



# Discrimination at work on the basis of sexual orientation and gender identity: Results of the ILO's PRIDE Project

## Introduction

In 2012, with the support of the Government of Norway, the International Labour Organization (ILO) initiated the “Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work (PRIDE)” project. The project conducts research on discrimination against Lesbian, Gay, Bisexual and Transgender (LGBT) workers across the world and highlights good practices that promote meaningful inclusion. The first phase of the project, which is now complete, focused on Argentina, Hungary and Thailand, and work is on-going in Costa Rica, France, India, Indonesia, Montenegro and South Africa.

The research methodology is structured around the four pillars of the ILO's Decent Work Agenda - fundamental principles and rights at work, employment promotion, social protection, and social dialogue - with a fifth pillar devoted to assessing the particular challenges related to the interplay between HIV and AIDS and LGBT issues in the world of work. The PRIDE research is primarily qualitative, and does not claim to make conclusive, generalizable findings concerning the world-of-work experiences for LGBT workers. Through desk research, interviews and focus group discussions, it seeks to paint a picture of the main legal, policy and day-to-day drivers and obstacles to promoting inclusion in employment and occupation.

## The experiences of LGBT persons at work

Preliminary research findings confirm what many may have suspected: it is common for LGBT workers to face discrimination at work on the basis of their sexual orientation and/or gender identity. LGBT persons frequently experience discrimination and harassment in education, which hampers employment prospects. Discrimination continues in access to employment and throughout the employment cycle, and

can, in extreme cases, result in LGBT workers being bullied, mobbed, and sexually or physically assaulted.

Discrimination, harassment and exclusion from the labour force often occur because of perceived non-conformity with heteronormativity (the social belief that being heterosexual is “normal”) and because of preconceptions of how women and men are expected to appear and behave. Often women who are perceived to be “masculine”, or men who are perceived to be “feminine” in behaviour or appearance, suffer discrimination or harassment. In many cases lesbian, gay and bisexual workers reported being asked invasive questions about their personal lives and to justify why they are not heterosexual. Others outlined how they had to “prove” their femininity or masculinity in order to be accepted at the workplace and to have their contribution valued. For example both the Thailand and Argentina studies report how some employers expect lesbian women to affirm their feminine identity by changing their mannerisms and way of dress.

Fear of discriminatory treatment and violence often leads many LGBT workers to keep their sexual orientation secret. Lesbian and gay respondents reported changing the name of their partners in conversations at the workplace or simply avoiding the discussion of their private lives entirely. This can lead to considerable anxiety and loss of productivity.

Transgender people report the most severe forms of workplace discrimination. Many transgender respondents reported being rejected at the job interview stage simply because of their appearance. Problems within the workplace include the inability to obtain identity documents that reflect their gender and name, reluctance of employers to accept the way they dress, being discouraged from using bathrooms appropriate to their gender, and increased vulnerability to

bullying and harassment by workmates. In many cases, transgender workers (particularly transwomen) are completely excluded from formal employment. In some countries, this leaves few survival strategies other than sex work, often in dangerous conditions, which greatly increases their vulnerability to HIV infection.

### Fundamental principles and rights at work

76 countries continue to criminalize same-sex sexual relations, and legislation protecting the rights of LGBT workers is absent in the vast majority of ILO member States. Where such laws do exist, employment law either explicitly lists sexual orientation and gender identity as prohibited grounds of discrimination (including in Hungary and South Africa) or there is jurisprudence that extends principles established in more general anti-discrimination legislation to LGBT workers (as in Argentina). The Argentinian Gender Identity law recognizes the right to one's chosen gender identity, and to be identified in official documents according to that identity. Thailand has no law explicitly outlawing discrimination on the ground of sexual orientation or gender identity in employment and occupation. However, the category "sex" in the Thai Constitution is taken to include "sexual identity" or "sexual diversity".

Legislation alone does not stop discrimination. Even where progressive legislation exists, workers do not always have access to legal redress, either due to prohibitive financial costs, or because of drawn-out legal procedures. In Hungary, Argentina and South Africa, many LGBT workers reported their reluctance to file a formal complaint because of the potential economic loss from losing their jobs if their employers found out, or because of a lack of confidence in complaints' procedures.

Nonetheless, the passing of legislation outlawing discrimination against LGBT people in the workplace and elsewhere, and the media coverage this generates, can influence a real societal shift toward greater tolerance. Conversely, supportive attitudes in society, including support from workers' and employers' organizations, are often a prerequisite for the effective application of the law.

### Employment promotion

Many LGBT respondents reported having been refused jobs because of their sexual orientation – in some cases in an explicit manner during a job interview. Similarly, many have been denied a job, because their gender expression (i.e. clothing, mannerism, voice) did not "match" their legal gender identity. LGBT workers also reported being unfairly dismissed or denied promotions.

LGBT workers are often typecast as being suitable for some occupations and not others. For example in Argentina, gay men reported being encouraged to work in call centres and in customer services, while being discouraged from

working in the mining sector. Similarly in Thailand transwomen reported greater acceptance in the entertainment or service sectors. However, many LGBT persons stay away from formal employment altogether, taking up freelance or informal work. Transwomen in particular report finding more social acceptance and better pay in sex work, which, as mentioned above, raises their vulnerability to HIV infection and greatly decreases their life expectancy.

To combat stereotypes and prejudices against LGBT workers, many forward-thinking workplaces are implementing diversity policies, usually as part of an overarching framework to promote equality and diversity on all grounds. While primarily a matter of workers' rights, such an approach also makes business sense. Prejudice on any basis, including sexual orientation and gender identity, can impede the recruitment or promotion of the best candidate for the job. Moreover, a diverse workforce brings with it different ideas, and ways of doing things that can propel innovation and appeal to additional markets.

The ILO's PRIDE research has produced numerous examples of this business logic, and arguably the private sector is blazing the trail in this regard. In Hungary, the "We're Open" campaign garnered the support of more than 400 companies in showing the positive contribution of LGBT workers. Similarly in Argentina, through the "Mesa de empresas comprometidas con la diversidad sexual" programme, enterprises are active in promoting sexual diversity at the workplace through a partnership with the Argentine Federation of Lesbians, Gays, Bisexuals and Trans.

### Social protection

Social protection is linked to marriage equality and civil partnerships, because it is through formally recognizing their relationships that LGBT workers and their partners and children become entitled to medical care, pensions, adoption rights, and parental leave and child benefits on the same terms as heterosexual couples. Access to health services provided through workplaces also presents an obstacle for many LGBT workers as, due to stigma, many refrain from accessing needed and critical prevention, treatment and support services.

As of May 2015, 17 countries, including Argentina and South Africa, provided legal recognition of marriage between same-sex partners, while in 23 more countries, or sub-national jurisdictions, same sex couples could enter civil-partnerships. Hungary is one such country having introduced civil partnerships for same-sex couples in 2009. However the 2012 Constitution explicitly states that marriage is between a woman and a man. Thai law provides for neither same-sex marriage, nor civil partnerships. In Argentina, same-sex couples are entitled to the medically-assisted reproduction techniques provided to heterosexual couples, and there is social security coverage for

transgender persons who are undergoing interventions and hormonal treatment.

### Social dialogue

Dialogue between government and employers' and workers' organizations plays a critical role in achieving the ILO's objective of advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equality, security and human dignity. As outlined earlier, the position of ILO member States on LGBT workplace rights varies widely. International trade unions have publicly declared their commitment to working on LGBT workers' rights, and, as described above, many employers are taking the lead on LGBT workplace rights, in many cases pushing the boundaries beyond what is required in law.

The findings from the ILO research present differing pictures at the national level. In Thailand and Hungary, respondents suggested that LGBT rights are not considered a matter of priority for the constituents. In Hungary, LGBT trade union members reported a general "blindness" toward LGBT workers. In interviews with social partners in both countries, respondents argued that LGBT was not an issue of concern as such workers were minorities or simply not present in their membership base or workplaces at all.

In Argentina anti-discrimination clauses on sexual orientation and gender identity have been included in collective agreements with trade unions in the public sector, and several trade unions have incorporated anti-discrimination policies and advocated for the interests of LGBT workers. Meanwhile, the Congress of South African Trade Unions adopted a Resolution prohibiting discrimination on the ground of sexual orientation and actively promotes the rights of LGBT persons. Furthermore the National Economic Development and Labour Council, a statutory tripartite negotiating body enthusiastically supported the need for the PRIDE research, describing the initiative as "long overdue".

### Multiple discrimination: Sexual orientation, gender identity and HIV status

Stigma and discrimination against persons living with HIV in the world of work are well-documented, including denial of employment on the grounds of HIV status. At work, people living with HIV can be exposed to misguided and prejudiced assumptions about their sexual practices and can be ostracized due to unfounded fears regarding transmission. The research has identified dangerous myths purportedly linking sexual orientation and gender identity to HIV status. For example, in Argentina, interviewees reported transwomen being ridiculed for their supposed HIV status. In both Hungary and Thailand, LGBT workers, and in particular gay men, reported often being asked at work

whether they had HIV. In Hungary, gay men reported being accused of promiscuity because of their sexual orientation, and many were reticent to talk about HIV issues. Some interviewees objected to it being a pillar of the PRIDE research, due to fears that the LGBT community would be stigmatized because of it.

On a positive note, a number of gay rights advocates have organized around the topic of HIV and AIDS as a way to bring attention to the social, legal, and psychological well-being of men who have sex with men (MSM) and transgender persons. In societies that are less open to multiple expressions of sexualities, advocacy for HIV prevention is sometimes the only opportunity to bring attention to the rights of LGBT persons. And the campaign for HIV prevention has been, and continues to be, used as a catalyst to advocate for the rights of LGBT persons in the workplace and elsewhere.

### Conclusion

There has undoubtedly been progress in recognizing the human rights – including labour rights – of LGBT persons. More and more countries are adopting laws prohibiting discrimination based on sexual orientation or gender identity in the world of work and elsewhere. Since the turn of the new millennium, many countries, and sub-national jurisdictions, have instituted marriage equality and civil partnerships for same-sex couples.

However, even where legal protection is in place, the reality is that many LGBT workers still face considerable discrimination, and even harassment at work, leading many to conceal their sexual orientation or to gravitate towards sectors with a more tolerant working environment. And at the extreme end of the spectrum, in six countries same-sex sexual activity is considered a crime, punishable by the death penalty.

It is clear from the research that countries with strong laws and policies promoting equality for LGBT workers fare better. This is unsurprising. A solid legal framework has obvious benefits in terms of LGBT workers' access to justice. However it also provides the bedrock for a more positive working environment, as the passage of such legislation can create a powerful impetus for governments, employers and workers to move toward more inclusive and diverse workplaces.

The ILO stands ready to play its part. In the words of the Director General: The ILO is committed "to promoting decent work for all women and men, regardless of sexual orientation or gender identity. Decent work can only exist in conditions of freedom and dignity. It means embracing inclusion and diversity. It requires us to stand up against all forms of stigma and discrimination...and to the insidious role of homophobia and transphobia in fostering discrimination."

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