



# Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work

## Results of the ILO's PRIDE Project

### Introduction

Equality and non-discrimination are at the very core of the social justice mandate of the International Labour Organization (ILO). And we know that some groups of workers are more likely to face discrimination than others, including lesbian, gay, bisexual and transgender (LGBT) workers. However little was known about the nature and extent of the discrimination, or the good practices in promoting equality and inclusion. As a result, since 2012 the International Labour Organization (ILO) has been implementing the 'Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work (PRIDE)' project, with the generous support of the Government of Norway. The project has developed an innovative methodology that combines research with interviews and focus groups, with a view to answering some of these questions. Hearing the voices of LGBT workers, and the involvement of the tripartite partners, have been key components of the project.

As the first phase of the project nears completion, with research, findings and recommendations from nine countries, common trends can be seen, and good practices that could be an inspiration for others have also been revealed. The nine countries in the initial stage are Argentina, Costa Rica, France, Hungary, India, Indonesia, Montenegro, South Africa and Thailand.

### LGBT workers and the law

In recent years, more and more ILO member States have identified sexual orientation and gender identity as

prohibited grounds of discrimination in their employment or anti-discrimination laws. At the same time marriage equality has been legislated for in twenty-one member States. Adopting legislation prohibiting discrimination against LGBT people in the world of work and elsewhere creates an essential foundation to be able to know your rights and exercise them. Raising awareness of legal rights through campaigns and media coverage, can also have an important influence on societal attitudes toward LGBT rights. Positive attitudes in society, including support from workers' and employers' organizations, are often a prerequisite for the effective application of the law.

### Different approaches to addressing discrimination against LGBT workers

Of the countries that have legal provisions prohibiting discrimination against LGBT workers, a number of different approaches have been employed: some countries explicitly list sexual orientation and gender identity as prohibited grounds of discrimination in their employment or anti-discrimination law, as is the case in France, Hungary, Montenegro and South Africa. An approach taken in other jurisdictions is to extend, through jurisprudence, the principles established in more general anti-discrimination legislation to LGBT workers, as in Argentina. Another approach is found in Thailand, where discrimination on the basis of "sex" as set out in the Thai Constitution has been interpreted to include 'sexual identity' or 'sexual diversity'.

However, as of May 2016, seventy-two countries and five sub-national jurisdictions have laws criminalizing consensual same-sex sexual activity. This can result in fines, jail terms, or (in five cases) the death penalty. Meanwhile, despite the fact that the World Health Organization declassified homosexuality as a psychiatric disorder in 1990, the untenable idea that being LGBT is a “sickness” that must be cured persists in many ILO member States. Nonetheless in much of the world LGBT women and men are no longer pathologized or criminalized, but are increasingly becoming part of the story of the progress in human rights and equality. And as with the civil rights movements of the past century, the world of work has been a crucial arena for spearheading legal change, ending stereotypes and promoting understanding of the need to ensure the dignity of all human beings. Through advancing workplace rights for women, persons with disabilities and people living with HIV, the ILO has been, and continues to be, at the forefront in advancing human rights for all workers.

### Getting and keeping a job

The research findings confirm that 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 result in LGBT workers being bullied, mobbed, and sexually or physically assaulted. Discrimination can be based on both real or perceived sexual orientation and gender identity. Those who do not conform to traditional gender stereotypes, like effeminate men and masculine women, often experience more discrimination than LGBT persons who can “pass” as heterosexual.

*I have a colleague who told me (despite the fact that I am gay) it is different with you, because with you, you don't notice.*

LGBT representative, Costa Rica

*I act in conformity with people's expectations, not because I live for other people, but because I live for my work. I need to eat, my mother is depending on me. I cannot take the liberty to be myself.*

Transwoman, Costa Rica

At face-value, the evidence suggests that the best strategy for an LGBT job seeker is to stay in the closet until finding a job, and then remain in the closet once starting to work. However research by the ILO and other agencies demonstrates that people who have come out at work have fewer symptoms of anxiety, depression, and burnout. And a central factor in the decision to come out at work is a supportive environment with proactive diversity and inclusion policies in place.

### Occupational segregation for LGBT workers

Even in relatively “tolerant” working environments 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 industries. In Indonesia the Ministry of Social Affairs offers training programmes in sewing and beauty classes for transpersons. In India, creative sectors such as fashion, TV production and advertising are more open towards LGBT people. Many LGBT persons stay away from formal employment altogether, taking up freelance or informal work.

*As a transgender person I faced many struggles at an early age. I managed to finish high school and later go on to college. This has helped me a great deal in finding a job. I can look around at other transgender people and see how rare this is. Most did not finish high school and have had so few choices. They never experienced much workplace discrimination because they never really had a chance for a real job.*

Transgender person, Indonesia

### LGBT workers, healthcare and family life

To a large extent the campaign for marriage equality has come to symbolize the LGBT rights movement in many countries over the past decade. LGBT workers' right to recognition of their family roles and responsibilities is inherently linked to legal provision for marriage equality and civil partnerships. It is through formally recognizing their relationships that LGBT workers and their partners and children become entitled to medical care, pensions, adoption rights, parental leave and child benefits on the same terms as heterosexual couples.

*You know I would love to be with her in that maternity, I would love to. It is like her being sick. I am always there for her. I would like to share. They must understand that we are two women who are in love, not a man and a woman. (...) I want to be there as a parent too.*

Lesbian Mother, South Africa.

Access to health services provided through workplaces also presents an obstacle for many LGBT workers as the care they need is not available to them, or, due to stigma, many refrain from accessing needed and critical prevention, treatment and support services.

### Argentina taking the lead

In Argentina, same-sex couples are have the same legal rights to marry as heterosexual couples. Same-sex couples are also entitled to the medically assisted reproduction techniques provided to heterosexual couples, and there is social security coverage for transgender persons who are undergoing surgical interventions and hormonal treatment. And 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.

### LGBT rights as workers' rights

International trade unions have publically declared their commitment to working on LGBT workers' rights, and many employers, particularly multinationals, are taking the lead on LGBT workplace rights, in many cases pushing the boundaries beyond what is required by law. However the ILO's research suggests that, at national level, LGBT rights are not taken up as an issue of concern by trade unions or employers, and LGBT rights rarely feature in collective agreements. Argentina and South Africa, however, stand out as exceptions to this trend.

To combat stereotypes and prejudices against LGBT workers, many workplaces are implementing LGBT-friendly policies, usually as part of an overarching framework to promote equality and diversity on a range of 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.

### LGBT rights and diversity strategies in the private sector

Many of the world's biggest and most successful companies have advanced diversity strategies, including in respect of LGBT. Indeed, nearly 90 per cent of Fortune 500 companies prohibit discrimination based on sexual orientation, and almost 60 per cent of them extend benefits to the same-sex partners of their employees. For example many French companies, including Casino, Sodexo, and Accenture have signed up to 'L'autre Cercle', an association devoted to LGBT inclusion at work.

*I actually came out at IBM before I could even come out to my mom. (...) I didn't know when I joined IBM about the LGBT policies. So when I joined I had a really good manager then who came to me and said: you know there's this programme and they welcomed me and I went to socials and I was like wow! People even get married, I didn't even know, none of my friends are married so it was a new experience for me. That gave me courage to go back to my mom two years later and actually start discussing – we are still discussing it, even today. I wouldn't have done the stuff that I've done, especially for the community as well, had I not been at IBM, that's 100 per cent sure.*

LGBT person, South Africa

### LGBT rights and HIV and AIDS

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. Indeed such stigma led to some interviewees objecting to HIV and AIDS being a pillar of the PRIDE research, due to fears that the LGBT community would be stigmatized because of it.

*Oh, they won't be fired because of their HIV status. It happened to a couple of our friends who are HIV-positive. They never told their employers about being HIV-positive, but somehow their employers found out. Somebody must have told them about it. The employers told them to take extended leave. You know, the employers will find a way to lay them off without making any reference to their HIV status. Employers are clever like that.*

Transgender person, Indonesia

### HIV and AIDS as an entry-point for LGBT workers' rights

In many countries HIV and AIDS is the only 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 LGBT rights and even in those where same-sex activity is criminalized, advocacy for HIV prevention is sometimes the only opportunity to bring attention to the rights of LGBT persons.

## Conclusion

While there has undoubtedly been progress in recognizing the human rights – including labour rights – of LGBT persons, the results of the PRIDE study send a clear message that there is still a long way to go. It is clear from the research that countries with strong laws and policies promoting equality for LGBT workers fare better. A solid legal framework has obvious benefits in terms of LGBT workers' access to justice, but also creates the backdrop to more proactive inclusion policies being adopted by trade unions and private enterprise, including in respect of benefits for workers' same-sex partners and children.

With a better understanding of how discrimination manifests itself, the legal gaps, as well as the often large gap between law and the day-to-day reality for LGBT workers, the ILO aims to widely disseminate the results with a view to raising awareness of LGBT rights globally, and to support collaboration between governments, and workers' and employers' organizations to promote rights, diversity and equality in the world of work.

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