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On October 7, 2009, this document was reissued to include a table that was initially missing.

United States Government Accountability Office
Washington, DC 20548

October 1, 2009

The Honorable Tom Harkin
Chairman
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Susan M. Collins
United States Senate

The Honorable Jeff Merkley
United States Senate

Subject: *Sexual Orientation and Gender Identity Employment Discrimination:
Overview of State Statutes and Complaint Data*

Federal law prohibits discrimination in employment based on a number of factors, including race, color, religion, sex, national origin, disability, and age. Although federal law does not prohibit discrimination in employment on the basis of sexual orientation,¹ 21 states² and the District of Columbia provide such protection in their statutes. Thirteen of these states³ also have statutes explicitly prohibiting discrimination in employment on the basis of gender identity.⁴ Based on your request to update our 2002 report on this subject,⁵ we (1) reviewed state statutes that prohibit discrimination in employment on the basis of sexual orientation and gender identity, including the characteristics, coverage, and exclusions of the laws, and (2) gathered information

¹ Executive Order 13087, issued on May 28, 1998, amended Executive Order 11478 to prohibit discrimination based upon sexual orientation within executive branch civilian employment.

² These states are California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin.

³ Except where otherwise specified, we use the term “state” throughout this correspondence to refer to the District of Columbia as well as to the 21 states.

⁴ Additionally, some states may permit gender identity complaints to be filed under provisions prohibiting discrimination based on sex, sexual orientation, or disability.

⁵ U.S. General Accounting Office, *Sexual Orientation-Based Employment Discrimination: States' Experience with Statutory Prohibitions*, GAO-02-878R (Washington, D.C.: July 9, 2002).

concerning the number of administrative employment discrimination complaints filed in each state—both the total number and the number of complaints listing sexual orientation or gender identity as one of the claimed bases for discrimination.

In response to your request, we utilized legal databases to determine which states have laws specifically prohibiting discrimination in employment on the basis of sexual orientation and gender identity and compared our results with other organizations' lists.⁶ We sent questionnaires to the 22 states we identified having such laws. We asked the states to verify information concerning their statutes and to provide us with data on the numbers of administrative employment discrimination complaints filed for the most recent 3 years for which data are available. All data are as reported by the state agency; we did not verify these data. We created a table for each state incorporating each state's responses and other information and sent these tables to the states for their comments, which we incorporated as appropriate. We conducted our review during August and September 2009.

Of the 22 states that have laws prohibiting discrimination based on sexual orientation, the statutory definitions in all but one state (Minnesota),⁷ define "sexual orientation" as including in some form the categories of heterosexuality, homosexuality, and bisexuality. All but five⁸ of the statutory definitions include people who are perceived by others to be, or are identified with, a specific orientation, whether or not they identify with that orientation. Therefore, for instance, a person who is discriminated against because he is incorrectly perceived by an employer to be homosexual, but who is actually heterosexual, may still file an employment discrimination complaint based on sexual orientation.

Thirteen of the 22 states have laws explicitly prohibiting discrimination based on gender identity.⁹ Gender identity generally refers to a person's identity and/or appearance, whether or not associated with a person's sex at birth. Five of these states¹⁰ do not provide a separate statutory definition for "gender identity."¹¹ Some states reported that although their state statutes may not specifically prohibit discrimination based on gender identity, the state may nevertheless accept gender identity employment discrimination complaints under another basis, such as sexual orientation or sex. For instance, Massachusetts reported that it will accept, investigate, and adjudicate gender identity cases under the section of Massachusetts law prohibiting employment

⁶ Specifically, we compared our research to information compiled by the Human Rights Campaign and the National Gay and Lesbian Task Force.

⁷ Minnesota's statute defines "sexual orientation" in part as "having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person," or "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness." Minn. Stat. § 363A.03, Subd. 44.

⁸ The states that do not include such language in their definitions are Delaware, the District of Columbia, Maryland, Vermont, and Washington.

⁹ These states are California, Colorado, the District of Columbia, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington.

¹⁰ Colorado, Illinois, Maine, Minnesota, and Oregon.

¹¹ Colorado's statute refers to "transgender status" rather than "gender identity."

discrimination on the basis of sex. Wisconsin reported that, depending on the facts of the particular situation, an individual with a gender identity issue may be able to bring a claim of discrimination based on disability or sex.

Under the state statutes, the number of employees an employer has is a factor in determining coverage. Nine states cover employers having one or more employees.¹² Only four states require more than six employees for coverage.¹³ In Illinois, the minimum number of employees an employer must have in order for the statutory protection from employment discrimination on the basis of sexual orientation and gender identity to be in effect is a different number than for the statutory protection for other bases of employment discrimination. Specifically, the sexual orientation discrimination and gender identity provisions apply only to a private employer with 15 or more employees, whereas an employer need only employ one person to invoke the application of the provisions providing protection from employment discrimination on the basis of sexual harassment or physical or mental handicap unrelated to ability.

All the states provide at least a limited exemption for employers that are religious organizations, although the exemptions may vary in scope.¹⁴ They generally permit religious organizations to give preference to those of the same religion in hiring. In Maryland, the statute mentions sexual orientation specifically in exempting religious organizations from the employment non-discrimination provisions.¹⁵ Washington provides a clear exception for religious organizations.¹⁶ Minnesota law states that for religious or fraternal organizations, if sexual orientation is a bona fide occupational qualification for employment, the sexual orientation discrimination provisions do not apply; moreover, a not-for-profit religious association is exempt from these provisions except when the association is engaged in secular business activities unrelated to the religious and educational purposes for which it is organized.¹⁷

All but one (Massachusetts) of the states include employers that are non-profit organizations in the coverage of their sexual orientation and gender identity nondiscrimination statutes. However, these states may exempt specific types of organizations. For example, Minnesota exempts nonpublic service organizations whose primary function is providing occasional services to minors.¹⁸ New Hampshire exempts

¹² Some state laws explicitly state “one.” Where a specific number was not stated in the law, the states confirmed that the minimum number of employees for coverage was one.

¹³ Washington requires 8 and Illinois, Maryland, and Nevada each require 15.

¹⁴ We are using the term “exemption” to include any cases in which a state statute provides any sort of exception, however limited, for religious organizations.

¹⁵ Under Maryland statute the employment non-discrimination provision does not apply to “[a] religious corporation, association educational institution or society with respect to the employment of individuals of a particular religion or sexual orientation to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.” Md. Ann. Code art. 49B, § 18(2).

¹⁶ Under Washington law, the definition of employer “does not include any religious or sectarian organization not organized for private profit.” Rev. Code Wash. Ann. § 49.60.040(3).

¹⁷ Minn. Stat. §§ 363A.20, Subd. 20 and 363A.26(2).

¹⁸ Minn. Stat. § 363A.20, Subd. 3.

exclusively fraternal and social clubs,¹⁹ and Maryland and Nevada exempt private membership clubs.²⁰ Finally, all the state statutes include coverage of state and local government employers.

Generally, the administrative complaint data reported by states show relatively few employment discrimination complaints based on sexual orientation and gender identity. In some states, the laws proscribing sexual orientation and gender identity employment discrimination were enacted relatively recently; therefore, these states could not provide complete complaint data for the requested 3-year period.

Enclosed with this correspondence are tables for each of the 22 states for which we compiled information. For each state we listed specific information about the state statute, including relevant definitions and coverage (e.g., minimum number of employees and applicability of exemptions), and listed the complaint data provided by the states.²¹ Some of the information in the tables came from our reading of the state statute, as verified by the states, and other information came from the states' responses to our questionnaire. It is important to note that case law, regulation, or other guidance may also address the specific elements listed in the tables. Our focus in this report was only on the language of the state statutes.

James M. Rebbe, Senior Attorney, and Doreen S. Feldman, Assistant General Counsel, prepared this report.

If you have any questions about this letter, please contact me on 202-512-8208.



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Enclosure

¹⁹ N.H. Rev. Stat. Ann. § 354-A:2(VII).

²⁰ Md. Ann. Code art. 49B, § 15(b); Nev. Rev. Stat. Ann. § 613.310(2)(c).

²¹ All complaint data in the state tables are reported by state fiscal year (generally, July 1 through June 30), except where noted.

State Tables

State: CALIFORNIA	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	Cal. Gov. Code § 12940 (sexual orientation and gender identity), Cal. Gov. Code § 12926(p) (gender identity)
Definition of “sexual orientation”	“Heterosexuality, homosexuality, and bisexuality,” including “a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.” Cal. Gov. Code §§ 12926(m) and (q)
Does statute prohibit discrimination on the basis of gender identity?	Yes
Definition of “gender identify”	The definition of “sex” for purposes of the California fair employment statute “includes, but is not limited to, a person’s gender.” This section then refers to the definition of “gender” in the California Penal Code, which is defined as “sex, and includes a person’s gender identity and gender related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.” Cal. Gov. Code § 12926(p); Cal. Pen. Code § 422.56(c)
Minimum number of employees for coverage	5 ²²
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	2008 ²³ : 18,786 2007: 16,396 2006: 15,312

²² California law also prohibits harassment on all the protected bases, including sexual orientation or gender identity harassment; the minimum number of employees for this protection is one.

²³ All complaint data in this table are reported by calendar year.

Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	2008: 821 2007: 815 2006: 722
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	California does not have separate statistics on gender identity complaint data because gender identity discrimination is characterized as sex discrimination.

State: COLORADO	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	Colo. Rev. Stat. 24-34-402 (sexual orientation and gender identity), Colo. Rev. Stat. 24-34-401(7.5) (gender identity)
Definition of “sexual orientation”	“A person’s orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or an employer’s perception thereof.” Colo. Rev. Stat. 24-34-401(7.5)
Does statute prohibit discrimination on the basis of gender identity?	Yes ²⁴
Definition of “gender identity”	The Colorado statute includes “transgender status” in the definition of “sexual orientation” as a protected class but does not define that term in the statute.
Minimum number of employees for coverage	1
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY08/09: 712 FY07/08: 635 FY06/07: 593
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation ²⁵	FY08/09: 36 FY07/08: 23
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity ²⁶	FY08/09: 2 FY07/08: 1

²⁴ Colorado’s statute covers “transgender status.”

²⁵ Sexual orientation status was not covered before FY07/08.

²⁶ Transgender status was not covered before FY07/08.

State: CONNECTICUT	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	Conn. Gen. Stat. § 46a-81c (sexual orientation)
Definition of “sexual orientation”	“Having a preference for heterosexuality, homosexuality or bisexuality, having a history of such preference or being identified with such preference, but excludes any behavior which constitutes a violation of part VI of chapter 952 [relating to sex offenses].” Conn. Gen. Stat. § 46a-81a.
Does statute prohibit discrimination on the basis of gender identity?	No ²⁷
Definition of “gender identity”	N/A
Minimum number of employees for coverage	3
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data is available	FY08-09: 1,716 FY07-08: 1,814 FY06-07: 1,783
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data is available where at least one of the claimed bases for discrimination is sexual orientation	FY08-09: 44 FY07-08: 61 FY06-07: 72
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data is available where at least one of the claimed bases for discrimination is gender identity	Connecticut does not track gender identity complaints separately. They may appear as complaints based on sexual orientation, complaints based on sex, or both.

²⁷ According to a Connecticut official, discrimination based on gender identity or expression is treated as a form of discrimination because of sex, which is prohibited under Conn. Gen. Stat. § 46a-60. The Connecticut Commission on Human Rights and Opportunities treats gender identity discrimination in this manner based on a declaratory ruling involving a transsexual. *See Declaratory Ruling on Behalf of John/Jane Doe* (November 9, 2000). <http://www.ct.gov/chro/cwp/view.asp?a=2526&Q=315942>

State: DELAWARE	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	19 Del. C. § 711 (sexual orientation)
Definition of “sexual orientation”	“Exclusively means heterosexuality, homosexuality, or bisexuality.” 19 Del. C. § 710(18)
Does statute prohibit discrimination on the basis of gender identity?	No
Definition of “gender identity”	N/A
Minimum number of employees for coverage	4
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY08/09: 728 FY07/08: 619 FY06/07: 648
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	Coverage based upon sexual orientation status went into effect July 1, 2009, so Delaware has not yet collected any data.
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	N/A

State: DISTRICT OF COLUMBIA	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	D.C. Code § 2-1402.11 (sexual orientation and gender identity)
Definition of “sexual orientation”	“Male or female homosexuality, heterosexuality and bisexuality, by preference or practice.” D.C. Code § 2-1401.02(28)
Does statute prohibit discrimination on the basis of gender identity?	Yes
Definition of “gender identity”	“‘Gender identity or expression’ means a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual’s assigned sex at birth.” D.C. Code § 2-1401.02(12A)
Minimum number of employees for coverage	1
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available ²⁸	FY08: 357 FY07: 282 FY06: 350
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY08: 28 FY07: 17 FY06: 29
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	FY08: 2 FY07: 0 FY06: 0

²⁸ The District of Columbia uses the federal fiscal year, which runs from October 1 through September 30.

State: HAWAII	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	H.R.S. § 378-2 (sexual orientation)
Definition of “sexual orientation”	“Having a preference for heterosexuality, homosexuality, or bisexuality, having a history of any one or more of these preferences, or being identified with any one or more of these preferences” but “shall not be construed to protect conduct otherwise proscribed by law.” H.R.S. § 378-1.
Does statute prohibit discrimination on the basis of gender identity?	No ²⁹
Definition of “gender identity”	N/A
Minimum number of employees for coverage	1
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY07/08: 617 FY06/07: 461 FY05/06: 515
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY07/08: 8 FY06/07: 3 FY05/06: 7
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	Hawaii does not track gender identity complaints separately, but considers gender identity discrimination a form of sex discrimination.

²⁹ According to a Hawaii official, the Hawaii Civil Rights Commission has interpreted the “because of sex” provision of Haw. Rev. Stat. § 378-2 to include discrimination on the basis of gender identity. (H.R.S. § 378-2(1)(A) provides, in part: “It shall be an unlawful discriminatory practice [b]ecause of...sex...[f]or any employer to refuse to hire...” See D.R. No. 02-0015, June 29, 2002 (found at http://hawaii.gov/labor/hcrc/decisions/decl_relief_pet/DR15OR.pdf), reversed on other grounds, *RGIS Inventory v. Hawaii Civil Rights*, 104 Hawaii 158 (2004).

State: ILLINOIS	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	§ 775 ILCS 5/1-102(A), § 775 ILCS 5/2-102(A), §775 ILCS 5/1-103(O-1) (sexual orientation and gender identity)
Definition of “sexual orientation”	“Actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person’s designated sex at birth. ‘Sexual orientation’ does not include a physical or sexual attraction to a minor by an adult.” § 775 ILCS 5/1-103(O-1)
Does statute prohibit discrimination on the basis of gender identity?	Yes
Definition of “gender identity”	There is not a separate definition of “gender identity” in Illinois statute. See definition of “sexual orientation.”
Minimum number of employees for coverage	15 ³⁰
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY08/09: 3,855 FY07/08: 3,522 FY06/07: 3,287
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY08/09: 145 FY07/08: 81 FY06/07: 103
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	FY08/09: 5 FY07/08: 1 FY06/07: 3

³⁰ The minimum number of employees required for application of the non-discrimination provisions depends upon the type of employer and/or the type of discrimination being alleged. For instance, state and other governmental employers need only employ one person. Private employers must employ 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation. In cases where the complainant alleges discrimination based upon his or her physical or mental handicap unrelated to ability, or sexual harassment, the non-discrimination provisions apply if the employer employs a minimum of one person.

State: IOWA	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	Iowa Code § 216.6 (sexual orientation and gender identity)
Definition of “sexual orientation”	“Actual or perceived heterosexuality, homosexuality, or bisexuality.” Iowa Code § 216.2(14)
Does statute prohibit discrimination on the basis of gender identity?	Yes
Definition of “gender identity”	“A gender-related identity of a person, regardless of the person’s assigned sex at birth.” Iowa Code § 216.2(10)
Minimum number of employees for coverage	4
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY07/08: 1,453 FY06/07: 1,413 FY05/06: 1,526
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY08/09: 29 FY07/08 ³¹ : 17
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	FY08/09: 3 FY07/08: 4

³¹ Iowa started accepting employment discrimination complaints on the basis of sexual orientation and gender identity on July 1, 2007.

State: MAINE	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	5 M.R.S.A. § 4552, 5 M.R.S.A. § 4553(9-C) and (10), 5 M.R.S.A. § 4571, 5 M.R.S.A. § 4572 (sexual orientation and gender identity)
Definition of “sexual orientation”	“A person’s actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression.” 5 M.R.S.A. § 4553(9-C)
Does statute prohibit discrimination on the basis of gender identity?	Yes
Definition of “gender identity”	Maine does not have a separate statutory definition for this term.
Minimum number of employees for coverage	1
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY08/09: 494 FY07/08: 604 FY06/07: 544
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY08/09: 6 FY07/08: 17 FY06/07: 19
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	FY08/09: 0 FY07/08: 1 FY06/07: 0

State: MARYLAND	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	Md. Ann. Code art. 49B, §§ 14, 16 ³² (sexual orientation)
Definition of “sexual orientation”	“The identification of an individual as to male or female homosexuality, heterosexuality, or bisexuality.” Md. Ann. Code art. 49B, § 15(j)
Does statute prohibit discrimination on the basis of gender identity?	No
Definition of “gender identity”	N/A
Minimum number of employees for coverage	15
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No ³³
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY08/09: 741 FY07/08: 663 FY06/07: 645
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY08/09: 23 FY07/08: 24 FY06/07: 28
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	Maryland does not track gender identity complaints separately. It does accept gender identity complaints under “sex” but not “sexual orientation.”

³² Effective Oct. 1, 2009, article 49B will be recodified as State Government Article, § 20-101, et seq., Md. Ann. Code.

³³ The statute exempts a “bona fide private membership club (other than a labor organization) which is exempt from taxation under § 501(c) of the Internal Revenue Code.” Md. Ann. Code art. 49B, § 15(b).

State: MASSACHUSETTS	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	M.G.L. c. 151B, § 4(1), (3) (sexual orientation)
Definition of “sexual orientation”	“Having an orientation for or being identified as having an orientation for heterosexuality, bisexuality, or homosexuality.” M.G.L. c. 151B, § 3(6)
Does statute prohibit discrimination on the basis of gender identity?	No ³⁴
Definition of “gender identity”	N/A
Minimum number of employees for coverage	6
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	Yes ³⁵
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available ³⁶	2008: 2,951 2007: 2,862 2006: 2,641
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	2008: 100 2007: 96 2006: 85
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	N/A

³⁴ According to a Massachusetts official, the Massachusetts Commission Against Discrimination will accept, investigate and adjudicate gender identity cases under the section of Massachusetts statute prohibiting discrimination on the basis of sex. In addition, the official stated that there is state case law concluding that a transgender individual could fall within the definition of handicapped.

³⁵ Under M.G.L. c. 151B, § 1(5), “[t]he term ‘employer’ does not include a club exclusively social, or a fraternal association or corporation, if such club, association or corporation is not organized for private profit....”

³⁶ All complaint data in this table are reported by calendar year.

State: MINNESOTA	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	Minn. Stat. § 363A.02, Minn. Stat. § 363A.08, Minn. Stat. § 363A.03, Subd. 44 (sexual orientation and gender identity)
Definition of “sexual orientation”	“Having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness,” but “does not include a physical or sexual attachment to children by an adult.” Minn. Stat. § 363A.03, Subd. 44.
Does statute prohibit discrimination on the basis of gender identity?	Yes
Definition of “gender identity”	Minnesota does not have a separate statutory definition of “gender identity,” but includes this category in its definition of “sexual orientation.”
Minimum number of employees for coverage	1
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes ³⁷
Non-profit organizations exempt?	No ³⁸
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available ³⁹	2008: 880 2007: 821 2006: 926
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	2008: 24 2007: 21 2006: 28

³⁷ See discussion of Minnesota’s religious exemption in the letter preceding the state tables.

³⁸ Nonpublic service organizations whose primary function is providing occasional services to minors are exempt.

³⁹ All complaint data in this table are reported by calendar year.

<p>Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity</p>	<p>The definition of sexual orientation under Minnesota statute includes gender identity and therefore the numbers listed above for sexual orientation complaints encompass all gender identity complaints.</p>
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State: NEVADA	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	Nev. Rev. Stat. Ann. § 233.010, Nev. Rev. Stat. Ann. § 613.330 (sexual orientation)
Definition of “sexual orientation”	“Having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.” Nev. Rev. Stat. Ann. § 613.310(6)
Does statute prohibit discrimination on the basis of gender identity?	No
Definition of “gender identity”	N/A
Minimum number of employees for coverage	15
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No ⁴⁰
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY07/08: 1,401 FY06/07: 1,218 FY05/06: 972
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY07/08: 55 FY06/07: 30 FY05/06: 25
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	N/A

⁴⁰ Tax-exempt private membership clubs are exempt.

State: NEW HAMPSHIRE	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	N.H. Rev. Stat. Ann. § 354-A:6 (sexual orientation)
Definition of “sexual orientation”	“Having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the status of persons and does not render lawful any conduct prohibited by the criminal laws of this state or impose any duty on a religious organization. This definition does not confer legislative approval of such status, but is intended to assure the basic rights afforded under New Hampshire law.” N.H. Rev. Stat. Ann. § 21:49
Does statute prohibit discrimination on the basis of gender identity?	No
Definition of gender identity	N/A
Minimum number of employees for coverage	6
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No ⁴¹
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY07/08: 251 FY06/07: 318 FY05/06: 274
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY07/08: 7 FY06/07: 14 FY05/06: 5
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	New Hampshire does not allow a claim based on gender identity, but claims from transsexuals can be filed under the “sex” and “disability” categories.

⁴¹ Exclusively fraternal and social clubs are exempt.

State: NEW JERSEY	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	N.J. Stat. § 10:2-1, N.J. Stat. § 10:5-3, N.J. Stat. § 10:5-4, N.J. Stat. § 10:5-12 (sexual orientation and gender identity)
Definition of “sexual orientation”	“‘Affectional or sexual orientation’ means male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation.” N.J. Stat. § 10:5-5(hh)
Does statute prohibit discrimination on the basis of gender identity?	Yes
Definition of “gender identity”	“‘Gender identity or expression’ means having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person’s assigned sex at birth.” N.J. Stat. § 10:5-5(rr)
Minimum number of employees for coverage	1
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes ⁴²
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available ⁴³	2008: 692 2007: 717 2006: 885
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	2008: 34 2007: 39 2006: 47
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	New Jersey has not received any complaints alleging employment discrimination based on gender identity or expression since the law went into effect in February 2007 banning such discrimination.

⁴² The statute does not cover bi-state entities such as the Port Authority of New York and New Jersey.

⁴³ All complaint data in this table are reported by calendar year.

State: NEW MEXICO	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and gender identity	N.M. Stat. Ann. § 28-1-7 (sexual orientation and gender identity)
Definition of “sexual orientation”	“Heterosexuality, homosexuality or bisexuality, whether actual or perceived.” N.M. Stat. Ann. § 28-1-2(P)
Does statute prohibit discrimination on the basis of gender identity?	Yes
Definition of “gender identity”	“A person’s self-perception, or perception of that person by another, of the person’s identity as a male or female based upon the person’s appearance, behavior or physical characteristics that are in accord with or opposed to the person’s physical anatomy, chromosomal sex or sex at birth.” N.M. Stat. Ann. § 28-1-2(Q)
Minimum number of employees for coverage	15 ⁴⁴
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY08/09: 674 FY07/08: 747 FY06/07: 705
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY08/09: 30 FY07/08: 46 FY06/07: 45
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	FY08/09: 1 FY07/08: 1 FY06/07: 0

⁴⁴ New Mexico’s non-discrimination statute generally applies to employers having at least four employees; however, an employer must have at least 15 employees for the non-discrimination protections based on sexual orientation and gender identity to apply.

State: NEW YORK	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	NY CLS Exec. § 296 (sexual orientation)
Definition of “sexual orientation”	“Heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived. However, nothing contained herein shall be construed to protect conduct otherwise proscribed by law.” NY CLS Exec. § 292(27)
Does statute prohibit discrimination on the basis of gender identity?	No ⁴⁵
Definition of “gender identity”	N/A
Minimum number of employees for coverage	4
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY08/09 ⁴⁶ : 6,434 FY07/08: 6,088 FY06/07: 4,623
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY08/09: 312 FY07/08: 216 FY06/07: 141
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	New York does not track this subset of sex and/or disability complaints in its system.

⁴⁵ A New York official provided a citation from the *Resource Guide to the New York State Human Rights Law, 2008 Edition*, which states “The definition of ‘sexual orientation’ set forth in the Human Rights Law does not specifically include transsexuals. However, precedent exists under other, pre-existing provisions of the Human Rights Law to the effect that post-operative transsexuals are deemed to belong to the gender to which they have been surgically reassigned, and that discrimination against them is deemed to be sex discrimination. *Richards v. U.S. Tennis Association*, 93 Misc.2d 713, 400 N.Y.S.2d 267 (Sup.Ct.N.Y.Co. 1977). Furthermore, transsexuals who state that they have a disability are protected from discrimination under the disability provisions of the Human Rights Law, inasmuch as gender dysphoria is a recognized medical condition.”

⁴⁶ New York’s fiscal year runs from April 1 through March 31.

State: OREGON	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and gender identity	ORS § 659A.006, ORS § 659A.030 (sexual orientation and gender identity), ORS § 174.100 (gender identity) (as amended by 2007 Oregon Laws Ch. 100 (S.B. 2))
Definition of “sexual orientation”	“An individual’s actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s assigned sex at birth.” ORS § 174.100(6)
Does statute prohibit discrimination on the basis of gender identity?	Yes
Definition of “gender identity”	Oregon does not have a separate statutory definition of “gender identity.”
Minimum number of employees for coverage	1
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available ⁴⁷	2008: 1957 2007: 1916 2006: 1857
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	2009 (year to date): 34 2008: 28 2007 and 2006: There are no data for these years because Oregon’s statute prohibiting employment discrimination on the basis of sexual orientation and gender identity went into effect in January, 2008.
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	These data are included in the sexual orientation data listed above.

⁴⁷ All complaint data in this table are reported by calendar year.

State: RHODE ISLAND	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	R.I. Gen. Laws § 28-5-3, R.I. Gen. Laws § 28-5-7 (sexual orientation and gender identity), R.I. Gen. Laws § 28-5-6(15) (sexual orientation), R.I. Gen. Laws § 28-5-6(10) (gender identity)
Definition of “sexual orientation”	“Having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the status of persons and does not render lawful any conduct prohibited by the criminal laws of this state nor impose any duty on a religious organization. This definition does not confer legislative approval of that status, but is intended to assure the basic human rights of persons to obtain and hold employment, regardless of that status.” R.I. Gen. Laws § 28-5-6(15)
Does statute prohibit discrimination on the basis of gender identity?	Yes
Definition of “gender identity”	“Gender identity or expression’ includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self image, gender-related appearance, or gender-related expression; whether or not that gender identity, gender-related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person’s sex at birth.” R.I. Gen. Laws § 28-5-6(10)
Minimum number of employees for coverage	4
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY08/09: 277 FY07/08: 336 FY06/07: 301
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY08/09: 3 FY07/08: 11 FY06/07: 5

<p>Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity</p>	<p>FY08/09: 0 FY07/08: 0 FY06/07: 1</p>
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State: VERMONT	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	21 V.S.A. § 495 (sexual orientation and gender identity) ⁴⁸
Definition of “sexual orientation”	“Female or male homosexuality, heterosexuality, or bisexuality” but “shall not be construed to protect conduct otherwise proscribed by law.” 1 V.S.A. § 143
Does statute prohibit discrimination on the basis of gender identity?	Yes
Definition of “gender identity”	“An individual’s actual or perceived gender identity or gender-related characteristics intrinsically related to an individual’s gender or gender identity, regardless of the individual’s assigned sex at birth.” 1 V.S.A. § 144
Minimum number of employees for coverage	1
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes (<i>see also</i> footnote 48)
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available ⁴⁹	2008: 45 2007: 41 2006: 38
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	2008: 4 2007: 4 2006: 2

⁴⁸ This statute is part of the Vermont Fair Employment Practices Act (VFPEA) and is the principal statute proscribing sexual orientation and gender identity discrimination in employment. Claims alleging employment discrimination by private sector or municipal employers are enforced by the Civil Rights Unit of the state Attorney General’s Office (CRU) and claims against Vermont state employers are enforced by the Vermont Human Rights Commission (HRC). VFPEA applies to all private and public sector employers. In addition, other non-discrimination statutes may also apply to state executive, judicial, and municipal employers and are enforced by the Vermont Labor Relations Board and/or state courts.

⁴⁹ Pursuant to Vermont’s work-sharing agreement with the Equal Employment Opportunity Commission, the CRU and HRC also receive complaints alleging employment discrimination in violation of federal law. The statistics shown only include those that allege at least one violation of the VFPEA. In addition, number of complaints is listed by calendar year.

<p>Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity</p>	<p>2008: 1 2007: 0 2006: N/A because gender identity discrimination was not proscribed at the time</p>
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State: WASHINGTON	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and gender identity	Rev. Code Wash. Ann. § 49.60.030 and § 49.60.180 (sexual orientation and gender identity)
Definition of “sexual orientation”	“Heterosexuality, homosexuality, bisexuality, and gender expression or identity.” Rev. Code Wash. Ann. § 49.60.040(15)
Does statute prohibit discrimination on the basis of gender identity?	Yes
Definition of “gender identity”	“Gender expression or identity means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.” Rev. Code Wash. Ann. § 49.60.040(15)
Minimum number of employees for coverage	8
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY08/09: 692 FY07/08: 791 FY06/07: 607
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY08/09: 23 FY07/08: 25 FY06/07: 34
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	The statistics for “sexual orientation” employment discrimination complaints also encompass “gender identity” employment discrimination complaints. Washington does not track this category separately.

State: WISCONSIN	
Statutory provision(s) providing protection from employment discrimination on the basis of sexual orientation and/or gender identity	Wis. Stat. § 111.31 (sexual orientation)
Definition of “sexual orientation”	“Having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such preference.” Wis. Stat. § 111.32(13m)
Does statute prohibit discrimination on the basis of gender identity? ⁵⁰	No
Definition of “gender identity”	N/A
Minimum number of employees for coverage	1
Does statute address workplace access to shared facilities?	No
Religious organizations exempt?	Yes
Non-profit organizations exempt?	No
Does statute apply to government employers?	Yes
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available	FY08/09: 3,430 FY07/08: 3,504 FY06/07: 3,502
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is sexual orientation	FY08/09: 62 FY07/08: 56 FY06/07: 51
Total number of employment discrimination administrative complaints filed for the 3 most recent years for which data are available where at least one of the claimed bases for discrimination is gender identity	The Wisconsin Fair Employment Law does not provide for filing of a complaint based on gender identity.

⁵⁰ According to a Wisconsin official, Wisconsin does not specifically provide for filing of a discrimination complaint based on gender identity. However, depending on the facts of the particular situation, an individual with a gender identity issue may be able to bring a claim of discrimination based on disability or sex.

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