

Working in the Shadows

Ending Employment Discrimination For LGBT Americans



Working in the Shadows: Ending Employment Discrimination for LGBT Americans

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Table of Contents

Foreword	ii	INDIANA	
Executive Summary	iv	Thomas Bryant	17
		Susan Bresson	18
Workplace Protections and Federal Civil Rights Legislation.....	1	IOWA	
		Kathleen Culhane	19
The Major Provisions of ENDA.....	3	MAINE	
		Brad Nadeau.....	19
ENDA and Religious Organizations	5	MICHIGAN	
		John Schumacher.....	20
The Impact on Workers' Lives	5	MISSISSIPPI	
		Ashley Thomas	21
Support from the Business Community, the States, and the Public	8	TEXAS	
		Jessica Craig.....	22
The Need for ENDA: Documenting the Human Cost	10	J.C.	22
		Alex Gorinsky	23
CALIFORNIA		James Quinn.....	24
Janice Dye.....	11	Brooke Waits.....	25
Ronald Fanelle	12	VIRGINIA	
Jacinda Meyer.....	13	Linda Czyzyk	25
Juan Moreno	14	Conclusion	26
DELAWARE		Endnotes	27
Douglas Marshall-Steele	14		
DISTRICT OF COLUMBIA			
Diane Schroer	15		
FLORIDA			
Robert Jernigan	16		
Susan Stanton.....	17		

Foreword



My father - who worked for 39 years at the Warwick Hotel, graciously and skillfully serving thousands of people - always impressed upon me that the American dream was within reach as long as you were willing to work hard. But as *Working in the Shadows: Ending Employment Discrimination for LGBT Americans* makes clear, that's not always true for many hardworking lesbian, gay, bisexual and transgender Americans who continue to be fired and refused jobs and promotions because of their sexual orientation and gender identity.

Take the story of Diane Schroer. Before transitioning from male to female, Schroer was a U.S. Army Special Forces officer who logged 450 parachute jumps into some of the world's most dangerous places during her 25 years of service. She received numerous decorations including the Defense Superior Service Medal and was handpicked to head up a classified

national security operation. After retiring from the military, Schroer applied for a job with a large federal agency library as a senior terrorism research analyst. She received an offer shortly after the interview and accepted the position. Prior to starting work, Schroer invited her new boss to lunch to explain that she was transgender and would like to begin the job as a woman. The next day, the director called Diane and rescinded the offer because she wasn't a "good fit."

It's hard to imagine a more clear-cut example of discrimination or a more compelling reason why Congress should pass the Employment Non-Discrimination Act (ENDA) - legislation that would make it illegal to discriminate in the workplace based on sexual orientation and gender identity. In Diane's case, our own government passed up the most qualified person for a position to help combat terrorism - a person who spent 25 years in the trenches fighting terrorists - just because that person happened to be transgender.

Diane's story is just one of the many stories you will read about in *Working in the Shadows*. Janice Dye was dismissed from the training program at an oil change service center after being forced to complete the impossible test of completing an oil change in 10 minutes without any help. Co-workers later told her they had overheard management say, "we won't let that lesbo-bitch get that job." Jacinda Meyer was given a raise after only nine months on the job as an insurance agent, but soon after her supervisor learned that she was a lesbian, she was fired. Alex Gorinsky worked for a finance leasing company in the railroad industry and received good reviews and raises for five years. Three weeks after bringing his part-



ner to the company Christmas party, he was shown the door. And the list goes on and on, affecting people from all walks of life in jobs ranging from fast food workers to healthcare workers to lawyers.

Right now, it's legal in 30 states to fire or refuse to hire someone because of his or her sexual orientation, and in 38 states to do so based on one's gender identity. Yet according to a recent poll, 89% of Americans believe that gay men and lesbians should have equal rights in the workplace. With the passage of other civil rights statutes, Congress has seen fit to stop

arbitrary discrimination in the workplace. It's now time for Congress to help bring LGBT employees out of the shadows at work and pass ENDA. All Americans should have an equal shot at achieving the American dream.

ANTHONY D. ROMERO
Executive Director
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Executive Summary


Hardworking Americans should not be kept from supporting their families and making a positive contribution to the economic life of our nation because of characteristics that have no bearing on their ability to do their job. Many workers have to make a choice of hiding who they are at work in order to support their families at home. It remains legal in 30 states to fire or refuse to hire someone simply because of his or her sexual orientation, and in 38 states to do so solely based on an individual's gender identity.¹ Recently introduced federal legislation, the Employment Non-Discrimination Act of 2007 (ENDA), prohibits discrimination based on sexual orientation and gender identity in most workplaces.²

If enacted, ENDA would ban discrimination based on sexual orientation and gender identity in all aspects of employment, including hiring, termination, promotion, compensation, and most terms and conditions of employment. The bill would also protect workers from retaliation. ENDA would take its place among the other similar federal civil rights statutes that ensure civic equality for American workers, such as Title VII of the Civil Rights Act of 1964,³ the Age Discrimination in Employment Act (ADEA),⁴ and the Americans with Disabilities Act (ADA),⁵ by including sexual orientation and gender identity among the federal employment discrimination protections currently provided to Americans based on race, color, religion, sex, national origin, age and disability. ENDA is an important step toward ensuring fairness on the job for lesbians, gay men, bisexuals and transgender employees (LGBT),⁶ and it is critical that

Congress pass this legislation in order to expand the protection of anti-discrimination laws to more Americans.

Banning workplace discrimination enjoys strong support in the country. In 1996, ENDA came within one vote of passage in the Senate.⁷ In 2002, a bipartisan majority of the Senate Health, Education, Labor and Pension Committee voted to send the measure to the floor.⁸ Since then, year after year, support for ENDA's simple message of workplace equality has grown. A May 2007 poll conducted by Gallup found that 89% of Americans believe that gay men and lesbians should have equal rights in the workplace.⁹ Some of corporate America's most successful businesses have seen the wisdom in preventing arbitrary discrimination within their ranks. Eighty-eight percent of Fortune 500 companies have included sexual orientation in their workplace nondiscrimination policies and a quarter of them also prohibit discrimination based on gender identity.¹⁰ In addition, currently, 20 states and the District of Columbia prohibit workplace discrimination based on sexual orientation,¹¹ and 12 states and the District of Columbia prohibit workplace discrimination based on gender identity.¹² According to a 2002 U.S. General Accountability Office (GAO) report, these important protections have not led to a flood of litigation, but rather have provided appropriate remedies to a modest number of discrimination cases.¹³

ENDA represents a measured and pragmatic response to prejudice and discrimination. The time has long since come for Congress to end this injustice for gay, lesbian, bisexual and transgender Americans and pass ENDA.



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Without ENDA, many hard-working men and women do not have basic protections against discrimination.

Workplace Protections and Federal Civil Rights Legislation

During the last fifty years, when Congress has found that some Americans were being denied employment for reasons unrelated to their skills in the workplace, it responded by passing laws aimed at creating a system truly based on employee-merit and ensuring that arbitrary considerations do not govern access to employment. The principle federal antidiscrimination law is Title VII of the Civil Rights Act of 1964, which prohibits employers from discrimination in employment on the basis of race, color, religion, sex or national origin.¹⁴ By its terms, Title VII bans discrimination with respect to hiring, termination, compensation, promotion, and

other terms and conditions of employment. In finding similar protections necessary for additional classes of American workers, Congress extended this nondiscrimination principle in two subsequent acts. Under the Age Discrimination in Employment Act, enacted in 1967, employees over the age of forty are protected from discrimination in hiring, termination and mandatory retirement.¹⁵ By 1990, Congress passed the Americans with Disabilities Act, which prohibits employers from discrimination against an otherwise qualified disabled person, who, with or without a reasonable accommodation, is capable of performing the essential functions of the job at issue.¹⁶ Those laws have been - and continue to be - an essential part of making the Fourteenth Amendment's promise of



ENDA offers Congress and American employers the opportunity to ensure workplace equality for everyone by protecting lesbian, gay, bisexual, and transgender employees and their co-workers from discrimination in employment.

equal protection of the law a reality. ENDA offers Congress and American employers the opportunity to ensure workplace equality for everyone by protecting lesbian, gay, bisexual, and transgender employees and their co-workers from discrimination in employment.

Like other civil rights statutes, in its basic structure, ENDA is patterned after Title VII of the Civil Rights Act of 1964. Like Title VII, ENDA forbids employers from discriminating with regard to hiring, termination, compensation, promotion, and most terms and conditions of employment, as well as retaliatory conduct. ENDA is necessary because although some states, the federal civilian workforce, several local governments, and numerous corporations, schools, and universities ban discrimination based on sexual orientation, most people in this country have no protection against such workplace discrimination. Moreover, the majority of courts have consistently ruled that sexual orientation is not covered under Title VII.¹⁷ While a few federal courts have interpreted Title VII to provide transgender people some protection from workplace discrimination,¹⁸ in the majority of jurisdictions, there remains no clear protection against employment discrimination based on gender identity under federal law.¹⁹ ENDA would, for the first time, provide a federal remedy for discrimination against LGBT workers in most places of employment with 15 or more employees.

Without ENDA, many hard-working men and women do not have basic protections against discrimination. As the Supreme Court observed in *Romer v. Evans*, anti-discrimination laws are not "special rights,"²⁰ and ENDA does not grant any. The right to have and keep a job, as the Supreme Court observed, is often taken for granted, either because employees are already protected against discrimination or because many employees do not face discrimination.²¹

But for those who do face discrimination, there is no "special" right about a law aimed at preserving one's ability to work - one of the most essential aspects of day-to-day life in America. ENDA merely puts LGBT Americans on the same footing as everyone else.

In order to put to rest the unfounded criticism that LGBT employees would receive any special rights under ENDA, the bill narrows the scope of the anti-discrimination provisions that are available to other employees in Title VII. For example, ENDA expressly rejects the possibility that its implementation will lead to affirmative action for LGBT employees - relief that is sometimes available to address race and gender discrimination. In addition, it includes a provision that precludes the use of the "disparate impact"²² theory of discrimination, as recognized under Title VII, which prohibits employer actions that are neutral on their face, but disproportionately affect a protected class of employees. Finally, as discussed further below, ENDA has explicit and broad religious and military exemptions. So while modeled after civil rights statutes that have been in place for decades, ENDA is a modest step forward, allowing employees who work side-by-side with each other to be afforded the same basic protections they need to keep their jobs.

The Major Provisions of ENDA

ENDA is modest - it applies only to discrimination in employment and only to employers with 15 or more employees. It does not require that employers provide benefits to same-sex partners, and it expressly forbids the use of quotas or preferential treatment. It does not apply to the armed forces or to religious organizations or religious schools.

By adding sexual orientation and gender identity to the federal employment discrimination protections currently provided to Americans

ENDA includes a broad exemption for religious organizations, which balances respect for religious liberty and respect for workplace equality.

based on race, color, religion, sex, national origin, age and disability, ENDA is an important step towards ensuring fairness in the workplace, and continues our nation's ideal of judging employees by their ability and performance.

- ENDA prohibits employers from using an individual's sexual orientation and gender identity in almost all aspects of employment, including hiring, termination, promotion, compensation, and most terms and conditions of employment.
- ENDA's ban on workplace discrimination protects heterosexuals as well as LGBT employees. It protects workers who are discriminated against because they associate with lesbian, gay, bisexual and transgender co-workers, or those who are perceived to be LGBT. It also shields workers who oppose LGBT discrimination from retaliation.
- With a few exceptions, several of which are noted below, ENDA provides for the same protections as existing civil rights laws barring discrimination in the workplace do, including those involving enforcement, remedies and notification procedures.
- "Disparate impact" claims cannot be made under ENDA. Under Title VII of the Civil Rights Act of 1964, disparate impact claims can be made if an individual can demonstrate how an employment policy negatively disadvantages a protected group - even if the terms of the policy do not explicitly discriminate, and there is no proof of an intent

to discriminate. Therefore, neutral policies that may disproportionately impact LGBT workers are not covered by ENDA.

- ENDA forbids the use of quotas and preferential treatment of any kind based on sexual orientation or gender identity.
- ENDA includes a broad exemption for religious organizations.
- ENDA has no effect on the armed services. It does not apply to current military policies concerning lesbian and gay service members, nor does it apply to special veterans benefits.
- ENDA does not require employers to provide benefits to the partners of employees. It does not require or forbid "domestic partnership" plans that provide such benefits.
- ENDA exempts smaller businesses with fewer than 15 employees, as do existing civil rights protections.
- ENDA applies only to discrimination in employment, not to discrimination in housing or public accommodations.
- ENDA does not apply retroactively.

Congress has had the vision and courage to enact laws that ban discrimination based on other protected classes. We now have the historic opportunity to expand the law a little further to ensure that everyone can enter and succeed in the workplace without regard to sexual orientation and gender identity.

ENDA and Religious Organizations

ENDA includes a broad exemption for religious organizations, which balances respect for religious liberty and respect for workplace equality.²³ This exemption recognizes that the Constitution protects certain employment decisions of religious organizations, understanding that some religious organizations have significant reasons to make employment decisions, even those that take an individual's sexual orientation or gender identity into account. Thus, under those circumstances, LGBT employees of religious organizations will not have protection from sexual orientation or gender identity discrimination. Specifically, as currently drafted, ENDA outlines three categories of protections for religious organizations.

- ENDA provides a complete exemption for houses of worship, parochial and similar religious schools, and missions.²⁴

This subsection provides a blanket exemption for these institutions, and is directed at those religious organizations that have an inherently religious purpose, and where the religious organization cannot segregate the religious function from any secular function of its employees.

- ENDA also exempts positions at religious organizations that involve the teaching or spreading of religion, religious governance, or the supervision of individuals engaged in these activities.²⁵

This subsection closely tracks the "ministerial exception" applied by courts in determining whether the Free Exercise Clause of the First Amendment protects religious organizations from certain employment discrimination claims. Although the Supreme Court has not decided any claims related to the ministerial exception,

the federal courts of appeal have widely accepted the ministerial exception as extending to a religious organization's employment of persons "whose 'primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship.'"²⁶

- ENDA also allows religious organizations to require, for classes of jobs, employees and applicants to conform to a declared set of significant religious tenets, including one that would bar LGBT people from holding the position.²⁷

This subsection provides that, for similar job positions, the religious employer may require employees and applicants to conform to those of its religious tenets that it declares significant. This means that ENDA will apply to some positions, but not others at these employers. For example, a religiously-affiliated hospital could choose to require all social workers to follow a declared set of significant religious tenets, including avoiding same-sex sexual activity, and fire a female social worker who they learn is in a relationship with a woman. But the organization could also choose not, for example, to impose the same requirements on its janitors or other classes of employees. This provision was modeled on the religious organization provision in the ADA, but specifies conformity with the religious employer's "significant" tenets, instead of all tenets.²⁸ It also makes the organization's declaration of its significant religious tenets immune from judicial or administrative review.

The Impact on Workers' Lives

Although all arbitrary discrimination is wrong, workplace discrimination is especially egregious because it threatens the well-being and economic survival of American workers and



There is no question that arbitrary discrimination undermines a labor market appropriately focused on skill and talent. And this is no less true for LGBT employees.

their families. Often LGBT employees attempt to protect themselves against discrimination by hiding their identity. This requires carefully policing even the most casual conversations, and banishing almost any acknowledgment of family and friends from the workplace. In addition to being difficult to do, hiding one's identity takes a terrible psychological toll, and often results in co-workers building walls between each other.

As we have learned from the adoption of other civil rights laws, employment discrimination harms the emotional and economic well-being of workers, the functioning of the workplace, and the greater economy.²⁹ For example, in passing the ADA, Congress found that "the continuing

existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billion of dollars in unnecessary expenses resulting from . . . nonproductivity."³⁰ Similarly, in a 1965 report, which was the impetus for the ADEA, Secretary of Labor Willard Wirtz reported that arbitrary age discrimination had dire consequences for older workers, such as higher unemployment rates, deterioration of motivation and skills, and an increased likelihood of poverty.³¹ Moreover, Secretary Wirtz documented that this arbitrary discrimination "had a negative impact on an even larger scale as the American econ-

omy suffered from lower productivity - because of the waste of valuable human resources - and from higher unemployment rates."³² It also has been very well established that discrimination against women and minorities has resulted in a loss of a great talent pool and has had a direct, negative effect on the economy.³³ There is no question that arbitrary discrimination undermines a labor market appropriately focused on skill and talent. And this is no less true for LGBT employees.

The threat of sexual orientation and gender identity discrimination has a very real presence in American workplaces. As documented in the personal stories at the end of this report, LGBT employees are harassed, fired, not hired, and passed over for advancement without regard to their merit. That treatment would not be permissible if ENDA were law. A 2007 report of over 50 studies compiled by the Williams Institute indicates that when surveyed, 16% to 68% of LGBT people reported experiencing employment discrimination.³⁴ When surveyed separately, 15% to 57% of transgender individuals reported experiencing employment discrimination.³⁵ And many heterosexual co-workers reported witnessing sexual orientation discrimination in the workplace.³⁶ In another 2007 nationwide survey, 28% of LGBT workers reported that they have experienced discrimination or unfair treatment in the workplace.³⁷ One in four said they experience it on a weekly basis.³⁸

Studies also show that discrimination robs gay men and lesbians of the ability to make equal income with their heterosexual counterparts. The 2007 Williams Institute report documented that gay men earn 10% to 32% less than similarly qualified heterosexual men.³⁹ A 2002 study showed that gay men earn from 11% to 27%



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less and lesbians earn 5% to 14% less than the national average.⁴⁰ And while no detailed wage and income analyses of transgender employees have been conducted to date, the Williams study documented that transgender people report high rates of unemployment and very low earnings.⁴¹

These wage studies confirm that LGBT discrimination is not benign. Lower incomes and difficulty in getting and keeping a job create direct and immediate financial disadvantages for LGBT employees, just as they do for other

American workers who are now lucky enough to be protected by federal law. The National Commission on Employment Policies calculated that discrimination against gay and lesbian employees translated into a \$47 million loss in profits attributable to training expenditures and unemployment benefits alone.⁴² Not including outright terminations, it has been proposed that hostile work environments cost companies \$1.4 billion in lost output each year because of a reduction in gay and lesbian workers' productivity.⁴³

Support from the Business Community, the States, and the Public

In addition to employee fairness, the pure economic losses due to discrimination mean it makes good business sense for companies to put these protections in place. Recognizing this, America's corporate leaders support ENDA's fair-minded approach and our country's most

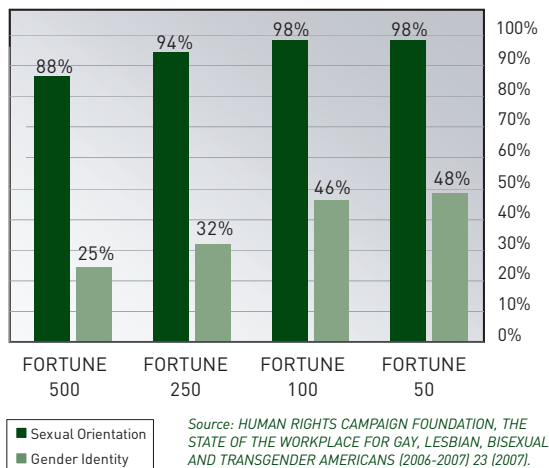
successful businesses have been the quickest to adopt inclusive policies. In fact, a trend of support has emerged. Employers understand that arbitrarily discriminating against a segment of the workforce ultimately hurts business. Eighty-eight percent of Fortune 500 companies have included sexual orientation in their workplace policies and a quarter of them also prohibit discrimination based on gender identity.⁴⁴ Compare this to 2000, when only 1% of Fortune 500 companies prohibited discrimination against transgender employees and applicants.⁴⁵ Moreover, 98% of the Fortune 50 prohibit discrimination based on sexual orientation, and nearly 50% prohibit discrimination based on gender identity.⁴⁶

Recently, the Business Coalition for Workplace Fairness, made up of some of the largest corporations in America, has endorsed ENDA. Some of those companies include: The Coca-Cola Company, General Motors Corporation, Dow Chemicals, General Mills Inc., J.P. Morgan Chase & Co., Marriott International, Microsoft Corporation, Morgan Stanley, and Nike Inc.⁴⁷

More than 30 major U.S. businesses joined this coalition during the first five months of 2007.⁴⁸

Moreover, 20 states and the District of Columbia⁴⁹ and at least 171 cities and towns ban employment discrimination based on sexual orientation.⁵⁰ Twelve states and the District of Columbia,⁵¹ and 88 cities and counties prohibit workplace discrimination based on gender identity.⁵² Without ENDA, employers are able to discriminate against a segment of their workforce with impunity, unless those workers are lucky enough to live in

Prohibition of Discrimination Based on Sexual Orientation and Gender Identity in Fortune-Ranked Corporate America





Not only is federal law lagging behind corporate America and state and local policies, but it is also lagging behind public support for ENDA.

one of the few states or municipalities that make such behavior illegal. Even with those state and local laws, however, only a small percentage of workers are protected against workplace discrimination based on sexual orientation and gender identity.

Not only is federal law lagging behind corporate America and state and local policies, but it is also lagging behind public support for ENDA. A May 2007 poll conducted by Gallup found that 89% of Americans believe that gay men and lesbians should have equal rights in the workplace.⁵³ A 2007 Peter D. Hart Research Associates survey indicated that 58% of respondents believe workplace protections should also extend to transgender employees.⁵⁴

And it must be noted that any arguments that extending workplace protections on a federal level will cause a flood of litigation are just not

supported by the facts. In 2002, the GAO reviewed the states' experiences with state statutory prohibitions on sexual orientation-based employment discrimination.⁵⁵ The GAO collected the number of complaints filed in states that prohibit sexual orientation discrimination, and found that relatively few complaints of such discrimination were made, whether measured in absolute numbers or measured as a percentage of all employment discrimination complaints under state law.⁵⁶ Another 2001 study showed that the raw number of complaints filed under the state laws was small, and that complaint rates of sexual orientation discrimination were similar to those of sex or race discrimination.⁵⁷ Therefore, although the need for this protection is real, there is no indication that a torrent of litigation will ensue.


The Need for ENDA: Documenting the Human Cost

Employment is necessary for people to lead a decent life and can be essential to survival. The ACLU receives many calls and emails from men and women who have lost or been denied jobs, or failed to receive promotions, because of discrimination based on sexual orientation or gender identity.⁵⁸ There is often little legally that can be done for most of these people. As discussed above, in some states and cities, they are fully protected by civil rights laws that prohibit discrimination based on sexual orientation and in some instances, gender identity. If they work for the government, sometimes they can claim limited protection under the Constitution or under civil service laws. But if like many Americans, they work for private businesses in states without nondiscrimination laws, they have no recourse and must continue to work in the shadows, hiding who they are.

For most LGBT Americans, economic survival comes down to separating the two most important parts of most individuals' lives - work and family. Imagine a workplace in which you must make certain there is no trace of the most important person in your life because you may risk your career and possibly your economic well-being if you slip and mention his or her name.

ENDA provides what simple justice demands - that no one should lose a job because of who they are or whom they love. Most people accept that our laws are above all, a statement about what we believe as a people. A federal civil rights law banning employment discrimination based on sexual orientation or gender identity does not say that we endorse being gay, or being heterosexual, any more than our federal civil rights laws against race discrimination endorse any particular race or national origin, or that our laws against religious discrimination endorse being a member of any particular religion or none at all. What passing ENDA does say, is that we, as a country, believe in fundamental fairness for hard-working people.

To provide real-life examples of why ENDA is so critically important, we have included stories from LGBT employees from all over the country, showing diverse Americans engaged in all different kinds of work. The sad reality is that their lives and their livelihoods would be different today if ENDA were the law of the land. While some instances of discrimination occurred in states that have laws protecting LGBT employees, these stories highlight that discrimination on the basis of sexual orientation and gender identity is a real threat and that Congress must pass a federal law to ensure that LGBT employees stand on the same legal footing with their coworkers.



To provide real-life examples of why ENDA is so critically important, we have included stories from LGBT employees from all over the country, showing diverse Americans engaged in all different kinds of work.



Janice Dye
Born in 1953

Janice worked as a mechanic in an oil change service center in San Diego. She had quit her job as a security guard and bus driver in Detroit to move to California to be with her partner. She had taken auto repair classes in high school, so working at a service center seemed like a good fit for her. Janice got along well with the other mechanics at the service center, who were excited to have a female mechanic working with them. Janice was out at work and her girlfriend occasionally brought her lunch at work.

The service center's management, however, was not supportive of Janice. Janice was the only female mechanic in the shop, as well as the only African American and lesbian. In 1997, Janice applied for a 3-month training program to become an assistant manager. At the end of the training program, she had to take timed tests. Janice was fired because she could not complete an oil change in less than ten minutes. However, management made her do the oil change alone, even though the usual procedure was to use two workers to complete an oil change (one in the ground pit below the car, and one on the ground floor at the car's hood). Janice's co-workers told her that they heard

managers in the break room saying: "we won't let that lesbo-bitch get that job."

After being fired, Janice left the service center and started to work at another location owned by the same company. She hoped she would not be discriminated against at the new location, but the managers treated her the same. She had to take the same test of completing an oil change in ten minutes and, again, she had to do the oil change alone (taking time to run up and down the stairs to the pit below the car). Management did not even let her finish the oil change because she had gone over the 10-minute limit. After 10 minutes, the manager yelled: "time's up" and "you're fired." Janice was coming up from the pit to put oil in the car. The manager told Janice to leave and he would finish the job. But he forgot to put oil in the car, the customer drove away and the engine burned out. The company had to buy the customer a new engine. After Janice was not offered an assistant manager position, she left the service center.

When her mother died, Janice moved back to her hometown of Detroit, Michigan to care for her elderly father who has Alzheimer's disease. She currently works as a dishwasher at a football stadium. She has three children. Janice's dream is to open her own auto repair garage with female technicians.





*Ronald Fanelle
Born in 1966*

Ronald Fanelle taught seventh and eighth-graders at a California middle school. The other faculty and the

principal knew that Ronald was gay, but his students did not. A month after Ronald and his partner, Randy, were married in February 2004, his co-workers congratulated him at a staff meeting. Then a teacher told his students that Ronald had gotten married over the weekend to a man in San Francisco and the news spread around the school. Ronald's students asked if it was true that he married a man. Ronald told them it was true. After one of his students made a few negative comments, Ronald read the sexual harassment code from the student handbook aloud.

In the following weeks, one parent, a personal friend of the school board president, vocalized his opposition to a gay man teaching in the school and arbitrarily accused him of bringing "his homosexual agenda into the classroom." The school hired a private investigator to investigate the situation and Ronald's background. Nothing damaging emerged, and for the most part, opposition to Ronald's position died down for the rest of the school year. Ronald, however, received hate mail on his school email account and dozens of

viruses were sent to the district, which shut down its system. Ronald was instructed in writing to open a private email account in order for parents and students to communicate with him.

In the following year, a few students created an anti-gay MySpace webpage that made fun of Ronald. Offensive stickers relating to Ronald's sexual orientation were posted all over the school. The principal called a meeting prior to the new 2006-07 school year. In the meeting, the principal made disparaging comments to Ronald in front of another principal, the union president, and the district's superintendent of personnel. His principal went on to tell Ronald: "Your problem is you're angry because no one will accept your gay marriage!"

Two weeks into the 2006-07 school year, a meeting was held and Ronald was disciplined for talking about his personal life. After the meeting, the principal and the assistant principal interrogated children for over two weeks, asking them if they knew Ronald was gay, or if he spoke about his personal life, and if the students liked him. The students reported that Ronald did not talk about his personal life and he was well liked. A week later, the superintendent of personnel formally disciplined Ronald for "inappropriate email communication" with students and parents because Ronald was sending email from a private email account instead of his school account. Ronald was only using a private account because the school had shut down his school account, due to the amount of hate mail and viruses.

Over three years, four students were removed from Ronald's classroom because their parents disapproved of his sexual orientation. The district's response to Ronald was simply stated as: "It's a conflict of family values." In February 2007, due to the principal's and the district's harassment, Ronald took an extended sick leave.



Jacinda Meyer
Born in 1975

Jacinda is Latina and a licensed life and health insurance agent in California. She worked for a company that administers employee benefits to client companies. After she worked at the company for nine months, she received positive feedback about her job performance and was given a raise. Her supervisors even gave

her handwritten cards to thank her for her good service, teamwork and positive attitude.

Throughout her tenure at the company, Jacinda's supervisors made several derogatory comments about lesbians. One of Jacinda's supervisors "warned" her before a meeting that the client was a lesbian and said: "I'm telling you now so you don't freak out when you see the pictures of two women on her desk." Jacinda did not respond to this comment, but later told another of her supervisors about the conversation. That supervisor asked: "Do you swing that way?" Jacinda replied: "If you are asking if I'm gay, yes - but I don't swing." The supervisor said: "Well, I'm fine with it as long as you don't kiss or hold hands in public."

Soon after Jacinda came out to her supervisor, the owner of the company approached her and told her about a book, *The Road Less Traveled*, which helped his son, who was a recovering drug addict. Jacinda interpreted the owner's comment as comparing being gay to being a drug addict. Her supervisor gave Jacinda the assignment of reading the book and writing a one-page essay about how it could improve her life.

Jacinda was offended by the book's characteri-

zation of homosexuality as immoral behavior. She was also offended by other passages that mentioned masturbation. Additionally, the book's perspective on spiritual growth made her uncomfortable. Jacinda wrote a letter to her supervisor saying she was uncomfortable with the assignment because the book's message violated her beliefs and she requested that her assignment be changed to read another book.

After she requested a different assignment, Jacinda's co-workers stopped talking to her and stopped asking her to join them at lunch. Shortly after that, Jacinda was fired on March 23, 2007. The company claimed that she was fired because the company's revenue was too low, but the company hired other people for the same job after they fired Jacinda.

The company offered Jacinda a severance of one month's salary if she signed a document saying she would not sue the company. Jacinda is a single mom with an eight-year-old daughter who had recently been hospitalized for asthma at the time Jacinda was fired. Jacinda was concerned about providing for her daughter so she signed the document promising not to sue the company and took the month's pay.

Shortly after being laid off, Jacinda interviewed with a "sister company" to the one she had left. After a series of interviews, personality and placement testing, they proceeded to make her a verbal offer. Twenty-four hours later, the director of human resources called to tell Jacinda that she would not be getting an offer letter because they had made "a business decision to go in another direction."

Jacinda is now working for another company doing similar work, although she is not out at her new job. She is also taking college classes at Saddleback Community College in the hopes of helping her to advance her career.

CALIFORNIA

*Juan Moreno
Born in 1987*

Juan is a Latino community college student studying nursing, who also works to help support his single mom and teenage sister. Juan applied for a part-time job at a local fast food restaurant where his friend worked. He interviewed with a shift manager in February 2007.

He had a successful interview with the shift manager who told Juan's friend that Juan would work out. The shift manager recommended to the store manager that Juan be hired. The store manager knew Juan was friends with a current employee and had seen Juan come into the store to visit his friend. The store manager asked Juan's friend: "Is he into men or women?" Juan's friend informed the store manager that Juan was gay, but then asked, "what does that have to do with hiring him?" The store manager replied: "I'm the head manager and I can do what I want to do." Juan was not hired.

Currently, Juan is a part-time program leader of a youth organization and an after school tutor for 5th and 6th grade students.

DELAWARE



*Douglas Marshall-Steele
Born in 1954*

Douglas, a registered nurse, went to his hospital's administration to complain about anti-gay statements and behavior of a doctor with whom he worked. The hospital investigated, but found that there was more than anti-gay issues; the hospital learned the male doctor was sexually harassing female nurses. The hospital told the doctor to stop the behavior and to apologize to Douglas. The doctor apologized and Douglas accepted. But a few weeks later, Douglas was fired under the pretext that he checked off his "rounds" boxes in advance of actually doing the rounds. This is a common practice by nurses with whom he worked - all the rounds still got completed.

Douglas sued, saying that the hospital's rationale was pretext for retaliation against him for reporting the doctor's anti-gay comments. Douglas filed a complaint with the Delaware Department of Labor, which determined that there was reasonable cause for Douglas to believe that the hospital retaliated against him for reporting the doctor's sexual harassment of the female nurses. After the Equal Employment Opportunity Commission reviewed Douglas' case and decided to pursue

his claim, the hospital finally agreed to settle with Douglas out of court.

Unfortunately, without legislation like ENDA, Douglas and other gay employees in Delaware have no protections. If the doctor or the hospital had limited their abuse to homophobic treatment, Douglas would have had no recourse. But because the doctor went on to sexually harass women (sex being a protected class both in Delaware and nationally), retaliation against reporting it was illegal.

Currently, the doctor continues to practice at the hospital and the hospital's nondiscrimination policy still does not include sexual orientation. Despite the settlement, Douglas has lost his professional position and emotionally has suffered very deeply.

Douglas quit nursing and devotes his time to LGBT work, setting up his own web site and advocacy group - Towardsequality.org. Douglas is an Army veteran, and continues to live with his partner in Delaware.

DISTRICT OF COLUMBIA



*Diane Schroer
Born in 1956*

As an Airborne Ranger and Special Forces officer, Diane Schroer completed 450 parachute jumps, received the Defense Superior Service Medal, and was hand-picked to lead a classified national security operation. But when she retired as a Colonel after 25 years of distinguished service in the Army, she faced one of her biggest challenges yet: coming out to her friends, family and employer as a transgender woman.

Diane had kept her gender identity a secret while she was in the Army, but she decided that she no longer wanted to keep the secret after she retired. After a stint at a private homeland security consulting firm, during which she was living as a woman while not at work and undergoing hormone therapy, Diane began searching for a new career. She interviewed for a job as the senior terrorism research analyst at a large federal agency library, a job for which she thought she was the perfect fit. She had a military background and was interested in military history and international relations. In fact she has a

16,000-volume home library collection on military history, the art of war, international relations, and political philosophy. Diane was thrilled to get an offer shortly after the interview and accepted the position right away.

Diane, who at the time was still using the name David professionally, asked her soon-to-be boss to lunch to talk with her about her transition. On their way to the restaurant, the division director was chatty and friendly, excited to have her start at the library and insisted that Diane was going to love working

there. When Diane explained that she is transgender and would like to begin the job as a woman, the only question the director asked her was which name should go on the hiring paperwork.

The next day, however, the director called Diane to rescind the job offer because "she wouldn't be a good fit" for the library. Diane was stunned. Twenty-four hours before the director rescinded the offer, the director had told her that she was the strongest candidate for the position. Diane was hurt and insulted. She had served her country for twenty-five years and now, according to Diane, "was being

told that I was no longer good enough to work for the federal government."

Diane began working with the ACLU to challenge the library's decision to withdrawal of her job offer. The District of Columbia has an employment nondiscrimination law that prohibits discrimination on the basis of gender identity, but it does not apply to federal employees. She is working as an independent consultant and now lives full time as a woman. In her free time, Diane sails, rides her two Harley-Davidsons, and spends time with her many friends and her three dogs.

FLORIDA



Robert Jernigan
Born in 1984

Robert worked at a retail music store in Florida. He needed the income from his job because Hurricane Ivan destroyed his apartment and his car in 2004. After the hurricane wiped everything out, Robert had to move back home with his parents, who have conservative religious beliefs and do not approve of his sexual orientation.

Robert was openly gay at work, which presented a problem because his boss constantly asked Robert if he was HIV positive

and refused to believe Robert when he said he was not. Robert even offered to show the boss his HIV test results, but the boss continued to ask him if he was HIV positive. The boss also told offensive anti-gay jokes and made disparaging comments to Robert when gay customers came into the store. The work environment became even more uncomfortable for Robert when the store began to sell the soundtrack to the movie "Brokeback Mountain," a gay-themed movie.

After the movie was released, a gay couple came to the store and purchased the soundtrack. Robert's boss said the couple looked "sick" and HIV positive. He made a big deal about having to go wash his hands and told Robert: "If I found out anyone working here was HIV positive, I'd have to fire them. I can't handle that."

His boss had become increasingly uncomfortable working with Robert and began to invent ways to accuse Robert of stealing in order to have him fired. Robert worked diligently for three years, but quit under the overwhelming pressure of the harassment.

FLORIDA



Susan Stanton
Born in 1958

Susan Stanton had been the city manager in Largo, Florida for 14 years and had received excellent job evaluations. In February 2007, Susan was fired as city manager just six days after a news article said that she was transgender and was going to transition from a man to a woman. The city commissioners voted 5-2 at a public meeting to fire Stanton. In the end, the commissioners said it was Stanton's judgment and honesty, not her

impending sex change that prompted their decision. Her appeal in March 2007 was unsuccessful and she was not reinstated.

Two months later, Susan applied for the position of city manager of Sarasota, Florida, 50 miles south of Largo. At an open meeting, Susan spoke personally and said that having a transgender city manager would not be as disruptive as they might think, and she hoped she had fully addressed all their concerns. The city commissioners interviewed Susan as one of five other candidates, but, unfortunately, Susan was not hired.

If ENDA were law, Susan might still have the job at which she excelled, in the city she lived in for many years.

INDIANA



Thomas Bryant
Born in 1969
(pictured on left)

Thomas worked for a temporary staffing agency in a cell phone supplies warehouse. Temporary workers had to prove themselves before the company offered them a staff position at the

warehouse by completing 1750 hours before being considered for full employment. Thomas' supervisors viewed him as a good employee. He was asked to train 50 new workers and trusted to use the RF Scan Gun, which would cost the company \$5,000 to replace.

Thomas was openly gay at work. When co-workers asked if he was married, Thomas said he had a life partner of more than five years. One co-worker repeatedly made comments about "fags" in front of Thomas. Thomas asked the co-worker to stop using that word because it offended him. The co-worker did not stop and continued to use the word. Each time Thomas told him to stop. The fourth time that the co-worker made a comment about "fags," Thomas told the co-worker that he had enough and he would have to go to human resources to report the co-worker. Thomas was leaving his station to go to human resources, when his supervisor said Thomas needed to drop the issue and get back to work. Thomas protested, saying he had put up with his co-worker's anti-gay comments for too long already. Then the supervisor told Thomas that the co-worker was exercising his "freedom of speech and he can say that to you if he wants."

Thomas went to human resources anyway, which brought the co-worker into the office with Thomas. The co-worker admitted using the word "fag." The human resources employee told him to stop saying it and then asked Thomas if that resolution was satisfactory. Thomas said it was and he thought the matter was concluded.

The next day, the company manager fired Thomas. The manager told Thomas that he was being fired because he slammed his RF Scan Gun down in anger the previous day before going to speak to Human Resources. Thomas denied slamming the gun and told his manager that the company's security cameras, as well as witnesses, would show that he did not slam down the gun. The manager fired Thomas anyway. The manager listed "discharged for attitude" and "provided misleading or inaccurate statements during investigation of harassment claim" on the written discharge notice. When he was fired, Thomas had worked for eight months and two days and was only 200 hours away from being eligible for a permanent employee position.

Thomas tried to find a lawyer who would represent him, but the lawyer told him that there is no law in Indiana against employment discrimination based on sexual orientation. Thomas is having a hard time finding new work because he does not have a high school diploma. He had dropped out of high school because his fellow students constantly harassed him and beat him up for being gay.

INDIANA



Susan Bresson
Born in 1963

Susan Bresson holds a masters degree, and in 2000, was hired and trained to provide accounting work as an assistant controller at a company that provides job placement services. Susan did not tell her supervisors

called her at the office every day. Six weeks into her training, Susan filled out her life insurance paperwork and listed her female partner as her beneficiary. Three days after she listed her female partner as her beneficiary, Susan was fired. She was told she was not working out even though her supervisors told her days earlier that her training was going well and they were making future plans for her.

or co-workers that she was a lesbian, although Susan had a rainbow sticker on the car that she drove to work and her partner

Now, Susan does accounting for a company that deals with troubled kids, where she is able to be out at work.

IOWA



Kathleen Culhane
Born in 1965

Kathleen was a research assistant doing chemical and biological analysis in an orthopedic surgeon's lab at a state university in Iowa. She had been working in the university for

three years when she told her supervisor and her co-workers that she was trans-

gender and would be transitioning from male to female. After this conversation, the surgeon stopped coming into the lab, and within weeks Kathleen was told she was being fired. The department administrator told Kathleen that they were firing her because they thought she could no longer give sufficient effort to the department because of her "condition."

When Kathleen found out that she was being fired, she notified the university's affirmative action office, which ordered the lab not to terminate her as long as she agreed to find work in another department. Kathleen had a few interviews in other departments, but no one wanted to hire her. She ultimately quit and left Iowa in 2002. "It caused me to leave a city I had lived in for 16 years," Kathleen said. "At the time it was overwhelming and terrible." Iowa's employment nondiscrimination law that protects LGBT employees did not come into effect until 2007, five years after Kathleen was forced to leave her job.

Kathleen now lives in St. Paul, Minnesota, is engaged to be married and has regained custody of her 12-year-old daughter. She sings in a chorus and is active in the Unitarian Universalist Church. Kathleen is also a veteran; she served in the Iowa Army National Guard.

MAINE



Brad Nadeau
Born in 1978

In April 2002, an insurance company in Bangor, Maine employed Brad in the area of reception

and public service. After about a month, Brad was called into a meeting for his performance review. All of his work was rated satisfactory

- he was not told that any areas of performance needed improvement. In fact, Brad trained a new employee who was hired a couple weeks after he was hired. Brad was not out at work because he was concerned that if he was honest about his sexual orientation, he might lose his job.

On June 2, 2002, Brad's partner picked him up at work and they went out for lunch together. When his partner brought him back to the office, they kissed goodbye in the parking lot. Brad noticed that an agency executive saw their kiss. The very same day, Brad saw that his supervisor and the executive were meeting behind closed doors. Brad was then called into a meeting with his supervisor and the executive. His supervisor told Brad that he was being fired

because his work was not satisfactory, despite his positive performance evaluation and the fact that he had over four years of office and administrative work experience.

Brad's termination seemed to violate company policy. The company policy states that the company is "committed to providing a work environment that is free of discrimination." The company also has a policy of progressive discipline, which the company states is "intended to give employees advance notice, whenever possible, of problems with their conduct or per-

formance in order to provide them an opportunity to correct any problems. Normally progressive discipline involves verbal counseling and one or more written warnings before an employee is terminated." Regardless, the company did not give Brad any warning before they fired him.

Maine currently has an employment nondiscrimination law that covers discrimination on the basis of sexual orientation and gender identity, however, the law was not in effect when Brad was fired in 2002.

MICHIGAN

John Schumacher
Born in 1949

John worked the overnight shift as stocker and "four star" cashier at a large retail store in

Michigan's remote Upper Peninsula. In three years on the job, he was named "Associate of the Month" four times. John is a Marine veteran with a high school diploma. He is the primary breadwinner because his partner is disabled.

He and the cashier supervisor carpooled to work everyday. At the time, the cashier supervisor was not John's supervisor, however, because John worked in the stockroom. After three months of carpooling, John told the cashier supervisor he was gay. She reacted with indifference and silence on the rest of the ride to work. Normally, John and the cashier supervisor would eat lunch together in the break room with other co-workers, but the night that John came out to her, she ignored John. The next night, he waited for her to pick him up, but she never came. He waited for an hour and then called a cab. When he arrived at work, the cashier supervisor was already there and did not say anything to him.

For several months, John was ignored by the cashier supervisor and he went about his busi-

ness. But when John was promoted to cashier, the cashier supervisor became his direct supervisor. "It was hell, starting off the bat," John said. The cashier supervisor treated John differently than the other cashiers. She assigned John stocking tasks in the shelves around the check-out lanes, but then yelled at him for leaving his register. She would not bring John change when he needed it, forcing him to go to the cash office to get change, but then he would get in trouble for leaving his register. Once, the cashier supervisor kept John and a customer waiting for 27 minutes before she came to his register to authorize a customer return, even though the store was not busy. Understandably, the customer was angry. John complained to the head manager five times but to no avail; each night the cashier supervisor would find a new way to make it more difficult for John to do his job.

On February 5, 2007, John came to work and realized he forgot to bring lunch and did not



have any cash to buy something at the store deli. John called home and asked his partner to bring something for lunch. His partner brought him a TV dinner from home. John ate the dinner in the break room in view of other workers and the cashier supervisor. Two weeks later, John was accused of stealing a frozen dinner from the store's grocery section. He was not able to produce a receipt for the TV dinner because he and his partner had bought it weeks before and did not save the receipt. He was fired on the spot.

While he worked at the retail store, John also volunteered at the local homeless shelter, cleaning and cooking meals. He also took "dis-

aster relief" classes at the local nonprofit organization so he could volunteer to assist in cases of a disaster like Katrina or 9/11. But the manager of the retail store from which John was fired sits on the board of the nonprofit organization, which owns the homeless shelter. Neither the shelter nor the nonprofit call John anymore to volunteer or take advance classes.

John is having a hard time finding a new job other than intermittent work, such as conducting telemarketing phone surveys. Word has spread around the area about his firing from the retail store and he is having trouble finding someone to hire him.

MISSISSIPPI



Ashley Thomas
Born in 1984

Ashley is a Native American woman living in Jackson, Mississippi. After she

graduated from high school, Ashley began working as a waitress in a restaurant. All of her co-workers knew that she had a girlfriend and her girlfriend would come to the restaurant to eat. When Ashley's boss discovered that Ashley was dating a woman, he began to harass her. Every day, he told Ashley she would go to hell for what she was doing and that she needed to find Jesus. Her boss' comments upset her to the point that she was in tears. Ashley's boss tried to get her to quit by making her do more work than other employees and being harder on her than anyone else. Her boss also made offensive comments like: "You just haven't found the right man; a man who knows what he is doing."

Ultimately, Ashley quit her job. She said that because of her experience, she is "less confident in telling coworkers who I am. I'm always in fear for my job because of my sexual identity." Ashley hopes that there will be a day when she can be out at work without being fearful of losing her job. She works with a LGBT community group, "trying to put a positive face on the gay community out there."



*Jessica Craig
Born in 1987*

Jessica works at a BBQ restaurant in San Antonio and is a student at a local community college.

Jessica had gone to high school with the restaurant owner's niece, who told the owner that Jessica is lesbian.

After the niece outed Jessica to the owner, Jessica's co-workers started to make a lot of anti-gay jokes. When Jessica asked her co-workers for help in lifting a heavy box, she was told: "you want to be a man, so lift that box yourself." When Jessica's girlfriend came to the restaurant to visit, Jessica's co-workers called her girlfriend

"Dumbo." Her co-workers repeatedly asked Jessica if she was still with "Dumbo." To get them to stop asking her, Jessica once said "no," to which a co-worker said: "Good, my prayers have been answered." Her co-workers often told her they were praying for her to "change."

Jessica complained about her co-workers' discriminatory comments to Human Resources, but Human Resources told Jessica to "stop making assumptions." Jessica asked Human Resources if there was anyone else she could talk to and the Human Resources employee said no. Fearing she would lose her job, Jessica contacted a member of the San Antonio city council who is sympathetic to LGBT issues, and explained her situation. The city councilmember contacted the restaurant owner to ask the owner to stop Jessica's co-workers from harassing her.

After the call to the city councilmember, the management on the job was very careful about not making harassing comments, but they began to look for any reason to write her up and fire her. They tried to send her home once by telling her she was suspended for a day, without giving her a reason or any written documentation. A co-worker told her that management was "setting her up" in order for them to be able to fire her for not being at work. To avoid that, she asked for documentation. Despite all of Jessica's efforts to keep a job she was good at, however, she ultimately got fired for not putting condiments out in a timely manner.

*J. C.
Born in 1971*

J.C. holds a masters degree and was the senior director of marketing for an online travel agency.

In more than three years on the job, J.C. distinguished himself as a top-performer. He got two

promotions and scored top performance ratings. In January 2006, his supervisor gave J.C. a rare perfect performance rating.

J.C. was openly gay at work and, as a result, he faced some instances of harassment. When J.C. was featured in the company newsletter, a vice

president of IT was overheard saying: "Great, we have a fag running our advertising." In 2006, J.C.'s boss left the company and the company hired a replacement who contributed to the harassment and seemed to treat him differently than other employees because J.C. was gay. J.C.'s new boss visited J.C.'s office and saw a picture of J.C. with another man on the desk. The boss asked who was in the picture. After J.C. said it was his partner, J.C.'s new boss started to treat him poorly.

First, the new boss questioned J.C. why the company was a sponsor of a Human Rights Campaign dinner. J.C. replied that the company had done this the past four years. The boss wanted documentation that the dinner was a worthy event in which the company should invest marketing resources. J.C. provided all the data on why advertising to the LGBT market was lucrative, but this was not sufficient for the boss. He wanted more proof this was a worthy market. Soon, the benchmark for marketing to the LGBT audience was much higher than marketing campaigns to any other group. In referring to the LGBT market, the boss would always use terms like "why are we doing *this type* of event" and "why are we marketing to *these people*." Once, J.C. pointedly asked, "What do you mean

by 'these people'?" The boss did not reply, but gave J.C. a look that clearly indicated that he did not want to start that conversation. Soon after he first starting raising questions about sponsoring LGBT events, the boss announced that, in the future, the company was not going to specifically target the LGBT market.

At J.C.'s next performance review, the boss gave him a zero, the lowest score possible. The boss' negative feedback in the review only mentioned nebulous comments like "doesn't have executive presence," giving J.C. nothing concrete. J.C.'s boss did not provide real examples to justify his negative comments and the low performance review score. The boss told J.C. to attend a leadership training class. In the class, J.C.'s peers all gave J.C. constantly high feedback scores, as opposed to the low scores his boss gave him. In January 2007, J.C. was fired. J.C. was told that he was fired due to "departmental restructuring."

J.C. is now employed as the chief marketing officer for an on-line lending company. He is out at work and has not encountered any problems from his supervisors or co-workers. J.C. lives with his partner of nine years in Dallas. They have two dogs.

TEXAS



Alex Gorinsky
Born in 1973
(pictured on left)

Alex was an account manager for a finance leasing company in the railroad industry.

He describes the industry as a "good old boy network" of very traditional clients. Alex worked for the company for five years, during which time he was promoted, received consistently positive reviews, and received merit pay raises. After three years with his partner, Alex felt like he needed to open up more and not hide his life, so he decided to bring his partner to the 2006 company Christmas party. His coworkers were very welcoming of his partner, Jon, but the introduction with his manager was awkward.

Three weeks later, Alex was laid off. His manager gave no specific reason for his termina-

tion, but the Human Resources Director said that he was fired for "performance related" reasons, while at the same time acknowledging that Alex's sales quota numbers were "solid." When Alex raised the possibility he was being fired because he had come out to his boss at the Christmas party, the human resources director said she did not know Alex was gay. However, she later mentioned the name of

Alex's partner Jon, whom Alex has not previously named, even though she had just claimed that she did not know that Alex was gay.

Alex found a new job in purchasing management with an airline. He and his partner were recently married in Canada, where Alex was raised. Alex and Jon live with their one-year-old puppy, Baxter.

TEXAS

James Quinn
Born in 1977

James has a high school GED and taught himself how to provide computer support. He worked at

the IT computer help desk at a multi-national corporation that provides products and services to oil and natural gas companies.

James received positive feedback from his supervisors. He was praised by his boss for being a vital piece in "building his bench" of solid team players. After working at the company for six months as a consultant, James was being considered for a promotion to full staff; one of the three consultants being considered out of the eight consultants who worked on the help desk.

James was out to a few people in the office, including a lesbian co-worker and three straight co-workers. James attended Houston's gay pride parade with these four co-workers. He also socialized with his lesbian co-worker outside of work, including going to lesbian bars with her. James and his lesbian co-worker had conversations at work in which their time at the bars came up, but they would not have graphic conversations because they knew they could be overheard by people in adjoining cubicles. If they had something to say that was more private, they would go outside onto the patio so that none of their co-workers would hear them. Other employees on the

same floor conducted prayer sessions in their cubicles during the workday that could be heard throughout the room.

In November 2006, someone in the office complained to Human Resources that James' conversation about his activities at gay bars and the gay pride parade constituted sexual harassment. A Human Resources employee asked James if he had ever talked in the office about attending gay bars or the pride parade. James replied that the only conversations of that kind that he had had were with his co-workers who had also attended the activities with him. The Human Resources employee said that talking about these activities constituted sexual harassment, and because James admitted having conversations about those topics, he was fired.

The lesbian co-worker and the straight co-workers who attended the activities with James were not fired. James' former lesbian co-worker continues to work at the company, but is not out at work because she fears for her job.

After being fired, James had to move back in with his parents. He now has a contracting job at a hospital helping with computer upgrades, but he had to take a \$20,000 pay cut from \$50,000 a year to \$30,000 a year. Because his new job does not provide health insurance, James has to pay for medical care out-of-pocket, which is a financial burden for James who is living with HIV.

TEXAS

*Brooke Waits
Born in 1981*

Brooke worked as the inventory control manager for a cell phone vendor. In the four months Brooke worked for the company, she implemented a control system that allowed the vendor to manage inventory. Her supervisor continually praised her for her work.

Brooke was not out to her co-workers at the store. She was quiet and kept to herself because she did not fit in with the other women who worked at the store and her male coworkers told a lot of lesbian jokes. She did not want to create problems, so Brooke did not say anything when her co-workers made anti-gay jokes and derogatory comments.

In May 2006, Brooke's manager approached Brooke's desk to ask her a question. Brooke was on the other side of the room sending a fax. Brooke's manager picked up Brooke's cell phone off of her desk, opened it, and then exclaimed "Oh my goodness!"

Brooke's manager had seen the screen saver inside Brooke's cell phone, which was a picture of Brooke and her partner sharing a New Year's Eve kiss. Brooke's manager immediately left the room and did not speak to Brooke at all for the rest of the day. Later in the day, Brooke overheard the manager tell another co-worker, "I knew there was something off about her."

The next day, Brooke arrived at work and, as soon as she walked in the door, her manager asked to speak with her. The manager told Brooke that she was fired. When Brooke asked why, the manager told her that they needed someone more "dependable." Brooke told the manager that she was dependable and, in fact, had been coming to work an hour early every day to work on implementing the new inventory system. The manager replied: "I'm sorry, we just need to let you go."

Until recently, Brooke worked part-time doing bookkeeping and taxes for her father's small business.

VIRGINIA



*Linda Czyzyk
Born in 1962*

(pictured on right)

Linda is an attorney and her partner is a college professor who teaches biology and genetics. The couple lived in North Carolina and Linda worked at a law firm where she was openly gay. When Linda's partner accepted a faculty position at a university in Virginia, the couple needed to relocate to Virginia.

In August of 2000, Linda had a phone interview with a law firm in Virginia and was invited for a second interview at the firm's office. During the interview, the firm repeatedly asked her why she was moving to Virginia. Linda replied that her spouse had taken a position at a local

university, making sure that she avoided using pronouns. The law firm asked Linda to come back for a third interview, but this time she was told to bring her spouse because the interview would include a dinner with all the partners and their spouses "to make sure we all got along."

Linda told the only female partner at the law firm that her spouse was a woman. The female partner said that was fine by her, but she would have to inform the other two partners at the firm. After talking to the male partners, the female partner called Linda back to tell her that the male partners said the firm would not hire

a lesbian and Linda should not bother coming to the third interview.


Since moving to Virginia, Linda started working in the public defenders' office. She often sees the partners in the firm that refused to hire her. While at the time, the firm had less than 15 employees and would not have been covered by ENDA as presently drafted, this story shows that without protection, even those who are trained to know better, can explicitly discriminate on characteristics other than skill or talent.

Linda and her partner enjoy hiking, camping and music. They care for six cats and a dog.



Conclusion

Sadly, these stories show that many workers have to work in the shadows - hiding themselves to protect their jobs. When discovered or when they took the bold step of coming out as LGBT, their livelihoods were put in jeopardy. By passing ENDA, Congress can help ensure that everyone can enter and succeed in the workplace without regard to sexual orientation or gender identity. ENDA will allow all American workers who stand side-by-side at the workplace, to also stand on the same footing in the eyes of the law.



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ENDNOTES

¹ HUMAN RIGHTS CAMPAIGN FOUNDATION, THE STATE OF THE WORKPLACE FOR GAY, LESBIAN, BISEXUAL AND TRANSGENDER AMERICANS (2006-2007) 12 (2007), available at http://www.hrc.org/Template.cfm?Section=Get_Informed2&CONTENTID=32948&TEMPLATE=/ContentManagement/ContentDisplay.cfm [hereinafter STATE OF THE WORKPLACE 2006-2007].

² Employment Non-Discrimination Act of 2007, H.R. 2015, 110th Cong. (2007). The bill defines “sexual orientation” as meaning “homosexuality, heterosexuality, or bisexuality.” *Id.* § 3(a)(9). The bill defines “gender identity” as meaning “gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual’s designated sex at birth.” *Id.* § 3(a)(6). As of this writing, the Senate version of the ENDA bill has not been introduced.

³ 42 U.S.C.A. §§ 2000e to e-17 (West 2005).

⁴ 29 U.S.C.A. §§ 621-634 (West 2005).

⁵ 42 U.S.C.A. §§ 12111-12117 (West 2005).

⁶ Transgender is an umbrella term for people whose gender identity, expression or behavior is different from that typically associated with their assigned sex at birth. M.V. LEE BADGETT ET AL., THE WILLIAMS INSTITUTE, BIAS IN THE WORKPLACE: CONSISTENT EVIDENCE OF SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION 9 (2007) [hereinafter BIAS IN THE WORKPLACE].

⁷ Employment Nondiscrimination Act, S. 2056, 104th Cong. (1996) (failing by a vote of 49-50 (roll call vote no. 281)).

⁸ STAFF OF S. COMM. ON HEALTH, EDUCATION, LABOR, AND PENSIONS, 107TH CONG., REPORT ON THE EMPLOYMENT NON-DISCRIMINATION ACT OF 2001, S. REP. No. 107-341, at 1 (2002); see Employment Nondiscrimination Act, S. 1284, 107th Cong. (2001).

⁹ Press Release, Gallup Poll News Service, Tolerance for Gay Rights at High Water Mark (May 29, 2007) [hereinafter Press Release, Gallup Poll News Service].

¹⁰ STATE OF THE WORKPLACE 2006-2007, *supra* note 1, at 23.

¹¹ American Civil Liberties Union’s Lesbian Gay Bisexual Transgender Project, Non-Discrimination Laws: State by State Information, http://www.aclu.org/lgbt/discrim/disc_map.html#maine [hereinafter ACLU, State Laws].

¹² *Id.*

¹³ U.S. GEN. ACCOUNTING OFFICE, GAO-02-878R, SEXUAL ORIENTATION-BASED EMPLOYMENT DISCRIMINATION: STATES’ EXPERIENCE WITH STATUTORY PROHIBITIONS, 1 (2002) [hereinafter GAO REPORT].

¹⁴ 42 U.S.C.A. § 2000e-2 (West 2005).

¹⁵ 29 U.S.C.A. § 623, 631 (West 2005).

¹⁶ 42 U.S.C.A. § 12111 (West 2005).

¹⁷ Courts have traditionally been unwilling to allow LGBT employees to use Title VII to sue for sexual orientation discrimination. See *Simonton v. Runyon*, 232 F.3d 33, 36 (2nd Cir. 2000); *Williamson v. A.G. Edwards & Sons, Inc.*, 876 F.2d 69, 70 (8th Cir. 1989); *DeSantis v. Pacific Tel. & Tel. Co., Inc.*, 608 F.2d 327, 329-30 (9th Cir. 1979), *overruled on other grounds by Nichols v. Azteca Rest. Enters.*, 256 F.3d 864, 875 (9th Cir. 2001). See generally, Toni Lester, *Queering the Office: Can Sexual Orientation Employment Discrimination Laws Transform Work Place Norms for LGBT Employees?*, 73 UMKC L. REV. 643, 646-648 (2005).

¹⁸ See *Smith v. City of Salem, Ohio*, 378 F.3d 566, 575 (6th Cir. 2004) [stating that “[s]ex stereotyping based on a person’s gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior; a label, such as “transsexual,” is not fatal to a sex discrimination claim where the victim has suffered discrimination because of his or her gender non-conformity.”]; see also NAT’L CTR. FOR LESBIAN RIGHTS, FEDERAL CASES RECOGNIZING THAT DISCRIMINATION ON THE BASIS OF GENDER NON-CONFORMITY AND/OR TRANSGENDER STATUS IS A FORM OF DISCRIMINATION ON THE BASIS OF SEX (2006), *available at*

www.nclrights.org/publications/nonconform.htm [citing mostly cases dealing with sexual harassment of employees who do not conform to gender stereotypes]; Ilona M. Turner, Comment, *Sex Stereotyping Per Se: Transgender Employees and Title VII*, 95 CAL. L. REV. 561, 561-62 (2007).

¹⁹ STATE OF THE WORKPLACE 2006-2007, *supra* note 1, at 12.

²⁰ *Romer v. Evans*, 517 U.S. 620, 631 (1996) [stating that “we cannot accept the view that Amendment 2’s prohibition on specific legal protections does no more than deprive homosexuals of special rights. To the contrary, the amendment imposes a special disability upon those persons alone.”].

²¹ *Id.*

²² See, e.g., Deborah J. Vagins, *Occupational Segregation and the Male-Worker-Norm: Challenging Objective Work Requirements Under Title VII*, 18 WOMEN’S RTS. L. REP. 79, 86-91 (1996) [explaining disparate impact theory in Title VII claims].

²³ Employment Non-Discrimination Act, H.R. 2015, 110th Cong. § 6 (2007).

²⁴ *Id.* § 6(a).

²⁵ *Id.* § 6(b).

²⁶ *E.E.O.C. v. Catholic Univ. of America*, 83 F.3d 455, 461 (D.C. Cir. 1996) [quoting *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985)].

²⁷ H.R. 2015, § 6(c).

²⁸ 42 U.S.C.A. § 12113(c)(2) (West 2005).

²⁹ See Michael C. Falk, *Lost in the Language: The Conflict Between the Congressional Purpose and Statutory Language of Federal Employment Discrimination Legislation*, 35 RUTGERS L. J. 1179, 1199 (2004) [citing U.S. Dep’t of Labor, *The Older American Worker: Age Discrimination in Employment: Report of the Secretary of Labor to the Congress Under Section 715 of the Civil Rights Act of 1964* (1965)]; see Rebecca E. Zietlow, *To Secure These Rights: Congress, Courts and the 1964 Civil Rights Act*, 57 RUTGERS L. REV. 945, 976 (2005) [citing ROBERT D. LOEY, *TO END ALL SEGREGATION: THE POLITICS OF THE PASSAGE OF THE CIVIL RIGHTS ACT OF 1964* 49 (1990)]; 42 U.S.C.A. § 12101(a)(9) (West 2005).

³⁰ 42 U.S.C.A. § 12101(a)(9).

³¹ Falk, *supra* note 29, at 1199 [citing Report of the Secretary of Labor to the Congress, at 5].

³² *Id.* [citing Report of the Secretary of Labor to the Congress, at 18-19].

³³ See STAFF OF H.R. COMM. ON EDUCATION AND LABOR, 102ND CONG., *REPORT ON THE CIVIL RIGHTS AND WOMEN’S EQUALITY IN EMPLOYMENT ACT OF 1991*, H.R. REP. No. 102-40, at 19 (1991); Zietlow, *supra* note 29, at 976; see, e.g., Mark J. Wolff, *Sex, Race, and Age: Double Discrimination in Torts and Taxes*, 78 WASH. U. L. Q. 1341, 1456, 1459-60 (2000).

³⁴ BIAS IN THE WORKPLACE, *supra* note 6, at i. A 2002 poll reported that 40% of gay employees have been discriminated against at work, showing the need for protection is very real. See Press Release, CBS Market Watch Survey: 40% of Gays Report Bias in the Workplace (Sept. 12, 2002). The survey reported that 2 out of 5 gay and lesbian employees say they have been discriminated at work. Of these, 23% said they experienced harassment on the job, 12% claimed they were denied a promotion, and 9% said their employment was terminated unfairly. *Id.*

³⁵ BIAS IN THE WORKPLACE, *supra* note 6, at i.

³⁶ *Id.*

³⁷ See Press Release, Careerbuilder.com, *Twenty-eight Percent of Gay/Lesbian/Transgender Workers Have Experienced Discrimination or Unfair Treatment at Work*, CareerBuilder.com and Kelly Services Survey Shows (June 19, 2007), <http://www.careerbuilder.com/share/aboutus>.

³⁸ *Id.*

³⁹ BIAS IN THE WORKPLACE, *supra* note 6, at ii. Although the findings on the impact of lesbians’ wages are less clear, the studies do show that lesbians consistently earn less than men, regardless of sexual orientation. *Id.* at ii.

⁴⁰ Julie A. Baird, *Playing it Straight: An Analysis of Current Legal Protections to Combat Homophobia and Sexual Orientation Discrimination in Intercollegiate Athletics*, 17 BERKELEY WOMEN'S L.J. 31, 65 (2002) (citing Dr. Lee Badgett, University of Massachusetts at Amherst, Employment Discrimination on the Basis of Sexual Orientation, Religious Tolerance, http://www.religioustolerance.org/hom_empl1.htm).

⁴¹ BIAS IN THE WORKPLACE, *supra* note 6, at ii.

⁴² See Kenneth A. Kovach and Peter E. Millsbaugh, *Employment Non Discrimination Act: On the Cutting Edge of Public Policy*, 39 BUS. HORIZON 65, 70 (1996) (citing a study that states that an estimated 42,000 gay employees are dismissed each year due to their sexual orientation).

⁴³ *Id.*; see also Jeremy S. Barber, Comment, *Re-Orienting Sexual Harassment: Why Federal Legislation is Needed to Cure Same-Sex Sexual Harassment Law*, 52 AM. U. L. REV. 493, 531 & n. 238 (2002).

⁴⁴ STATE OF THE WORKPLACE 2006-2007, *supra* note 1, at 23.

⁴⁵ *Id.* at 1.

⁴⁶ *Id.* at 23; Human Rights Campaign Foundation, Business Coalition for Workplace Fairness, www.hrc.org/workplace/support [hereinafter HRC, Business Coalition].

⁴⁷ HRC, Business Coalition, *supra* note 46. As of August 3, 2007, other members of the coalition include: Alberto-Culver Co., Bausch & Lomb, Inc, BP America, Inc., Bristol-Myers Squibb Co., Capital One Financial Corp., Charles Schwab & Co., Chevron Corp., Chubb Corp., Cisco Systems Inc., Citigroup, Clear Channel Communications, Inc., Coors Brewing Co., Corning Inc., Deutsche Bank, Ernst & Young LLP, Gap Inc., GlaxoSmithKline, Goldman Sachs Group Inc., Google Inc., Harrah's Entertainment Inc., Hewlett-Packard Co., HSBC -North America, Kaiser Permanente, Lehman Brothers, Levi Strauss & Co., Merrill Lynch & Co., Inc., Nationwide, NCR Corp., QUALCOMM Inc., Replacements Ltd., Robins, Kaplan, Miller & Ciresi LLP, Sun Microsystems Inc., Time Warner Inc., Travelers Companies Inc., and Washington Mutual Inc. *Id.*

⁴⁸ STATE OF THE WORKPLACE 2006-2007, *supra* note 1, at 1.

⁴⁹ ACLU, State Laws, *supra* note 11. Those states are California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon (effective Jan. 1, 2008), Rhode Island, Vermont, Washington, Wisconsin, and the District of Columbia. *Id.*

⁵⁰ STATE OF THE WORKPLACE 2006-2007, *supra* note 1, at 13.

⁵¹ ACLU, State Laws, *supra* note 11. These states are California, Colorado, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon (effective Jan. 1, 2008), Rhode Island, Vermont, Washington, and the District of Columbia. *Id.*

⁵² STATE OF THE WORKPLACE 2006-2007, *supra* note 1, at 12, 13. It should also be noted that some state courts and state and local governmental bodies have interpreted their existing state laws to include some protection against transgender individuals in Connecticut, Florida, Hawaii, Massachusetts, New Jersey and New York. *Id.*

⁵³ Press Release, Gallup Poll News Service, *supra* note 9.

⁵⁴ Memorandum from Peter D. Hart Research Associates, Results of Survey on Employment Non-discrimination (Feb. 26, 2007).

⁵⁵ GAO REPORT, *supra* note 13, at 1.

⁵⁶ *Id.* at 1, 7, 10.

⁵⁷ BIAS IN THE WORKPLACE, *supra* note 6, at 11 (citing William B. Rubenstein, *Do Gay Rights Laws Matter?: An Empirical Assessment*, 75 S. CAL. L. REV. 65, 101 (2001)).

⁵⁸ See *Employment Non-Discrimination Act: Hearing on S. 1284 Before the S. Comm. on Health, Education, Labor, and Pensions*, 107th Cong. 20 (2002) (testimony of Matthew Coles Director, Lesbian & Gay Rights Project, American Civil Liberties Union).

Hardworking Americans should not be kept from supporting their families and making a positive contribution to the economic life of our nation because of characteristics that have no bearing on their ability to do their job. Many workers have to make a choice of hiding who they are at work in order to support their families at home.

Recently introduced federal legislation, the Employment Non-Discrimination Act of 2007 (ENDA), would prohibit discrimination based on sexual orientation and gender identity in most workplaces. ENDA offers Congress and American employers the opportunity to ensure workplace equality for everyone by protecting LGBT employees and their co-workers from discrimination in employment. ENDA will allow all American workers who stand side-by-side at the workplace, to also stand on the same footing in the eyes of the law.