

# FLORIDA LGBT EMPLOYMENT DISCRIMINATION

*“If you are a member of the Lesbian, Gay, Bi-Sexual, and Transgender (LGBT) community, or a supporter, you are well aware of the societal and legal battles the LGBT community has historically faced.”*



Richard Celler



If you are a member of the Lesbian, Gay, Bi-Sexual, and Transgender (LGBT) community, or a supporter, you are well aware of the societal and legal battles the LGBT community has historically faced. Over the last several decades, one of the major battles fought, and eventually won, by the LGBT community was the right for same-sex couples to marry in the United States.

Unfortunately, discrimination against members of the LGBT community continues to occur in other areas, including the workplace. If you believe you have been the victim of employment discrimination you should consult with an experienced Florida employment law attorney right away to discuss your legal options; however, a general overview of the law regarding LGBT employment discrimination may also be helpful.

## WHAT IS SEXUAL ORIENTATION DISCRIMINATION?



actually is.

In the context of employment, sexual orientation discrimination refers to being treated differently in any aspect of employment because of your real, or your perceived, sexual orientation. Typically, this means being treated differently because an employer believes you are lesbian, gay or bi-sexual; however, it can also apply to a worker who is treated differently because an employer believes he/she is heterosexual. The key element is a focus on sexual orientation, regardless of what your sexual orientation

## WHAT IS GENDER DISCRIMINATION?

The terms “sex” and “gender” are commonly used interchangeably despite the fact that they actually have distinctly different meanings in the law. The term “sex” refers to a person's biological or anatomical identity as male or female, whereas the term “gender” is used to refer to the collection of characteristics that are culturally associated with maleness or femaleness. Gender discrimination, therefore, refers to being treated differently in any aspect of employment because of your real, or your perceived, gender identity.



## WHAT DOES “TRANSGENDER” MEAN?

As a member of the LGBT community you likely already know what “transgender” means; however, co-workers, employers, and others outside of the community should become familiar with the correct definition as well. A transgender individual is someone whose gender identity or gender expression does not match their assigned birth sex. In other words, if you were born a male but you feel like a female, identify with being female, and/or outwardly express yourself as female, you are transgender.

It is important to note that the definition of transgender has nothing to do with sexual orientation. A transgender individual may be heterosexual, homosexual, or bi-sexual. Some, but not all, transgender people undergo gender transition, a process by which they physically align their bodies with their internal gender identity. Transgender discrimination, therefore, refers to being treated differently in any aspect of employment because of your real, or your perceived, gender identity.



## HOW ARE LGBT WORKER'S DISCRIMINATED AGAINST IN EMPLOYMENT?



LGBT discrimination in employment can manifest itself in a virtually endless number of ways. Often, a worker does not even recognize that an employer's conduct qualifies as discrimination. The best way to determine if you have been discriminated against based on the fact that you are a lesbian, gay, bi-sexual, or transgender is to consult with an experienced Florida employment law attorney; however, the following are common examples of situations that may qualify as LGBT discrimination in the workplace and that might help you recognize your own status as the victim of discrimination:

- Being disqualified for employment or advancement based on your status as LGBT.
- Being paid less than other similar employees for similar work.
- Being harassed in the workplace by your employer, co-workers, or even non-employees because you are a member of the LGBT community.
- Being denied leave to care for a partner/spouse or for the birth of a child when you otherwise qualify for FMLA leave.
- Being fired or demoted after your boss finds out you are LGBT.
- Being denied company sponsored spousal or family benefits that are offered to other heterosexual married couples.

## ARE THERE FEDERAL LAWS THAT PROTECT LGBT WORKERS?

You may be surprised to learn that sexual orientation is not explicitly covered by **any** federal anti-discrimination law. Title VII of the Civil Rights Act of 1964 is where many anti-discrimination laws are found at the federal level. Title VII, however, only covers discrimination in the workplace based on race, color, religion, national origin, or sex.

For almost 20 years legislation has been introduced in Congress on almost a yearly basis that would result in the inclusion of “sexual orientation” and/or “gender” as a protected class for purposes of the country’s employment discrimination laws; however, a final version has yet to make it into law. Despite this, the official position of the Equal Employment Opportunity Commission, or EEOC, is that “the Commission, consistent with case law from the Supreme

Court and other courts, interprets the statute's sex discrimination provision as prohibiting discrimination against employees on the basis of sexual orientation and gender identity.” In other words, although federal law does not specifically mention sexual orientation or gender anywhere, Title VII has been interpreted as providing protection for members of the LGBT community when they are discriminated against in the workplace.



## WHERE DOES THE STATE OF FLORIDA STAND ON LGBT EMPLOYMENT DISCRIMINATION?

Most states also have their own anti-discrimination laws, many of which mirror, or are at least modeled after, the federal Civil Rights Act. Some states, however,



have also chosen to include the terms “sexual orientation” and/or “gender” in their list of protected classes. Unfortunately, the State of Florida is not among those states. The Florida Civil Rights Act only prohibits discrimination in employment based on race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

For over a decade, advocates have also been working at the state level in Florida to pass legislation that would prohibit discrimination in employment based on sexual orientation and gender. So far, those efforts have been unsuccessful. The good news, however, is that many cities and communities within the State of Florida have passed local laws that make it illegal to discriminate based on sexual orientation or gender. In fact, over half of all Florida residents live in a community with just such a law, including, but not limited to, residents of:

- Broward, Miami-Dade, Pinellas, Monroe, and Volusia Counties
- City of Gainesville
- City of Key West
- City of Miami
- City of St. Augustine
- City of Tampa
- City of West Palm Beach

## HAVE YOU READ YOUR COMPANY POLICIES?

Finally, even if you are not protected by federal or state law, your own company's policies might offer protection. Three out of every four Fortune 500 companies have a policy that protects against discrimination based on sexual orientation and approximately 40 percent of those companies also include "gender" as a protected class in their anti-discrimination policy.

Often, a company's own policies are even more stringent than state or federal law, thereby providing additional "ammunition" should you end up in litigation. If you believe you have been discriminated against, in *any* aspect of employment, based on the fact that you are a member of the LGBT community it is in your best interest to consult with an experienced Florida employment law attorney immediately.



EEOC, [What You Should Know about EEOC and the Enforcement Protections for LGBT Workers](#)

Florida Statutes, [Florida Civil Rights Law](#)

Findlaw, [Sexual Orientation Discrimination in the Workplace](#)

NOLO, [Sexual Orientation Discrimination: Your Rights](#)

Equality Florida Action, Inc., [Discrimination Overview](#)

## About the Author



### Richard Celler

Richard Celler is the Managing Partner of Richard Celler Legal, P.A., a/k/a the Florida Overtime Lawyer. He created this firm after having served as the Founding Member and Managing Partner of one of the largest employee/plaintiff side employment law divisions in the United States.

In November 2013, Mr. Celler left big firm life with the idea of reopening his own litigation firm with an emphasis on something most big firms cannot provide – a lower volume of cases, and more focus on the needs and attention of every single client.

Mr. Celler's practice focuses on all areas of the employment context from discrimination, harassment, and retaliation under the Florida Civil Rights Act, Title VII, the Family Medical Leave Act, and other employment related statutes. Additionally, Mr. Celler represents individuals in whistleblower and wage and hour litigation (overtime, minimum wage, commissions, final paychecks).

Many firms charge clients for an initial consultation to discuss their claims. Mr. Celler does not. You can call him or email him to discuss your case for free. If he elects to represent you, your case will be handled on a contingency basis, which means that he only gets paid, if you get paid. We encourage you to look at the remainder of our website for information on your rights and benefits in the workplace – [www.floridaovertimelawyer.com](http://www.floridaovertimelawyer.com).

#### **Richard Celler Legal, P.A.**

7450 Griffin Road, Suite 230

Davie, FL 33314

Phone: 866-344-9243

Email: [richard@floridaovertimelawyer.com](mailto:richard@floridaovertimelawyer.com)

Website: [floridaovertimelawyer.com](http://floridaovertimelawyer.com)