

FEDERALISM IN Action

LGBT in the Workplace

Although the Supreme Court has ruled that all states must recognize same-sex marriage, other rights for same-sex couples are still denied by many states and local communities. Texas has an estimated 429,000 lesbian, gay, bisexual, and transgender (LGBT) individuals active in the workplace, and those individuals face a wide range of discrimination.ⁱ Complaints and lawsuits indicate the LGBT community faces open hostility and harassment, such as the Austin police detective who accused male colleagues of showing her pornographic pictures of women, making inappropriate comments, and asking if she wanted to have sex with female detainees.ⁱⁱ Discrimination in hiring practices and pay and promotion are also alleged, with same-sex couples earning a median income that is 9 percent less than different-sex couples.ⁱⁱⁱ

There is no statewide law prohibiting discrimination based on sexual orientation or gender identity, but a handful of cities in Texas have passed local ordinances protecting the employees in that city. In 2000, Fort Worth became the first city in the state to

pass an ordinance outlawing discrimination based on sexual orientation; that law was later expanded to include gender identity.^{iv} To date, five cities—Fort Worth, Dallas, Austin, Plano, and San Antonio—have passed laws prohibiting such discrimination. Another seven cities bar discrimination by their city government. Two county governments—Dallas County and Walker County—have also outlawed LGBT discrimination. In addition, some private companies, including most of the large companies headquartered in the state, have prohibited discrimination as well as the University of Texas (UT) and Texas A&M systems. Still, nearly 86 percent of Texas's workforce is not protected from such discrimination.^v

At the state level, there seems little momentum to protect LGBT individuals against workplace discrimination. In fact, twenty anti-LGBT bills were introduced in the 84th state legislature, ranging from allowing people to discriminate against LGBT individuals based on religious grounds, prohibiting individuals to use the bathroom that corresponds to their gender identity, and nullifying and banning local laws designed to prevent LGBT discrimination. Although none of these bills passed, Lieutenant Governor Dan Patrick has already declared the transgender bathroom issue as a priority for the next legislative session. As the recent battle in Houston over the Houston Equal Rights Ordinance (HERO) amendment illustrates, state legislators appear unwilling to let local communities pass LGBT anti-discrimination laws. The Equality Act has been introduced in the national Congress to expand the Civil Rights Act of 1964, which prohibits

discrimination in hiring based on race and sex, to include sexual orientation and gender identity. So far, though, the national government has not been able to pass such legislation.

- Should local governments have the ability to prohibit LGBT discrimination?
- Should the state government be able to nullify or prohibit local LGBT ordinances?
- Does the national government pass protections against LGBT discrimination?

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- i Christy Mallory and Brad Sears, "Employment Discrimination Based on Sexual Orientation and Gender Identity in Texas," The Williams Institute, April 2015, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Texas-ND-May-2015.pdf> (accessed July 28, 2016).
 - ii Ciara O'Rourke, "Austin Detective Sues City Over Sexual Harassment, Retaliation Claims," *Austin American-Statesman*, December 29, 2014, <http://www.mystatesman.com/news/news/crime-law/austin-detective-sues-city-over-sexual-harassment-/njcdx> (accessed July 28, 2016).
 - iii Mallory and Sears, "Employment Discrimination Based on Sexual Orientation and Gender Identity in Texas."
 - iv Alexa Ura, Edgar Walters, and Jolie McCullough, "Comparing Nondiscrimination Protections in Texas Cities," *Texas Tribune*, June 9, 2016, <https://www.texastribune.org/2016/06/09/comparing-nondiscrimination-ordinances-texas> (accessed June 13, 2016).
 - v Mallory and Sears, "Employment Discrimination Based on Sexual Orientation and Gender Identity in Texas."