



New York City Bar Association LGBT Rights Committee

2013

Know Your Rights: A Guide to NYC Employment Laws for LGBT Workers

Disclaimer: This pamphlet is designed to provide general legal information to LGBT individuals who have questions about their workplace rights and employment laws applicable in New York City. This pamphlet does not provide legal advice, and is not a substitute for legal advice. Individuals with questions about their rights should consult a licensed attorney with experience in this area of the law.

Several federal, state and city laws protect the rights of LGBT employees in the workplace. Here are descriptions of three of these laws:

Title VII of the Civil Rights Act of 1964 is a federal law that prohibits discrimination on the basis of sex. Discrimination against an individual because of that person's gender identity or expression may be a form of sex discrimination. Lesbian, gay, and bisexual individuals may also experience sex discrimination, including sexual harassment. Sex discrimination includes adverse actions taken because of a person's failure to conform to stereotypes about how a man or woman should look, act, or behave.

The New York State Human Rights Law prohibits the same conduct as Title VII and also prohibits employers from discriminating against individuals in hiring, firing, or in the terms, conditions, or privileges of employment on the basis of an individual's actual or perceived sexual orientation (defined as heterosexuality, homosexuality, bisexuality, or asexuality) and/or marital status.

The New York City Human Rights Law prohibits New York City employers from refusing to hire, discharging, or discriminating against an employee in compensation or in the terms, conditions, or privileges of employment because of the employee's actual or perceived gender, marital status, partnership status, or sexual orientation (which includes homosexuality, heterosexuality, and bisexuality). The term "gender" means actual or perceived sex, including a person's gender identity (e.g. transgender), self-image, appearance, behavior or expression, whether or not different from the one traditionally associated with the sex assigned to that person at birth. The NYCHRL further prohibits the same conduct as Title VII.

In addition to these laws, you may be protected by other laws, or on the basis of other characteristics protected by these laws. The various laws overlap in some ways and also contain exceptions that may affect your legal rights. Therefore, it is important to consult an attorney to determine the laws applicable to your specific situation, the strength of your potential case, and the relief available to you.

"Employment at Will" is a principle that applies to most employment relationships in New York City. Generally, if there is no contract between an employer and employee restricting the conditions under which the employee may be fired (e.g., a union contract), an employee may be terminated at any time and for any reason, or for no reason at all, so long as the reason is not specifically prohibited by law. Your employer is not required to give you notice prior to your discharge, and you are not required to give notice prior to quitting. Your employer is also not required to give you a reason for your termination or to provide you with a termination letter (but you can ask for the reason and/or a termination letter).

Why it is important to investigate your rights: Employment discrimination is not only wrong, but may also be legally actionable and lead to money damages or other relief. However, even if you are the victim of unlawful workplace discrimination, there are requirements for and challenges to obtaining relief. The laws described here limit the amount of time you can bring an action for employment discrimination, and the time limits vary depending on the applicable law. There are also specific procedures that must be followed to protect your rights. You should contact an attorney as soon as possible if you believe you have suffered unlawful employment discrimination, or you may lose out on your legal rights.

Seeking relief: If you believe you are the victim of unlawful employment discrimination, there are several options available to you to seek relief. First, you should use any available internal remedies that your employer may offer to address potential discrimination, such as speaking to your employer's human resources representative or equal employment opportunity office, or to your union representative. Consult your employer's employee handbook to see what internal remedies are available. Failing to use these internal remedies may limit your legal remedies later on. If seeking help outside your employer, the U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights, and the New York City Commission on Human Rights may have the power to investigate and take action against employment discrimination. Contact information for these agencies has been listed at the end of this guide.

You may also be able to file an employment discrimination lawsuit in federal or state court. Before taking this action, you should talk to an attorney about what option(s) would be best for you.

Concerns about retaliation for taking action: Federal, State, and City employment discrimination laws prohibit an employer from retaliating against an employee for complaining about or reporting employment discrimination or for filing a discrimination claim. Complaints about matters other than employment discrimination are not generally protected under employment discrimination laws; however, certain labor laws may protect employees who complain about other matters. Employees who are retaliated against because they have complained about discrimination may be able to obtain legal remedies including money damages, reinstatement into their former jobs, and other relief.

Keeping records and other general tips:

- Carefully read any document that your employer gives you and consider speaking to an attorney before signing it to avoid waiving or negatively affecting your legal rights.
- Carefully read your employer's employment policies and employee handbook to make sure that you are complying with your employer's rules of conduct and following the employer's guidelines for reporting discrimination/sexual harassment.
- Keep copies of evaluations and other documents detailing your job performance.
- Keep detailed written records of instances of employment discrimination in a safe place outside of your workplace. This could be helpful to you and your attorney in supporting a possible claim for employment discrimination. Write down, with as much detail as possible:
 - o Any discriminatory comments made to you or conduct aimed at you, including who said or did what, when, and where.
 - o The names of any witnesses to any discriminatory comments/conduct.
 - o The names of other employees who are treated more or less favorably than you, and examples of that differential treatment.
- Do not make accusations or threats – if you believe you have suffered employment discrimination and you are considering taking action against your employer, consult an attorney first.
- Not all bad experiences at work are unlawful, but you may be able to resolve your differences through your employer's human resources department or through your union representative.

Resources for LGBT employees: You may be able to obtain free legal advice to assist you with understanding your legal rights and potentially pursuing an unlawful employment discrimination claim. Consider contacting one of these resources:

- **New York City Bar Association – City Bar Justice Center Hotline (advice only)**
 - o www.nycbar.org/get-legal-help/legal-hotline
 - o Telephone: 212-626-7383
- **Lambda Legal**
 - o www.lambdalegal.org/help
 - o Telephone: 212-809-8585
- **The Legal Aid Society**
 - o www.legal-aid.org
 - o Telephone: 888-218-6974 (toll-free)
- **The LGBT Bar Association of Greater New York (LeGaL)**
 - o www.le-gal.org
 - o Telephone: 212-353-9118
- **MFY Legal Services, Inc. Workplace Justice Project**
 - o <http://www.mfy.org/>
 - o Telephone: 212-417-3838
- **NYLAG LGBT Law Project**
 - o www.nylag.org
 - o Telephone: 212-613-5000
- **Sylvia Rivera Law Project**
 - o www.srlp.org
 - o Telephone: 212-337-8550
- **Transgender Legal Defense and Education Fund**
 - o www.transgenderlegal.org
 - o Telephone: 646-862-9396
- **US Equal Employment Opportunity Commission**
 - o <http://www.eeoc.gov/contact/>
 - o Telephone: 800-669-4000
- **New York State Division of Human Rights**
 - o <http://www.dhr.ny.gov>
 - o Telephone: 718-741-8400
- **New York City Commission on Human Rights**
 - o <http://www.nyc.gov/html/cchr/>

In addition, **Legal Referral Service** (<http://www.ilawyer.org>; tel: 212-626-7373) may be able to aid you in finding and retaining a lawyer who, for a fee, may be able to assist you in pursuing a claim (fee arrangements to be worked out with the individual attorney).