



National Center for
**TRANSGENDER
EQUALITY**

KNOW YOUR RIGHTS: EMPLOYMENT DISCRIMINATION AND TRANSGENDER PEOPLE

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Federal courts and the U.S. Equal Employment Opportunity Commission (EEOC), which enforces federal job discrimination laws, have concluded that discrimination because a person is transgender or gender non-conforming constitutes illegal sex discrimination. Many states and localities also expressly prohibit job discrimination based on gender identity and/or expression. This resource outlines the rights and procedures transgender employees have to address discrimination. While NCTE does not provide legal services, we encourage any employee who cannot resolve workplace issues through their employer's internal human resources procedures to seek legal counsel. We also encourage workers to share their experiences with NCTE to aid our advocacy efforts on behalf of all transgender employees.

WHAT LAWS PROTECT YOU?

The following laws offer protection for transgender people in employment:

- **Title VII of the Civil Rights Act of 1964** prohibits sex discrimination in employment. Federal courts and the U.S. Equal Employment Opportunity Commission (EEOC), which enforces this law, have concluded that discrimination because an employee or job applicant is transgender or gender non-conforming constitutes sex discrimination. Title VII applies to any employer with at least 15 employees. This means that **complaints of anti-transgender job discrimination anywhere in the country can be filed with the EEOC.**
- **State and local laws** in many jurisdictions also explicitly prohibit discrimination based on **gender identity or expression**. As of May 1, 2012, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Massachusetts, Minnesota, New Jersey, New Mexico, Nevada, Oregon, Rhode Island, Vermont, Washington State and Puerto Rico and nearly 200 cities and counties have such explicit laws. These laws are enforced by state and local civil or human rights agencies.
- **State or local government employees** are protected by **state constitutions and laws prohibiting discrimination on the basis of sex** in employment. Additionally, **executive orders** in Delaware, Indiana, Kansas, Kentucky, Maryland, Michigan, New York, and Pennsylvania explicitly prohibit gender identity discrimination in state employment.
- **Federal civilian employees** have additional protections and different procedures for complaints. The federal government has issued **guidelines regarding transgender issues in the workplace**. Please refer to NCTE's resource, "Transgender Federal Employees: Your Workplace Rights" for more information.

WHAT ARE YOUR EMPLOYMENT RIGHTS?

You have the right not to be fired or refused a job or promotion because you are transgender. This is true even if your state and locality have not passed laws explicitly prohibiting gender identity discrimination.

You have the right to be treated with respect and not be harassed. Sex-based harassment is unlawful when it is

WHAT ARE YOUR EMPLOYMENT RIGHTS? (CONTINUED)

severe or pervasive and an employer does not take steps to stop it. Jokes or derogatory comments about transgender people, repeated and intentional use of the wrong name or pronouns, or intrusive, disrespectful personal questions may constitute harassment, and supervisors should take steps to stop it.

You have the right to safe and adequate access to restrooms and other facilities. Federal regulations enforced by the Occupational Safety and Health Administration (OSHA) require employers to make adequate facilities available as freely as possible for all employees. Under no circumstances may an employer require you to use restroom facilities that are unsanitary, unsafe, or located at an unreasonable distance from your work station. Denial of access to restrooms that are consistent with an employee's gender identity may also constitute discrimination.

WHAT CAN YOU DO ABOUT EMPLOYMENT DISCRIMINATION?

Try to resolve it within your company

Many problems can be resolved internally, either by talking with the person who is causing a problem, or by using your company's internal complaint process. Sometimes, a manager or coworker just needs to understand your point of view; they may not have met a transgender person before. Other times, a direct supervisor may be biased, but management will back you up. Find out about your company's equal employment opportunity (EEO) procedures, and whether your company's EEO policy expressly covers gender identity. Even if it doesn't, you can still file an internal complaint. These can often be resolved in days or weeks. Another possibility is having an attorney or legal organization approach your employers on your behalf to fix the problem. However, you are not required to use your company's internal process before filing a complaint with federal, state, or local officials.

Weigh your options

The primary reason to assert your rights is to make an ongoing instance of discrimination or harassment stop. When the discrimination or harassment is not ongoing, filing a complaint afterwards may serve the important purpose of preventing the same thing from happening to others, and sometimes can result in remedies such as back pay. Complaints also lead employers to change their policies or discipline or fire an employee responsible for discrimination. However, it is important to be realistic. Complaint processes can take a long time—years, in the case of lawsuits—and some cases may require legal assistance, which can be expensive. Many cases are difficult to prove because you may not have evidence that a person took a particular action against you because you are transgender, rather than for some other reason. Legal protections for transgender people are generally new and still being established, and the law may change quickly. Monetary remedies from a discrimination complaint are rare.

File a charge of sex discrimination with the U.S. Equal Employment Opportunity Commission (EEOC)

A charge of discrimination must be filed with the EEOC or an equivalent state agency before an employee may bring a lawsuit. Most charges are resolved without going to court. Generally a charge must be filed within 180 days of a discriminatory or harassing action, although there are some exceptions. (Note: Federal government employees generally need to file a complaint within 45 days.)

We recommend filing a charge in person at a regional EEOC field office. If you cannot do this, a charge may be filed by mail in the form of a letter that includes the following:

- Your name, address, and telephone number
- The name, address and telephone number of the employer
- The number of employees employed there (if known)
- A short description of the events you believe were discriminatory
- When the events took place
- Why you believe you were discriminated against (e.g., because of your sex)
- Your signature

WHAT CAN YOU DO ABOUT EMPLOYMENT DISCRIMINATION? (CONTINUED)

Charges cannot be filed online or by phone, however the agency maintains an informational hotline (1-800-669-4000) and an online assessment tool to help individuals determine how and where to file. For details on filing charges, you can find instructions on the EEOC's website: <http://eeoc.gov/employees/howtofile.cfm>. The law protects individuals against any threats or retaliation by the employer for participating in the complaint process.

The EEOC will generally either ask you and your employer to take part in the agency's mediation program. If the case is not sent to mediation or mediation doesn't resolve the case, the EEOC will investigate the charge. Following an investigation, the agency will either find a violation of the law and try to reach a settlement between you and your employer, or will issue a "Right-to-Sue" letter permitting you to file a lawsuit in federal court.

File a lawsuit

You must file an EEOC complaint and receive a Right-to-Sue letter before you can file a federal lawsuit. You can request a Right-to-Sue letter immediately when you file your charge. However, unless you have a lawyer representing you, it is not usually advisable to ask for a Right-to-Sue letter immediately. You must file a lawsuit within 90 days from the day you receive the EEOC's Right-to-Sue letter.

To file a lawsuit based on state or local law, you do not need to go through the EEOC process first. Sometimes, however, you may need to go to the state agency charged with enforcing the law first.

This type of lawsuit is complex and you will generally need to hire a lawyer to help you. Deadlines are still very important, so if you feel you may ultimately need to sue you should begin looking for a lawyer early in the process.

File a complaint with a state or local civil or human rights agency

State and local human rights agencies are responsible for enforcing state and local laws prohibiting employment discrimination based on sex or gender identity or expression, where protected. The Department of Justice keeps a list of contact information for state human rights agencies here: <http://www.justice.gov/crt/legalinfo/stateandlocal.php>. Human rights agencies may have individual differences in the complaint filing process, and contacting the appropriate office for your area is the best way to learn more about who to contact and how to initiate the complaint process.

Use union grievance procedures

If you are a member of a union, your union will have a negotiated grievance procedure to resolve disputes between employees and your employer. This process may specifically exclude discrimination complaints, or may have rules about the interaction between the grievance procedure and the EEOC process. Your union membership will not prevent you from bringing an EEOC complaint, but bringing an EEOC complaint may prevent you from using your union procedure. Your union procedure may have strict deadlines and fewer safeguards or appeal rights than an EEOC complaint, but it may also be faster or require less legal assistance. Contact your union representative for details and decide how it would be best for you to proceed based on the seriousness of your issue, your situation with your union, etc.

TIPS FOR THE COMPLAINT PROCESS

Document everything. Your complaint will be far more effective if you can present solid factual information. It is important to begin collecting your evidence and keeping records in preparation. Keep a log of the date, time, location, witnesses, and people involved in any events that were disrespectful or discriminatory. Also keep any documents that your employer gives you, such as performance reviews or disciplinary notices. If you present your case in an organized way, you raise the chance of your complaint getting full attention and an appropriate resolution.

Stay on top of deadlines. Timelines for formal complaint processes are very strict. If you feel that you have experienced a pattern of ongoing discrimination, it is safest to assume that the time limit began as soon as you

TIPS FOR THE COMPLAINT PROCESS (CONTINUED)

recognized that pattern. Make sure you make a note of the date when you first file your complaint. Mark your calendar at every stage of the process so that you know all the relevant deadlines.

Be assertive. Do not assume that once you file a complaint, the complaint process will proceed automatically. You will have to stay aware and be assertive. Check in periodically to find out what is happening with your case. If the action or inaction of the individual handling your case is causing you problems at work, call that to their attention, and speak to a supervisor if necessary.

Be specific. You must state that you are claiming that the acts you describe constitute sex discrimination, or gender identity discrimination where it is explicitly prohibited by state or local law. Describing the acts that you believe are discriminatory is not usually enough.

Consider your privacy. When you file a complaint with the EEOC, your personal information is protected by the Privacy Act. The agency will share information only when it is necessary to investigate your case, and will not give it to the public or media. There are usually similar laws at the state level. Presenting more detail about the discriminatory incident will generally help your case. However, we don't recommend sharing details about your personal medical history unless they are relevant to the substance of your complaint. In contrast to EEOC complaints, documents filed in court become public records – discuss any privacy concerns with an attorney before filing in court.

GET HELP

Resolving a case of workplace discrimination can be a complicated process. Don't hesitate to seek help from a lawyer or your union representative (or both). While NCTE does not provide legal services or referrals, there are many other groups that may give you referrals or maintain lists of local employment lawyers. You can try your local legal aid or legal services organization, or national or regional organizations such as Lambda Legal, the National Center for Lesbian Rights, the ACLU, the Transgender Law Center, and others listed on NCTE's website. The National Employment Lawyers Association also maintains an online directory of employment lawyers.

SHARE YOUR STORY

If you are facing discriminatory treatment, consider sharing your story with NCTE so we can use it in advocacy efforts to change policy, improve education, and reduce future discrimination. If you successfully resolve issues in your workplace, and especially if any of the material here helped, we want to hear from you as well.

Additional Resources

U.S. Equal Employment Opportunity Commission: <http://eeoc.gov>

U.S. Equal Employment Opportunity Commission Guidance on Sex-Discrimination:
<http://eeoc.gov/laws/types/sex.cfm>

How to File a Charge with the EEOC: <http://eeoc.gov/employees/howtofile.cfm>

EEOC Assessment System: <https://egov.eeoc.gov/eas>

Links to State and Local Human Rights Agencies:
<http://www.justice.gov/crt/legalinfo/stateandlocal.php>

Links to LGBT Legal Organizations: <http://transequality.org/Resources/links.html#legal>

Links to Legal Services Organizations: <http://www.lsc.gov/map/index.php>

National Employment Lawyers Association: <http://www.nela.org>

NCTE Resources on Federal Government Employment and Other Issues:
<http://transequality.org/Resources/index.html>

OPM Guidance on the Employment of Transgender People in the Federal Workplace
<http://www.opm.gov/diversity/Transgender/Guidance.asp>

Transgender-Inclusive Health Care Coverage and the Corporate Equality Index:
<http://www.hrc.org/transbenefits>

Pride at Work: <http://www.prideatwork.org>