire				•	•			•
New Jersey			•	•	•		Civil unions	Respects as civil unions
New Mexico			•	•	•			May respect foreign <sup>9</sup>
New York			•	•	•			•
North Carolina			•					
North Dakota		•	•					
Ohio		•	•					
Oklahoma		•	•					
Oregon		•	•	•	•		Domestic partnership	
Pennsylvania			•					
Rhode Island			•	•	•		Civil unions	May respect foreign
South Carolina		•	•					
South Dakota		•	•					
Tennessee		•	•					
Texas		•	•					
Utah	•	•	•					
Vermont				•	•			•
Virginia		•	•					
Washington			•	•	•		Domestic partnership	Respects as a DP
West Virginia			•					
Wisconsin		•	•	•	•	Domestic partnership		
Wyoming			•					

<sup>9</sup> New Mexico's Attorney General issued an opinion on January 4, 2011, that same-sex couples' out-of-state marriages should be honored in state.

**Note:** This document offers general information only and not legal advice about specific situations.