## THE NEED FOR AN EXECUTIVE ORDER

### Banning Federal Contractors From Discriminating Against LGBT Workers

**Issue Brief** 

April 2013

The federal government protects LGBT federal employees from job discrimination. Yet, it still funnels almost \$300 billion each year to businesses that can discriminate.

- Federal government<sup>1</sup> employees have specific nondiscrimination protections stemming from two Presidential executive orders. These orders protect federal government workers based on "race, color, religion, sex, national origin, handicap and age"<sup>2</sup>—and, as of 1998, sexual orientation.<sup>3</sup> A 2012 EEOC decision finds that transgender federal workers are protected under prohibitions on discrimination based on a worker's "sex."<sup>4</sup>
- Unfortunately, these protections do not extend to LGBT employees of companies that do business with the federal government.
- In 2012 alone, \$293 billion contract dollars were awarded in states that have no state-level nondiscrimination protections for gender identity/expression, with \$249 billion of that total going to states that also have no protections for sexual orientation.
- More than 60% of the 25 states that received \$5 billion or more in federal contracts in 2012 have no employment nondiscrimination laws explicitly covering sexual orientation—and 68% lack laws covering gender identity.
- Subsidizing discrimination with taxpayer money is a lose/ lose proposition—and it breaks America's basic bargain that workers will judged and rewarded based on their contributions and capabilities, not what they look like, who they are, or who they love. It's bad for workers and bad for America's competitiveness.

# Status of Employment Nondiscrimination Protections in the 25 States Where Federal Contracts Totaled \$5 Billion or More in FY 2012

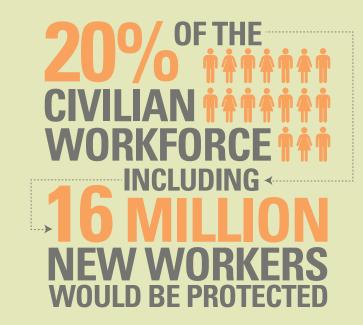


Employment nondiscrimination law explicitly covers sexual orientation & gender identity (8 states & DC)  Employment nondiscrimination law explicitly covers only sexual orientation (2 states) No employment nondiscrimination law explicitly covers sexual orientation and gender identity (15 states)

Source: Movement Advancement Project analysis of public data for Fiscal Year 2012 (October 2011-September 2012) available at <a href="http://www.usaspending.gov">http://www.usaspending.gov</a>.

An executive order requiring federal contractors to adopt policies barring discrimination against LGBT workers would help ensure employment protections for the majority of the American workforce.

- For more than 70 years, presidents have used executive orders for federal contractors to advance workplace protections.
- In 1941, President Roosevelt issued an executive order that banned federal contractors from discriminating against workers because of race, creed, color or national origin, serving as an important precursor to the passage of Title VII of the Civil Rights Act.
- A 1965 executive order prohibits federal contractors and subcontractors with contracts in excess of \$10,000 from discriminating in employment decisions on the basis of race, color, religion, sex or national origin.<sup>5</sup>
- Executive orders can be more specific and have broader reach than existing statutes. This order would cover all employers—including those with fewer than 15 employees—who contract for amounts exceeding \$10,000 in any 12-month period. It would allow for proactive investigation and enforcement, even when a particular employee has not filed a complaint.
- An executive order covering LGBT employees would cover more than 20% of American civilian workforce—including extending protections to an additional 16 million workers.<sup>6</sup>













### Workplace discrimination is real.

- Today, over 180 federal laws and thousands of state laws aim to support workers in:
  - Accessing good jobs in safe workplaces
  - · Having equal opportunities to succeed and advance
  - Receiving fair wages and benefits.<sup>7</sup>
- · Yet workplace discrimination is still pervasive—the EEOC has a backlog of more than 70,000 private-sector discrimination cases across all states.8
- · The highest rates of per capita discrimination complaints were clustered across the South.

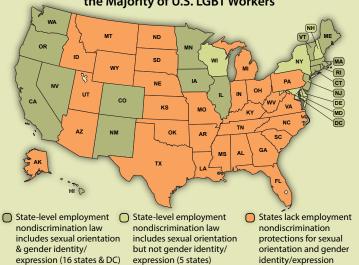
# 20 States with Highest Rates of Federal Discrimination Charges Per Capita (shown in orange) SD UT Note: N=20 states plus D.C.

Source: U.S. Equal Employment Opportunity Commission, "EEOC Charge Receipts by State, 2012" http://www1.eeoc.gov/eeoc/statistics/enforcement/state\_12.cfm

### LGBT workers face pervasive discrimination. They can be unfairly fired simply for being LGBT, often with nowhere to turn for help.

- Nearly four in 10 (38%) LGBT employees who were "out" at work reported harassment and discrimination in the past five years, compared to only 10% of LGBT employees who were "not out."
- Transgender workers face the most harassment; 90% of transgender and gender non-conforming employees experienced harassment, mistreatment or discrimination on the job. 1
- An overwhelming majority of Americans (87%) mistakenly believe that it is already illegal under federal law to fire someone simply for being LGBT; 78% think that it is illegal under state law, including 75% of people in states without any state-level protections. 11
- · Yet, there are no statewide protections in 29 states for sexual orientation and no statewide protections in 34 states based on gender identity. Many of these states are also states with high rates of federal discrimination complaints.
- · Nearly three-fourths of voters (73%) support workplace nondiscrimination protections for LGBT workers.1
- Despite almost two decades of advocacy, Congress has repeatedly failed to pass Employment Non-Discrimination Act (ENDA) legislation which would make sexual orientation and gender identity protected classes alongside race, color, national origin, religion, sex, pregnancy, disability, age, and genetic information and mend the patchwork of laws for LGBT workers.

### State-Level Employment Nondiscrimination Laws Do Not Protect the Majority of U.S. LGBT Workers



Source: Movement Advancement Project Equality Maps (current as of April 2013) http://www.lgbtmap.org/equality-maps/employment\_non\_discrimination\_laws

### The Bottom Line: The impact of an executive order for federal contractors will be immense.

An executive order for federal contractors will affirm America's basic bargain: Every worker should be measured based on their abilities, aptitudes, qualifications, skills, and performance. When that bargain is broken, every worker—including LGBT workers—should be able to seek help under the law.

Since federal contractors employ people in all 50 states, the executive order would protect LGBT employees of federal contractors in states that currently lack LGBT-inclusive state employment nondiscrimination laws. When combined with existing state laws and federal employee protections, an executive order could also help ensure employment protections for the majority of the American workforce.

- Military employees are not included in these protections.

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