



LGBTQ EQUALITY

THE EQUALITY ACT OF 2019: STRENGTHENING OUR FEDERAL CIVIL RIGHTS LAWS

In this moment of intense and increased attempts to undermine LGBTQ equality by the Trump-Pence Administration, LGBTQ individuals have an especially critical need for explicit protections in federal law. While more and more courts have found that federal law's prohibition of sex discrimination also protect LGBTQ individuals from discrimination based on sexual orientation or gender identity, explicit protections in our federal civil rights laws would ensure that these protections are not vulnerable - especially in light of this federal government's actions to pack the courts with an increasingly hostile federal judiciary. The Equality Act of 2019 provides these clear protections through our federal civil rights laws.

While the Supreme Court's 2015 marriage equality decision expanded rights for LGBTQ people, there is still much to be done to ensure equal treatment under the law. Federal law and about half of the states lack explicit non-discrimination protections for LGBTQ people at work, at school, and elsewhere, leaving many vulnerable to discrimination.

The Equality Act would amend key federal nondiscrimination laws to provide explicit protection against discrimination based on sexual orientation and gender identity in employment, housing, credit, federally funded programs (including education), and federal jury service. It would make clear that these types of discrimination are forms of sex discrimination and unlawful.

The protections the Equality Act would provide are vital for LGBTQ women. For example, over one third of transgender women report losing a job because of their gender identity or expression, and studies have found that lesbian, bisexual,

and queer women are 30% less likely to receive invitations to interview for jobs than their straight counterparts.¹ Transgender women of color also face discrimination in many contexts including experience pervasive housing discrimination - with 31% of Black transgender women and 27% of Native transgender women reporting being denied a home or apartment in the past year because they were transgender.²

The Equality Act would also close longstanding gaps in federal law and for the first time prohibit discrimination on the basis of sex in public spaces and services and in all federally-funded activities, providing important new legal protections for women.

Finally, the Equality Act expands the kinds of entities considered to be spaces of public accommodations under the law in a way that also expands current civil rights protections against discrimination based on race, religion and national origin - in addition to sex.

Creating explicit federal protections for LGBTQ people

While the Supreme Court has not yet addressed whether discrimination on the basis of sexual orientation or gender identity is an illegal form of sex discrimination, the Equal Employment Opportunity Commission (EEOC) and an increasing number of courts have found this to be the case. But federal civil rights laws do not explicitly protect LGBTQ people from discrimination, leaving many employers, schools, landlords, and others without a clear understanding of the legal protections for LGBTQ people. There are also currently no protections at all on the federal level on the basis of sexual orientation and gender identity when it comes to public accommodations and many federally funded programs, because there are no federal sex discrimination protections in these areas. The Equality Act would update existing civil rights laws by providing explicit non-discrimination protections on the basis of sexual orientation and gender identity.



The Equality Act provides protections for LGBTQ people in the following areas:

- **Employment:** The Equality Act would explicitly prohibit discrimination of LGBTQ people and make it clear that discrimination based on “sex stereotyping” is a prohibited form of sex discrimination in employment.
- **Federally funded programs and activities (including education):** The Equality Act would protect LGBTQ people from discrimination by institutions that receive federal funds – including schools, hospitals, domestic violence shelters, and police departments.
- **Housing:** The Equality Act would protect LGBTQ people from housing discrimination, including in the sale or rental of housing and harassment by landlords.
- **Public Spaces and Services:** The Equality Act would protect LGBTQ people from harassment and other discrimination in “public accommodations,” including stores, restaurants, hotels, transportation, and providers of health care services.
- **Credit:** The Equality Act would protect LGBTQ individuals from discrimination in credit, financing, and lending.
- **Federal Jury Service:** The Equality Act would protect LGBTQ people’s right to serve on federal juries without discrimination.

Creating new sex discrimination protections

Federal civil rights law does not currently prohibit sex discrimination in public spaces and services, or in all federally funded programs. The Equality Act would close these long-standing gaps in existing civil rights laws by providing explicit non-discrimination protections on the basis of sex, including prohibitions of discrimination the basis of pregnancy, as well as on the basis of sexual orientation and gender identity.

In Public Spaces and Services

The Equality Act protects against sex discrimination, including discrimination on the basis of pregnancy, in public places like restaurants, stores, banks, health care providers, and transportation. For example:

- The Equality Act would make it unlawful for contractors, mechanics, and car dealerships to charge a woman more than a man for the same work.
- The Equality Act would ensure that pharmacies cannot refuse to fill a woman’s birth control prescription.

- The Equality Act would provide protections against sexual harassment in public transportation, restaurants, and other public places.

In Federally Funded Programs and Activities

The Equality Act would prohibit any program that receives federal funds from discriminating on the basis of sex, including pregnancy. For example:

- A developer with a federal grant could not discriminate against women-owned businesses in its contracting.
- Women would have new tools to challenge a federally funded police department’s systematically inadequate response to sexual violence or intimate partner violence.
- An organization getting federal funding to provide services to trafficking victims could not refuse to provide them with access to reproductive health care.

Expanding protections against discrimination on the basis of race, religion, or national origin in public spaces

Current federal law protects against discrimination in public accommodations on the basis of race, religion, or national origin. The Equality Act would update the public spaces and services covered to include retail stores, and services such as banks and legal services. For example:

- The Equality Act would provide legal protections for women of color being racially and sexually harassed on a bus or train.
- The Equality Act would provide legal protections for Black and brown youth who experience being followed or otherwise targeted for discriminatory treatment in retail stores or shopping malls.

Ensuring that religion is not used as an excuse to discriminate

The Equality Act makes it clear that the Religious Freedom Restoration Act (RFRA) cannot be used to block these important protections against discrimination. This is necessary because in recent years individuals, organizations, and for-profit corporations have used RFRA to claim that any number of laws, including child labor laws, domestic violence laws, and nondiscrimination laws, do not apply to them.³ The Equality Act makes clear that religion does not give employers, landlords, schools or others a license to discriminate.

1 See CENTER FOR AMERICAN PROGRESS AND MOVEMENT ADVANCEMENT PROJECT, *Paying an Unfair Price: The Financial Penalty for LGBT Women in America*. (2015), available at <http://www.lgbtmap.org/file/paying-an-unfair-price-lgbt-women.pdf>.

2 James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality.

3 See, e.g., NATIONAL WOMEN’S LAW CENTER, *The Hobby Lobby “Minefield”: The Harm, Misuse, and Expansion of the Supreme Court Decision* (Aug. 2015), available at <https://nwlc.org/wp-content/uploads/2015/08/nwlchobbylobbyreport2015.pdf>.

