



REPORT APR 8, 2022

New Opportunities for the Biden-Harris Administration To Create Good Jobs for LGBTQI+ Workers

AUTHORS



Aurelia Glass



Sharita Gruberg



Caroline Medina



Karla Walter

Advancing Racial Equity and Justice, Biden Administration, Economic Justice, Economy, LGBTQ Rights, Sectoral Bargaining, Unions, Worker Rights, Workforce Development



For decades, the U.S. economy has left LGBTQI+ individuals and their families behind, but the Biden-Harris administration can use its existing authority to uplift LGBTQI+ workers.



A woman from Warren, Michigan, blows bubbles as she helps her coworkers to prepare for the Motor City Pride parade on June 9, 2019, in Detroit. (Getty/Brittany Greeson)

Introduction and summary

Lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) workers face significant barriers to economic security—in particular, employment discrimination, workforce exclusion, and a lack of access to good jobs that pay well, offer quality benefits, and support workers' right to come together in unions. Fortunately, the recently enacted Infrastructure Investment and Jobs Act (IIJA)¹ and President Joe Biden's economic agenda contain critical investments that provide a historic opportunity to advance equity, ensure government spending creates good jobs, and include LGBTQI+ workers in a rebuilt economy that works for all Americans. These investments help to address the climate crisis, rebuild crumbling roads and bridges, and expand other critical sectors, with a new commitment to supporting long-marginalized workers—including LGBTQI+ workers.² The Biden-Harris administration must use its considerable administrative and executive power to ensure that all new investments and all other government spending include the standards, outreach, and enforcement necessary to uplift and empower LGBTQI+ workers. Moreover, it is crucial that these policies to expand economic opportunity are implemented in line with the principles of President Biden's executive actions to prevent discrimination on the basis of gender identity and sexual orientation.³

LGBTQI+ workers face heightened economic challenges, especially following the COVID-19 recession. Although current research is limited due to underinvestment in federally funded data collection on LGBTQI+ workers, existing analysis demonstrates clear evidence of the challenges they face: Employment discrimination and workforce exclusion contribute to higher rates of poverty, unemployment, use of public benefits, and housing instability among LGBTQI+ people compared with their non-LGBTQI+ counterparts. For LGBTQI+ communities of color,⁴ LGBTQI+ people with disabilities,⁵ and transgender people,⁶ these barriers to achieving economic security are further heightened. And while little is known about the experiences of intersex workers in the United States, there is evidence to suggest they also face discrimination in employment and other barriers to workforce inclusion.⁷

Making matters worse, the Trump administration weakened existing government programs to collect data on the economic well-being of LGBTQI+ workers;⁸ ensure that LGBTQI+ people have access to work and are safe on the job;⁹ hold to account corporations with lucrative government contracts when they violate the rights of their employees;¹⁰ and protect transgender workers directly employed by the federal government.¹¹

Already, the Biden-Harris administration has taken several actions to restore critical protections for LGBTQI+ workers. If fully enacted, the IIJA and President Biden's economic agenda would create millions of jobs, fund critical enforcement agencies, and support measures to increase access to good jobs for disadvantaged workers, offering a generational chance to include LGBTQI+ workers in a rebuilt economy. In addition, the Biden-Harris administration has a considerable opportunity to improve job quality and access for LGBTQI+ workers who are directly employed by the federal government as well as in jobs funded through existing government spending programs.

One recent survey found that LGBT workers make up 5 percent of the direct federal workforce;¹² however, it is worth emphasizing that the true number is likely significantly higher due to underreporting. Indeed, a 2018 report by the Human Rights Campaign found that almost 50 percent of LGBT workers are closeted at work.¹³



Executive and administrative action today will uplift LGBTQI+ workers for generations.

The federal government already spends a great deal to fund jobs in the private sector that could better support LGBTQI+ employees. Last year alone, the federal government awarded private sector corporations more than \$632 billion on contracts for goods and services,¹⁴ purchasing services that range from staffing COVID-19 call centers for the public to caring for aging military veterans to constructing ports and roads. Without administrative action, the jobs created by these spending programs may not be accessible to LGBTQI+ workers and other marginalized communities or may fall short of providing them adequate wages and benefits.

All government-funded jobs should be good jobs that are accessible to workers from all walks of life; but too often, the government falls short of its commitment to be a model employer, and LGBTQI+ workers have consistently been left behind. For this reason, the Center for American Progress recommends that the Biden-Harris administration take the following six steps to guarantee that the IJJA and future investments, as well as other government spending programs, benefit LGBTQI+ workers:

- 1 Collect better data on the economic well-being of LGBTQI+ Americans:** By incorporating demographic questions on sexual orientation, gender identity, and variations in sex characteristics in federally funded surveys; expanding government research on LGBTQI+ workers; and furnishing better enforcement data, the government can significantly expand knowledge on the barriers that LGBTQI+ workers face and help shape policy interventions to address those challenges.
- 2 Ensure that jobs funded through federal spending are good jobs for LGBTQI+ workers and their families:** Jobs must pay decent wages and create an even playing field for LGBTQI+ workers and their families by providing good benefits that meet the health needs and family status of LGBTQI+ workers. By raising pay and increasing equitable access to inclusive benefits—such as health insurance and leave policies—for those whose jobs are funded by government spending, the administration can improve the economic well-being of LGBTQI+ workers and their families.
- 3 Make existing anti-discrimination protections real by empowering LGBTQI+ workers to stand up for their rights:** Meaningful enforcement of nondiscrimination protections based on sexual orientation, gender identity, and sex characteristics—including intersex traits—paired with outreach, education, and technical assistance, is crucial to increasing awareness, holding lawbreakers accountable, and fostering more inclusive workforce environments.
- 4 Build pathways to good jobs through apprenticeships and training focused on LGBTQI+ workers and youth:** LGBTQI+ people with targeted job training and apprenticeship opportunities can access high-quality jobs, allowing industries to attract and retain a skilled and diverse workforce.
- 5 Support the right of workers to come together in solidarity and promote collective bargaining as a means of strengthening protections for LGBTQI+ workers:** Encouraging unionization can help create good jobs for LGBTQI+ workers, as unionized workers typically bargain for equitable pay and benefits, nondiscrimination protections, and bans on dismissal without just cause.
- 6 Lead through federal example by making sure the federal government is a model employer for its direct public employees:** The federal government should demonstrate best practices with its direct employees—for example, by ensuring that LGBTQI+ workers can access quality federal job opportunities; by eliminating discriminatory health insurance exclusions that impose massive costs on transgender workers; and by strengthening federal employee bargaining rights.

Already, policymakers in both Congress and the administration have prioritized LGBTQI+ Americans and other historically underserved communities through the IIIJA —also known as the “Bipartisan Infrastructure Law”—as well as through President Biden’s economic plan and several executive actions. Some have gone further by supporting the Equality Act passed in the U.S. House of Representatives,¹⁵ which would clearly outlaw discrimination on the basis of sexual orientation, gender identity, and sex characteristics—including intersex traits—in critical areas of public and private life, from the workplace to housing to banking to the courts. It is crucial that the Senate pass the Equality Act in order to advance LGBTQI+ workers’ rights and prevent future administrations from rolling back protections for LGBTQI+ workers via executive fiat.

Additionally, President Biden has a historic opportunity to ensure that new support for federal infrastructure and investments currently being considered in Congress benefit LGBTQI+ Americans and advance equity throughout the economy.

This report focuses on executive and administrative actions that the Biden-Harris administration can take now to lift up working LGBTQI+ Americans, while also acknowledging key legislative priorities to improve their economic standing. Frequently, these policies are geared toward better understanding and responding to the specific needs of LGBTQI+ workers in the economy. The report also highlights policies aimed at raising standards and building power for disadvantaged and low-income workers broadly, in recognition of both the intersectional nature of identity and the fact that due to employment discrimination and workforce exclusion, many LGBTQI+ workers disproportionately earn lower incomes.

Adopting these recommendations aligns with the aims of Executive Order (EO) 13988,¹⁶ which directs all federal agencies that enforce federal laws prohibiting sex discrimination to also prohibit discrimination based on sexual orientation and gender identity (SOGI), as well as EO 13985,¹⁷ which directs federal agencies to promote equity, civil rights, and equal access to opportunities and benefits for LGBTQI+ communities and other underserved communities. Executive and administrative action today will uplift LGBTQI+ workers for generations.

ADDITIONAL RESOURCES



Improving the Lives and Rights of LGBTQ People in America

Jan 12, 2021
Caroline Medina, Sharita Gruberg, Lindsay Mahowald, + 1 More



The United States Must Advance Economic Security for Disabled LGBTQI+ Workers

Nov 3, 2021
Caroline Medina, Lindsay Mahowald, Thee Santos, + 1 More



Ensuring Government Spending Creates Decent Jobs for Workers

Jan 29, 2018
Karla Walter



Public Sector Training Partnerships Build Power

Oct 3, 2019
Karla Walter

The American economy leaves LGBTQI+ workers behind

For generations, LGBTQI+ workers have faced increased rates of poverty, overrepresentation in sectors that offer poor wages and few benefits, increased rates of

unemployment, and persistent workplace discrimination.

LGBTQI+ community faces widespread discrimination

Experiences of discrimination and harassment remain pervasive for LGBTQI+ workers, detrimentally affecting workplace experiences, creating barriers to workforce entry, increasing the risk of unemployment, and narrowing pathways to economic security. For example, according to CAP's nationally representative 2020 survey of LGBTQI+ adults, among respondents who experienced discrimination in the year prior, 35 percent reported it negatively affected their "ability to be hired" to a moderate or significant degree, while 31 percent reported it negatively affected their "salary or ability to be promoted" to a moderate or significant degree.¹⁸

LGBTQI+ DISCRIMINATION IN THE WORKPLACE

3.9M

Number of LGBT workers who live in states without clear statutory protections from discrimination in employment

35%

Share of surveyed LGBTQI+ adults who reported that discrimination negatively affected their "ability to be hired" to a moderate or significant degree

51%

Share of surveyed Black LGBTQI+ adults who reported that discrimination negatively affected their "ability to be hired" to a moderate or significant degree

53%

Share of surveyed transgender adults who reported that discrimination negatively affected their "ability to be hired" to a moderate or significant degree

According to that same survey, LGBTQI+ respondents of color and transgender respondents reported heightened rates of discrimination, with 51 percent of Black LGBTQI+ respondents and 53 percent of transgender respondents overall reporting that discrimination negatively affected their "ability to be hired" to a moderate or significant degree.¹⁹ This kind of workforce discrimination and exclusion can also contribute to dynamics that lead vulnerable LGBTQI+ people, especially gay and bisexual men as well as transgender people of color, to participate in underground economies such as sex work.²⁰

In 1993, Minnesota became the first state to expressly prohibit employment discrimination based on sexual orientation and gender identity.²¹ In the years since, 22 other states and the District of Columbia have passed state laws with similar protections; however, the Williams Institute estimates that 3.9 million LGBT workers live in states without clear statutory protections from discrimination in employment.²² In June 2020, the U.S. Supreme Court affirmed prior Equal Employment Opportunity Commission (EEOC) and federal court decisions in *Bostock v. Clayton County*,²³ ruling that Title VII of the Civil Rights Act of 1964's prohibition on sex discrimination in employment includes discrimination based on sexual orientation and gender identity.²⁴ Specifically, Title VII's statutory protections make it unlawful for covered employers to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."²⁵

READ MORE ON THE BOSTOCK CASE AND ITS IMPLICATIONS FOR LGBTQI+ CIVIL RIGHTS —

REPORT

Beyond *Bostock*: The Future of LGBTQ Civil Rights

Aug 26, 2020
Sharita Gruberg

Notably, on day one of his presidency, President Biden signed EO 13988, which directed all federal agencies that enforce federal laws prohibiting sex discrimination to also prohibit discrimination based on SOGI and to take actions necessary to fully implement this policy.²⁶ Recently, in its enforcement of Title IX, the U.S. Department of Justice extended the *Bostock* interpretation to also apply to discrimination against individuals based on their sex characteristics, including intersex traits.²⁷

The *Bostock* decision was a landmark ruling for LGBTQI+ people for whom discrimination and harassment remain pervasive. Yet even after the Supreme Court established protections nationwide, approximately 9 percent of LGBT employees reported that they had been fired or not hired within the past year because of their sexual orientation or gender identity, according to data collected by the Williams Institute in May 2021.²⁸ Notably, transgender employees and LGBT employees of color were more likely to report experiencing forms of discrimination or harassment.



Approximately 9 percent of LGBT employees reported that they had been fired or not hired within the past year because of their sexual orientation or gender identity.

While nondiscrimination based on sexual orientation and gender identity is now the law of the land for workers covered by Title VII of the Civil Rights Act of 1964, there must be increased awareness among prospective and current employees, employers, and the public about the right to nondiscrimination, protection against retaliation, and how to file complaints. The burden is typically on workers to file a complaint, putting them at risk for illegal firings or retaliation since enforcement is lacking. For that reason, robust awareness efforts must be paired with proactive civil rights enforcement and systemic accountability mechanisms, especially at the EEOC and the Office of Federal Contract Compliance Programs (OFCCP), to lessen the burden on individual employees. Continuing to combat anti-LGBTQI+ discrimination in employment is critical to bolstering economic opportunities and addressing existing disparate economic outcomes that LGBTQI+ people face.

LGBTQI+ discrimination increases economic insecurity

Discrimination and workforce exclusion contribute to unemployment, wage, and income differences between LGBTQI+ and non-LGBTQI+ people, and economic vulnerabilities are more pronounced for transgender individuals, bisexual people, lesbian women, and LGBT people of color.²⁹ Although poverty rates differ by sexual orientation and gender identity, evidence reveals that LGBT people collectively report higher rates of poverty than cisgender straight people.³⁰ For example, a 2019 report by the Williams Institute found that LGBT people have an overall poverty rate of 21.6 percent, compared with 15.7 percent among cisgender straight people, and that transgender people have especially high rates of poverty: 29.4 percent.³¹ That same report found that “lesbian (17.9%) and straight (17.8%) cisgender women have higher poverty rates than gay (12.1%) and straight (13.4%) cisgender men,” while “bisexual cisgender women (29.4%) and men (19.5%) had higher poverty rates than cisgender straight women and men, respectively.”³²



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Recent studies examining wage differentials suggest that, after controlling for other relevant variables, gay and bisexual men earn less than heterosexual men, while lesbian and bisexual women earn higher wages than heterosexual women—although the latter trend may be diminishing.³³ Analysis by the Williams Institute found that lesbian, bisexual, and queer cisgender women and transgender people were each 18 percentage points more likely than the general U.S. population to be living in a low-income household.³⁴ Meanwhile, economic data on people with intersex traits are extremely limited, but CAP's 2020 survey revealed that LGBTQI+ intersex respondents were 7 percentage points more likely than their LGBTQI+ nonintersex counterparts to report a household income of less than \$25,000 annually.³⁵

LGBTQI+ people and families are excluded from needed support

Too often, employers offer benefits that do not account for the needs of LGBTQI+ families, and many employer-provided health insurers actively discriminate against LGBTQI+ people. The structural dependence of the U.S. health insurance system on employer-provided coverage creates obstacles to inclusive health care for LGBTQI+ populations that are at high risk of unemployment and employment discrimination; this includes transgender individuals and workers who are denied coverage through their employers.³⁶

For example, plans may refuse transgender people coverage for medically necessary gender-affirming care, as well as care unrelated to gender affirmation,³⁷ or employers may offer plans that discriminate against LGBTQI+ families by denying coverage for reproductive health services such as fertility treatments or fertility preservation.³⁸ These illegal discriminatory policies deny LGBTQI+ workers coverage for necessary health care that is regularly approved for non-LGBTQI+ employees, leading LGBTQI+ workers to forgo that care due to cost³⁹ or pay exorbitant out-of-pocket costs that may further jeopardize their financial stability.⁴⁰ Similarly, employers may not provide paid family and medical leave that is inclusive of chosen family—individuals with “close bonds akin to those traditionally thought to occur in relationships with blood or legal ties”—which is crucial for caretaking support among LGBTQI+ communities.⁴¹

Employment and wage discrimination; overrepresentation in low-wage, low-income jobs; and underrepresentation in high-wage, high-quality jobs obstruct pathways to economic security and adequate living standards for LGBTQI+ communities, making them more likely to rely on public benefits and face barriers to stable housing and adequate health care.⁴² The government and private employers alike have a responsibility to adopt and enforce strong nondiscrimination policies, create work environments with LGBTQI+-inclusive policies and cultures, and engage in meaningful outreach to increase employment opportunities for LGBTQI+ workers. Improving access to good-quality jobs is an important step to disrupting common pathways to poverty for LGBTQI+ people and fostering more equitable economic outcomes.

Achieving good jobs for LGBTQI+ workers

Achieving good jobs for LGBTQI+ workers requires understanding the challenges facing LGBTQI+ workers, defining clearly what makes a job a good job, and enacting policies that meet the unique circumstances of LGBTQI+ Americans. A good job must pay fair market wages, above a baseline of \$15 per hour; offer quality benefits; and support workers' right to come together in unions.⁴³ Moreover, workers should enjoy access and opportunity on the job through high-quality training programs and protections to ensure that they are not fired, paid less, or treated unfairly for their gender identity, sexual orientation, sex characteristics, race, disability, religion, or national origin.

While these standards establish a baseline for good jobs that ought to be accessible to workers of any sexual orientation, gender identity, or sex characteristics, they comprise an especially large gain for LGBTQI+ workers, for whom such standards are infrequently and inadequately met. For instance, the provision of high-quality health benefits would have particularly positive effects on employment outcomes and ability to work for transgender people, who often suffer worse health outcomes due to lack of access to care.⁴⁴ Similarly, the ability to unionize not only raises wages and benefits but also protects workers against discriminatory dismissal and provides representation to challenge illegal employer actions.⁴⁵

The federal government has a long history of attaching protections to ensure that jobs created through its spending are high quality. This includes wage and benefits standards, anti-discrimination protections, and support for workers seeking to come together in unions, as well as funding for worker training. Jobs funded through federal contracting dollars, in particular, feature numerous protections, such as prevailing wages and benefits.⁴⁶ Similarly, the Infrastructure Investment and Jobs Act and the rest of Biden's economic plan include standards and more support to uphold market wage and benefits, bolster workers' right to unionize, and increase diversity of the workforce accessing these jobs.⁴⁷

Unfortunately, existing pay and benefits standards are often so low that subsidized workers still earn poverty wages.⁴⁸ Moreover, quality standards are meaningless to LGBTQI+ workers if covered jobs are not accessible or if the laws designed to protect them from harassment and discrimination on the job are not enforced.

Notably, the federal government's own LGBTQI+ employees may lack sufficient protections. Federal employees who are transgender or have transgender dependents can struggle to access health insurance that covers costly but necessary gender-affirming care.⁴⁹ In addition, years of hostility from President Donald Trump and his National Labor Relations Board (NLRB) appointees have weakened unions' power to protect their members.⁵⁰

Fortunately, the Biden-Harris administration has considerable authority to raise pay and benefits for all workers while increasing accessibility for LGBTQI+ workers through high-quality training and enforcement of essential protections. In particular, the following reforms can help achieve these ends.

Collect better data on the economic well-being of LGBTQI+ Americans

Persistent lack of routine data collection on sexual orientation and gender identity and variations in sex characteristics poses a significant barrier to policymakers, researchers, and other stakeholders aiming to improve the economic security and labor force experiences of LGBTQI+ people. While existing data do reveal glaring insufficiencies in how well the U.S. economy serves LGBTQI+ workers, expanding and enhancing data collection on sexual orientation, gender identity, and variations in sex characteristics in large-scale, federally funded surveys is vital to understanding and addressing the challenges faced by LGBTQI+ workers with evidence-based policy solutions.

Expand and enhance federally funded general population surveys

Most U.S. government surveys still do not collect information on sexual orientation and gender identity, and thus far, none ask questions that can identify intersex populations.⁵¹ Although a few population-based surveys now collect data on cohabitating same-sex spouses and unmarried couples, this only captures a small subgroup of the LGBTQI+ population, and the sample's characteristics are not representative of the broad LGBTQI+ community.⁵²

There are numerous large-scale, population-based surveys that collect crucial information on employment, labor force experiences, economic security, and public benefit access of the U.S. population but lack questions on sexual orientation, gender identity, and variations in sex characteristics. Furthermore, the presentation of labor data often precludes data disaggregation that makes it possible to analyze information on people living at the intersection of multiple marginalized identities—for example, those who identify as Black bisexual women.

In March 2022, the National Academies of Sciences, Engineering, and Medicine published a milestone report presenting guiding principles and best practices for collecting data on sex, sexual orientation, gender identity, and variations in sex characteristics in multiple settings, including general population surveys.⁵³ Executive agencies should adopt the recommendations of the report and act swiftly to add SOGI measures and test measures on variations in sex characteristics on the following priority surveys:

- The **Current Population Survey**, in addition to its various supplemental questions, provides important information about employment and unemployment; emerging trends in employment status, wages, and earnings; and variables affecting labor force participation.⁵⁴
- The **American Community Survey** collects critical information about the social, economic, housing, and demographic characteristics of approximately 3.5 million households each year across the country, and federal agencies use these data to monitor and enforce employment nondiscrimination laws.⁵⁵
- The **Survey of Income and Program Participation** collects extensive data on the income, program participation, and financial well-being of individuals and households.⁵⁶

Without directly measuring sexual orientation, gender identity, and variations in sex characteristics, these data cannot be used to analyze the socioeconomic profile and experiences of LGBTQI+ populations and their families—or to compare these experiences to those of the non-LGBTQI+ population for a wide array of purposes. For example, such comparisons can help identify workforce barriers, differentials in wages and earnings, public and private industry participation, and use of a broad range of public benefits programs.

It is critical to add tested and validated SOGI measures based on best existing practices, as well as testing and validating new measures to identify people with intersex traits.⁵⁷ Doing so on such large-scale surveys would provide researchers with a large enough sample size to disaggregate data that allow for analysis of the experiences of subgroups among LGBTQI+ communities as well as other intersecting identities related to race, ethnicity, and more. Ultimately, these data will be a tool for researchers, policymakers, and other stakeholders to better understand the experiences, challenges, and needs of the LGBTQI+ workforce and to meaningfully advance equity efforts across the economy. Specifically, adding these demographic questions to federally supported surveys is an important step to realizing the aims of EO 13985,⁵⁸ which directs federal agencies to promote equity, civil rights, racial justice, and equal access to opportunities and benefits for LGBTQI+ communities and other underserved communities through various actions, including but not limited to expanding data collection efforts.

Fund and support research targeting LGBTQI+ workers

The Biden-Harris administration should invest in quantitative and qualitative research specifically targeting LGBTQI+ communities. Engaging in community-based participatory research will allow researchers to more directly examine the experiences of and exclusionary barriers encountered by LGBTQI+ people, especially transgender people of color, when entering or participating in the labor market, with a focus on populations living with multiple marginalized identities, such as transgender people of color. Investigating these experiences will help to identify and address existing challenges to affirmatively promote employment opportunities for LGBTQI+ communities. For example, research could investigate the unique barriers that transgender workers who socially, medically, or legally transition face when trying to join or participate in the workforce and how to effectively expand workforce training programs that are inclusive of transgender communities.⁵⁹

Taking a community-centered approach to understanding and addressing these workforce obstacles is essential. One method involves utilizing community-based participatory research (CBPR) or community-engaged research (CEnR), which have long been established as effective tools in combating inequalities within public health and social science.⁶⁰ CBPR includes community stakeholders or members of the community who researchers want to access in order to avoid perpetuating harmful assumptions about a certain population, such as stereotyping, stigmatization, and other damaging practices that have historically affected marginalized communities.⁶¹ This approach provides communities the opportunity to be in the driver's seat of a research initiative, with the goal of equalizing power between the researchers and the communities they study.⁶² Success with CBPR has been well documented and has been integral to many partnerships' success in grant-funded programs, including federally funded programs.⁶³ Including LGBTQI+ communities from conception to implementation of research will help to advance equity.

There are multiple actions the administration can take to advance these goals and this kind of research. The Office of Personnel Management (OPM) should add a to its Federal Employee Viewpoint Survey a question that allows people with intersex traits to self-identify, conduct focus groups on the experiences of LGBTQI+ employees, and use its findings to inform the administration's work as part of President Biden's Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce, including through a public report.⁶⁴ Additionally, the U.S. Department of Labor should fund qualitative and quantitative research on the experiences of LGBTQI+ workers through its Labor Research and Evaluation grants as part of its priority interest in improving equal employment opportunities for targeted populations.⁶⁵

Such research could inform strengthened implementation of nondiscrimination and other workplace protections, as could investments in the creation of a pilot program to demonstrate, evaluate, and replicate best practices for increasing workforce participation and access to higher-wage, quality jobs for disadvantaged LGBTQI+ workers—particularly transgender people—accompanied by testing evaluation and a publicly available national report. Findings and best practices based on such research initiatives should be integrated into the work of the Interagency Working Group on Safety, Inclusion, and Opportunity for Transgender Americans as part of its coordinated federal approach to addressing discrimination, barriers to economic opportunity, and stigma that gender-diverse communities face.⁶⁶

Use data to improve enforcement

To improve enforcement of nondiscrimination and other workplace protections and ensure that the government fulfills its responsibilities for LGBTQI+ workers under EO 13988, data collection and reporting across federal agencies such as the EEOC and OFCCP must also be improved. For example, the EEOC should improve its data collection and disaggregated data reporting on discrimination based on sexual

orientation, gender identity, and sex characteristics in its charge data. The EEOC could use these data to explain the agency's roles and responsibilities in resolving complaints; notify people about the complaint filing process and their right to nondiscrimination; and issue updated guidance on Title VII of the Civil Rights Act of 1964 as well as other equal employment laws, including information on how multiple or intersectional discrimination complaints are covered.

Data collection, reporting on charges, and robust enforcement of nondiscrimination protections through the OFCCP are also crucial. As discussed below, the administration's proposed rulemaking to rescind the 2018 directive⁶⁷ and 2020 final rule⁶⁸ that expanded the number of taxpayer-funded federal contractors and subcontractors eligible for religious exemptions—which provided a broad license to discriminate and weakened employee safeguards—was necessary to ensure that LGBTQI+ federal contractors are not subject to discrimination.⁶⁹ Additionally, data collection should be expanded to quantify how many federal contractors there are, better understand how many contractors rely on religious exemptions, and track outcomes of discrimination complaints based on SOGI and other protected characteristics.⁷⁰

In addition to adopting recommendations discussed below in the section on anti-discrimination protections, the OFCCP can improve transparency by expanding reporting requirements that contractors disclose affirmative action plans for inclusive recruiting and subcontracting to include LGBTQI+ employees, by making such reports public, and by providing updates on how contractors are meeting those goals. Furthermore, such steps would ensure that OFCCP's compliance evaluations of employment practices by contractors are inclusive of LGBTQI+ employees.⁷¹

SEE ALSO

REPORT

The State of the LGBTQ Community in 2020

Oct 6, 2020

Sharita Gruberg, Lindsay Mahowald, John Halpin

Ensure that jobs funded through federal spending are good jobs for LGBTQI+ workers and their families

Jobs must pay decent wages and create an equitable playing field for LGBTQI+ workers by providing good benefits commensurate with the health and family status of LGBTQI+ workers. Policies to raise wages and benefits for workers and to standardize compensation requirements across subsidized companies have positive impacts for LGBTQI+ workers, as LGBTQI+ people earn lower wages overall and these actions would shield them and other workers from pay disparities due to discrimination. Moreover, raising standards for federally funded jobs now has the potential to be particularly powerful since the IJJA, along with President Biden's broader economic agenda, would support millions of jobs annually, alongside the already sizable federal contracting workforce, making federal spending highly consequential for setting job standards nationwide.⁷²

In addition, all federally funded jobs should provide high-quality benefits, especially health insurance and paid family leave, that do not leave gaps for LGBTQI+ workers and their families. Transgender people suffer staggering rates of poverty and poor mental health, due in no small part to the high cost and inaccessibility of necessary medical care.⁷³ Nearly half of all transgender adults describe being denied coverage for gender-affirming care in the past year, and even more report avoiding medical care due to cost.⁷⁴ Insufficient health benefits, such as health insurance policies that fail to cover transgender workers, encourage worse health outcomes for LGBTQI+ workers.

Require contracted jobs to pay decent wages

The administration has considerable power to raise pay and benefits for workers on direct federal contracts as well as other types of spending funded by the IIJA and Biden's economic plan. Already, many of these positions carry minimum pay and prevailing wage and benefits standards.

Federal policymakers enacted the Davis-Bacon and Related Acts (DBA) and McNamara-O'Hara Service Contract Act (SCA) in order to require contractors to pay wages and benefits that are at least as high as those that "prevail" in a given locality.⁷⁵ In addition, President Barack Obama established minimum wage and paid sick leave protections for federal contract workers that include leave to care for chosen family.⁷⁶ Finally, the Obama administration extended anti-discrimination protections to LGBTQ contract workers and issued regulations that clarified that medical benefits must provide parity in access to care for LGBTQ workers, particularly transgender workers.⁷⁷

Strong contractor wage standards have been found to shrink racial pay gaps in the construction⁷⁸ and service sectors,⁷⁹ an effect that likely applies to the similar LGBTQI+ pay gap. These wage standards also go further than reducing pay disparities within sectors and promote higher wages sectorwide in low-wage industries and occupations.⁸⁰



Strong contractor wage standards have been found to shrink racial pay gaps in the construction and service sectors.

While contracted wage rates for many jobs are family-supporting, too often, they undercut industry standards and even pay poverty wages. Fortunately, the Biden-Harris administration is undertaking administrative actions to raise these standards: President Biden signed an executive order to raise the hourly minimum wage for federal contractors from \$10.95 to \$15,⁸¹ which increased wages for upward of 390,000 workers beginning January 30, 2022, and likely lift a substantial number of LGBTQI+ people out of poverty.⁸²

In addition, the Department of Labor (DOL) is modernizing prevailing wage rules for the first time in almost four decades. Doing so will ensure that wage calculations better reflect market wage rates and the realities of the 21st century. For example, while an SCA-covered janitor in New York City earns more than \$28 per hour in wages—due to high union density and workers' ability to win strong standards through collective bargaining—a similar worker in Des Moines, Iowa, would earn only \$15 per hour in wages.⁸³ The DOL is currently updating the rules governing the DBA and has put a revision of SCA regulations on its long-term economic agenda.⁸⁴ It can, however, also help to raise pay for custodial workers and other occupations where wages have been kept artificially low due to long-standing segregation by ensuring that it fully values workers' contributions and gives due consideration in prevailing wage determination processes to the compensation earned by direct federal employees in similar positions.⁸⁵

SEE ALSO

ARTICLE

Service Contract Workers Deserve Good Jobs

Apr 9, 2021

Karla Walter, Anastasia Christman

Update benefits supplements to keep pace with rising health care costs

President Biden's Department of Labor should also take immediate action so that benefits contributions for contract workers keep pace with rapidly increasing health care costs. Although the SCA requires covered employers to contribute to fringe benefit plans or to provide a cash equivalent, in recent years, increases in required employer contributions have significantly lagged behind growing benefits costs.⁸⁶ Over the past decade, employer premium contributions to family health plans jumped by 61 percent across the private sector, while the fringe benefit supplement paid to service contractors rose only 35 percent.⁸⁷ By raising required benefits contribution rates or cash equivalents, the government can account for increasing care costs—especially given the heightened costs transgender workers shoulder for care.

Uphold equity and access for disabled contract workers

The administration also cannot allow contractors to undercut standards for workers with disabilities, who are highly represented in the LGBTQI+ community.⁸⁸ Federal standards have long permitted many contracting corporations to pay workers with disabilities far less than the prevailing wage.⁸⁹ Given the higher rates at which LGBTQI+ people report having disabilities—39 percent of transgender adults, for instance, relative to 27 percent of the total population—and the dramatically heightened economic insecurity of LGBTQI+ workers with disabilities, eliminating programs that allow contracting corporations to segregate contract workers on the basis of disability and pay less than the prevailing wage would also promote wage equality for LGBTQI+ people.⁹⁰

The administration should ensure that Americans with and without disabilities work side by side and earn the same wages. It can do this by raising the contractor utilization goal for workers with disabilities from 7 percent to 12 percent⁹¹—the level for direct federal employees⁹²—as well as by implementing a system to more closely monitor progress toward that goal and by ending the use of waivers to federal contractors through the AbilityOne Program, which allows employers to pay workers less than prevailing wages.

39%

Share of transgender adults who report having disabilities

SEE ALSO

REPORT

The United States Must Advance Economic Security for Disabled LGBTQI+ Workers

Nov 3, 2021

Caroline Medina, Lindsay Mahowald, Thee Santos,
+ 1 More

Expand LGBTQI+ small-business owners' access to federal contracts

The IJA requires 10 percent of state spending on highway and surface transportation contracts to be expended through businesses owned by socially and economically disadvantaged individuals as defined by the Small Business Act. This includes LGBTQI+-owned businesses.⁹³ Notably, the provision requires each state to collect data on these businesses and report information on their concerns, awards, commitments, and achievements. It is imperative that the government engage in meaningful outreach with the National LGBT Chamber of Commerce and community-based organizations to

raise awareness of these opportunities and to facilitate the provision of technical assistance to qualifying LGBTQ-owned businesses. Data collection should also utilize best practices in question design for gathering information on sexual orientation and gender identity in this particular setting.

Extend job quality protections to more federally funded jobs

The Biden-Harris administration should also continue to widely encourage targeted hiring practices as a policy tool to connect good jobs to communities, including the LGBTQI+ community, that are traditionally left out of specific industries or that face high barriers to employment. One federally approved policy tool that the administration should take advantage of is the U.S. Employment Plan (USEP), which has been used to promote the creation of high-quality U.S. jobs in vehicle manufacturing but can be used in other industries as well. USEP is a federally approved policy tool that builds good jobs and equity into the public purchasing process by incentivizing manufacturers bidding for public contracts to make transparent, public commitments to creating good jobs with inclusive hiring practices.⁹⁴

Finally, the House-passed Build Back Better Act demonstrates how the government could invest in industries where LGBTQI+ workers are overrepresented through funding outside the direct federal procurement system. A Human Rights Campaign analysis of 2018 data from the General Social Survey found that LGBTQ workers are overrepresented in the hospital, K-12 education, and higher education sectors—all industries that were allocated substantial Build Back Better funding.⁹⁵ This ranged from funding community colleges and children's hospitals to investing in training programs to diversify the teaching, physician, and mental health workforces.⁹⁶ Many of these investments are not funded through direct federal contracts, but rather grants, loans, and other types of financial incentives that carry their own administrative rules and standards.

In order to uphold market pay and reduce income disparities for LGBTQI+ workers in these sectors, the Biden-Harris administration should explore its ability to attach wage and benefits requirements to jobs created through this or similar funding and monitor whether these funds are reaching LGBTQI+ populations.

Make existing anti-discrimination protections real by empowering LGBTQI+ workers to stand up for their rights

Although *Bostock v. Clayton County* outlawed workplace discrimination on the basis of sexual orientation and gender identity for workers covered by Title VII in 2020, and President Obama banned employment discrimination against LGBTQ workers employed by federal contractors in 2014, legal protections are meaningless without effective enforcement. The Trump administration, in particular, took repeated actions to undermine basic protections for LGBTQI+ Americans.⁹⁷ Moreover, the high continuing rates of workplace discrimination suggest that federal enforcement through the Equal Employment Opportunity Commission (EEOC), which enforces federal antidiscrimination protections for most private employers, and the Office of Federal Contract Compliance Programs (OFCCP), which oversees anti-discrimination among federal contractors, needs additional funding, more effective enforcement tools, and better access to workplaces through partnerships with worker and community organizations.⁹⁸

Rebuild government enforcement capacity

Years of underfunding have defanged federal offices such as the OFCCP, weakening their ability to investigate and punish employers who violate workers' rights.⁹⁹ When properly staffed and resourced, the OFCCP wields significant power to raise standards for workers. The OFCCP enforces standards for many more than just direct contract workers: Its jurisdiction includes all employees of firms that receive federal contracts,

covering roughly 1 in 5 American workers, making it a particularly powerful tool for upholding worker protections.¹⁰⁰ Moreover, the agency's power to punish egregious violations with suspension and debarment can incentivize large contracting corporations that receive billions of dollars in federal contracts to comply with the law. Research finds that the OFCCP's interventions to prevent discrimination among government contractors have proven successful.¹⁰¹

However, the Trump administration persistently slashed the OFCCP's budget¹⁰² and even proposed subsuming the OFCCP into the EEOC,¹⁰³ which would have eliminated the only office dedicated solely to enforcing antidiscrimination protections among federal contractors. The OFCCP already faces a daunting task in overseeing many thousands of individual workplaces; without sufficient funding, it cannot effectively pursue remedies from employers who break the law. The Biden-Harris administration, for its part, has taken steps in the right direction by seeking to increase the OFCCP's budget, which would allow the agency to hire more employees and modernize its enforcement and outreach efforts; future spending legislation must include these budgetary increases as well.¹⁰⁴

President Trump also sought to hollow out anti-discrimination protections by permitting faith-based contractors to claim religious exemptions in order to discriminate against LGBTQI+ people when hiring, promoting, and providing benefits,¹⁰⁵ as well as by using the COVID-19 pandemic as a pretext for suspending OFCCP enforcement and granting exemptions.¹⁰⁶ While the Biden-Harris administration has sought to rescind the faith-based exemption, it should finalize its new rule as quickly as possible.¹⁰⁷

Although the OFCCP enforces compliance among contractors, the EEOC, as the federal government's dedicated office for enforcing anti-discrimination law, still has a prominent role to play in making government spending equitable. The EEOC should receive funding for additional outreach and education, as workers cannot bring complaints when they do not know their rights—a prominent issue given the recency of *Bostock* protections, which do not even figure into EEOC educational posters. The EEOC can also offer technical assistance to federal agencies and programs supporting workers. Additionally, due to the variations in protections across states, the EEOC should communicate with local Fair Employment Practices Agencies in states that have not yet incorporated these national protections into their laws.

Expand strategic enforcement

As the government rebuilds enforcement capacity, the OFCCP can also help prevent future lawbreaking by reviewing more bidders' affirmative action plans, particularly in high-violation industries. While federal contractors are required to develop plans to ensure that protected classes of workers have equal access and opportunity, the OFCCP does not typically review these plans until after a worker files a complaint and does not require corporations to set goals around the hiring and retention of LGBTQI+ workers. Moreover, reports may potentially mask racial inequities since contractors must only set a single goal for minority hiring and are not required to disaggregate demographic data for the purposes of measuring progress.¹⁰⁸ The OFCCP should require companies to submit plans in advance that disclose disaggregated racial and gender breakdowns as well as steps employers are taking to recruit and retain LGBTQI+ workers and prevent discrimination on the basis of sexual orientation, gender identity, and sex characteristics. Doing so will encourage companies to adopt best practices and empower the agency to better protect LGBTQI+ workers, particularly LGBTQI+ workers of color, by using these data to target likely violators.

Partner with trusted community and worker organizations

The OFCCP could also better investigate violators by partnering with community organizations. The LGBTQI+ community thrives through a network of educational,

public health, and legal organizations for mutual assistance that often have insights into workplaces that workers might hesitate to share with the government. Community advocate groups and worker organizations such as labor unions can act as trusted resources for LGBTQI+ workers, educating employees on their rights, giving workers a safe place to report violations and find legal assistance, and embedding stakeholders to help oversee contractors. These organizations should receive grants for enforcement activities related to educational outreach, monitoring of contractor compliance, and assistance in bringing complaints to the OFCCP. For example, the DOL Women's Bureau and Employment and Training Administration provides grants to state labor agencies to partner with worker and community organizations, supporting outreach to low-income and marginalized women workers to help them understand and exercise their rights in the workplace.¹⁰⁹

Similarly, the OFCCP's Mega Construction Project Program can ensure that the government, contractors, labor, and community organizations come together regularly to monitor contractors' ability to achieve anti-discrimination protections and hiring goals on large construction projects and problem-solve when projects are falling short. Under the Obama administration, former OFCCP Director Pat Shiu expanded staffing for this program, and under the leadership of current Director Jenny Yang, the OFCCP is expanding efforts to improve monitoring and compliance among federal construction contractors.¹¹⁰

Empower LGBTQI+ workers to hold lawbreakers accountable

Finally, to empower LGBTQI+ government contract workers whose rights are violated to pursue complaints in court, the Biden-Harris administration should sign an order banning forced arbitration agreements and class-action waivers and requiring contractors to maintain a just-cause standard for termination. These agreements, which employers increasingly impose as conditions for employment, strip workers of their access to the courts by locking them into remediation with third-party arbitrators who award damages to workers much less frequently and for lower amounts.¹¹¹ Arbitration clauses are often coupled with other forced contractual agreements that chill worker actions—such as class-action waivers, which prevent workers from suing on a collective basis, and nondisclosure agreements, which prevent them from speaking out about workplace abuses. These agreements also set an extremely high bar for proving discriminatory intent that workers must overcome when seeking damages for discrimination.

Indeed, despite existing protections against workplace harassment and discrimination, research finds that workers fear employer retaliation for reporting illegal behaviors. For example, a 2021 survey found that half of LGBT workers are not open about being LGBT with their supervisor, likely to avoid discrimination and harassment; additionally, 1 in 4 LGBT employees experienced sexual harassment on the job due to their sexual orientation or gender identity.¹¹² Another recent study found that among all workers who have experienced sexual harassment, 53 percent responded that fear of employer retaliation would factor into their decision about reporting it.¹¹³

SEXUAL HARASSMENT AND LGBT WORKERS

1 in 4

Share of surveyed LGBT workers who reported experiencing sexual harassment on the job

53%

Share of all surveyed workers who experienced sexual harassment and reported fear of employer retaliation would factor into their decision about reporting it

Barring contractors from dismissing employees without just cause and forcing workers to sign away their rights to a fair hearing would empower LGBTQI+ people to pursue legal remedy when they suffer discrimination; ensure that they feel safe blowing the whistle on unfair treatment, harassment, and discrimination; and create workplaces in which they are free to be themselves. Likewise, outlawing contract clauses that favor employers would encourage LGBTQI+ workers to pursue legal remedy when they suffer discrimination.¹¹⁴

Build pathways to good jobs through apprenticeships and training focused on LGBTQI+ workers and youth

The IIJA and President Biden’s economic agenda support the expansion of registered apprenticeship and other types of high-quality training programs through additional and flexible funding sources as well as new allowances for recipients to prioritize the hiring and training of local residents for associated jobs. These investments should be structured to expand LGBTQI+ workers’ access to high-quality jobs while improving hiring and retention processes so that government-supported industries better reflect the diversity of the U.S. workforce. By better targeting LGBTQI+ workers, monitoring workforce intermediary results, and partnering with trusted community organizations, the government can ensure that newly funded workforce interventions are effective tools for addressing structural inequities in hiring that leave LGBTQI+ workers behind.

READ MORE ON THE NEED TO CREATE PATHWAYS TO GOOD JOBS

REPORT

Good Jobs for All: How Federal Laws Can Create Pathways From Education and Training to Good Jobs

Jan 12, 2021

Laura Jimenez, Livia Lam

REPORT

Better Training and Better Jobs

Feb 22, 2018

Angela Hanks, David Madland

Include LGBTQI+ workers in new initiatives that connect workers to good jobs

All too often, publicly funded workforce initiatives do not result in significant earnings gains for workers and are blind to issues of discrimination, occupational segregation, and economic disparities that prevent many LGBTQI+ workers from accessing these opportunities. These barriers are particularly daunting for LGBTQI+ communities of color; workers with disabilities; transgender individuals; and youth exiting homelessness or the foster system to overcome.

For example, current workforce investment initiatives often target individuals with “significant barriers to employment.”¹¹⁵ Although LGBTQI+ people are disproportionately represented in many of the existing currently enumerated categories, such as low-income individuals, homeless youth, and youth aging out of the foster system, existing statutory language defining this category is largely silent on race and LGBTQI+ identity.¹¹⁶

The Biden-Harris administration is already taking steps to expand pathways into good jobs through training programs. For example, the IIJA supports the creation of training

centers for the installation and maintenance of energy-efficient building technologies run in partnership with employers and labor unions; allows the use of surface transportation funds for the establishment of registered apprenticeship or pre-apprenticeship programs; and permits cities and states receiving federal funds to establish local hiring programs with economic or geographic preferences.¹¹⁷ Moreover, as part of the Department of Labor's new Good Jobs Initiative, the agency launched a webpage designed to connect organizations providing high-quality training to empower workers and connect them to good jobs with new sources of government support.¹¹⁸

Similarly, President Biden's economic agenda would expand registered apprenticeships, youth apprenticeships, and pre-apprenticeships—models proven to provide high-quality training and long-term earnings benefits.¹¹⁹ The economic agenda also supports sectoral training partnerships in high-skill, high-wage, or in-demand sectors, such as clean energy, infrastructure, public health, home care, early childhood care, and education.

The Biden-Harris administration has significant regulatory and administrative authority to ensure that LGBTQI+ communities and other communities frequently left behind by government investment benefit from new and existing high-quality training programs. Specifically, the Department of Labor should issue guidance clarifying how new workforce training funds can incentivize or mandate recruitment partnerships with organizations that serve workers of color, workers with disabilities, and LGBTQI+ workers. The agency should explain that these populations are overrepresented in the existing categories that target individuals with barriers to employment and should provide support and technical assistance to state and local policymakers expressly designating these populations and supporting program diversity, equity, inclusion, and accessibility.

In addition, the DOL should clearly articulate across all new program funds those supportive services eligible for reimbursement, such as transportation, child care, dependent care, workplace accommodations, benefits navigation, and emergency funds. The agency should establish and measure criteria for program success that include participant job placement and long-term earnings gains based on self-reported demographic data.¹²⁰

Attract and retain LGBTQI+ workers in high-quality infrastructure jobs through clear requirements, monitoring, and partnerships with worker and community organizations

Workforce development grant recipients should demonstrate an ability to place workers into positions that pay market wages.

Similarly, any new investments in apprenticeships or investments that permit use of local hiring targets should center around LGBTQI+ and other disadvantaged workers, support advancement into good jobs, and structure government oversight and monitoring to ensure that programs meet their goals. For example, in order to support the IJJA's provisions permitting transportation and transportation infrastructure grant recipients to establish local or economic hiring preference, the DOL should issue a workforce diversity report and a model local-hire plan.¹²¹ Already, bill language provides ample opportunity to focus on LGBTQI+ workers since it requires the DOL, as part of its reporting process, to evaluate and address barriers to populations that are traditionally underrepresented in the workforce.

In addition to issuing specific guidance that encourages local efforts to center LGBTQI+ communities with flexible metrics for equitable employment, the government's model local-hire plan documents should provide concrete guidance on how to set hiring goals early in project planning and center these goals throughout project completion. This guidance should also establish and reserve funding for partnerships with community and worker organizations, pre-apprenticeship programs, and support services needed to

attract LGBTQI+ workers to these jobs. Moreover, it should build diverse core crew at project outset to ensure that projects do not have to play catch-up in reaching diversity goals and creating welcoming environments that help to retain new entrants. Community and labor partners with proven track records of serving LGBTQI+ individuals and connecting workers to good jobs can also play an essential role in retaining diverse workforces; adopting high-quality training materials; and serving as trusted intermediaries in resolving workplace disputes through formal and informal processes.

Government officials, general contractors, and outside organizations should jointly monitor progress and create transparency around achieving these goals. Ultimately, programs will be most successful if state and local organizations are empowered to withhold funds from contractors that do not meet funding goals. The National Taskforce on Tradeswomen's Issues, for its part, has developed many of these best practices.¹²²

Expand best practices across other industries

Across all industries, the government should condition new workforce development funding on applicants' ability to successfully advance the earnings, benefits, and job conditions of targeted populations, including participating LGBTQI+ workers. In the case of fast-growing, low-wage industries, government support should be conditioned on communitywide efforts to simultaneously adopt reforms to improve working conditions and demonstrate a commitment to advancing participants' careers.

Similarly, the federal government should coordinate with federally funded workforce development systems to ensure that job-matching activities and training partners connect workers with high-quality jobs, expand access for LGBTQI+ workers, and better track participant success.¹²³

All DOL workforce programs, including those administered by the Employment and Training Administration, U.S. Women's Bureau, Veterans' Employment and Training Service, and Office of Disability Employment Policy, should review their workforce programs to ensure that grant priorities and incentives, program evaluations, guidance documents, training and technical assistance resources, and outreach strategies incorporate a comprehensive approach to equity, including LGBTQI+ equity.

Support the right of workers to come together in solidarity and promote collective bargaining as a means of strengthening protections for LGBTQI+ workers

The LGBTQI+ community has always found its strength in solidarity and can strengthen its power in the workplace through organizing and collective bargaining. While unions matter for everyone, raising wages and benefits across the board, they matter most for marginalized groups. Indeed, unions have been found to narrow racial and gender gaps in compensation¹²⁴ and racial gaps in wealth,¹²⁵ an effect that likely extends to LGBTQI+ workers. But union protections go much further than compensation and demonstrate the importance of supporting unions in creating good jobs for LGBTQI+ workers.



The LGBTQI+ community has always found its strength in solidarity and can strengthen its power in the workplace through organizing and collective bargaining.

Union contracts typically include anti-discrimination protections, bar dismissal without just cause, and extend equitable pay and benefits, all of which protect LGBTQI+ workers.¹²⁶ Union members overwhelmingly support bargaining for their LGBTQI+ colleagues in the workplace, and a survey of union members found that 70 percent of workers affirm that their contracts protect LGBTQI+ workers.¹²⁷ In addition, unions have long offered their members support in navigating dispute resolution and negotiated collective bargaining agreements that include anti-discrimination clauses. In the absence of state-level protections, collective bargaining agreements may be the only protection LGBTQI+ workers have in the workplace—and they frequently shield employees from dismissal without just cause. Establishing base pay reduces discrimination by forcing employers to offer all their workers reasonable wages, and unions advocate for extending benefits, especially health care for transgender employees.¹²⁸

Advance essential legislative reforms to restore the right of workers to freely and fairly form a union

As demonstrated by the recent wave of strikes across the country, Americans are increasingly demanding their right to come together to bargain for decent wages, benefits, and work conditions. One recent study found that nearly half of all nonunion workers say they would join a union if they could.¹²⁹ Yet federal labor laws stack the deck against workers who want to unionize, and as a result, just 10.3 percent of American wage and salary workers today are union members.¹³⁰

Reforms such as the Protecting the Right to Organize (PRO) Act¹³¹ and the Public Service Freedom to Negotiate Act¹³² would fix weaknesses in current U.S. laws and help spur a resurgence in organizing. Moreover, the House-passed Build Back Better Act would strengthen penalties against corporations that violate federal labor law and increase funding for the National Labor Relations Board by \$350 million, which enforces private sector workers' right to collectively bargain as well as the rights of workers outside of unions to join together to improve workplace conditions.

READ MORE ON UNIONS

REPORT

Unions Help Increase Wealth for All and Close Racial Wealth Gaps

Sep 6, 2021

Aurelia Glass, David Madland, Christian E. Weller

Reassert the role of the NLRB and other federal agencies in upholding bargaining rights

Even without comprehensive labor law reform, the administration has significant authority to support the rights of workers to come together in unions. For instance, the National Labor Relations Board and Department of Labor recently entered into an agreement to better protect workers who are fired or face other sorts of illegal employer retaliation when they exercise their workplace rights to receive minimum wages and overtime pay, to be assured safe and healthy working conditions, to organize a union and bargain collectively, and to fight for a workplace free from illegal discrimination.¹³³ In February, the White House Task Force on Worker Organizing and Empowerment released a report with nearly 70 recommendations to help agencies better uphold the rights of working people. Those recommendations include actions to ensure that working people know their rights and promote the benefits of unions; to expand data collection on worker organizing and research on how unions benefit middle-class stability and growth; to ensure that the government fosters direct federal employee organizing; and to make certain that critical worker protections are enforced.¹³⁴

A reinvigorated NLRB has the potential to win gains for LGBTQI+ workers under its pro-worker agenda and to rebuild union protections after languishing under Trump-era appointees.¹³⁵ For example, Trump-era decisions and rulemaking undermined the ability of gig workers misclassified as independent contractors to assert their bargaining rights; prevented faculty, adjuncts, and graduate students at religiously affiliated schools from bargaining; weakened fast-food and other franchise workers' ability to negotiate with corporations with the power to improve work conditions; and prevented pro-union workers from communicating with each other through modern and convenient means.¹³⁶ The NLRB and its general council is taking action to rebuild enforcement capacity and hold accountable corporations that violate workers' rights.¹³⁷ Cases and rulemaking that protect and extend the right to organize would empower LGBTQI+ workers to band together and advocate for themselves and their families and to establish a long-lasting precedent for workers in the future.

Lead through federal example by making sure the federal government is a model employer for its direct public employees

The federal government has long sought to be a model employer for the United States by hiring skilled employees in well-paying positions to offer quality services for the American people. By building equity for LGBTQI+ workers in public sector jobs now, it can show the private sector how business ought to be done. Public sector jobs offer workers at varying levels of education stable work with decent wages and benefits, frequently with essential union protections. Unfortunately, pathways into these jobs are limited for LGBTQI+ people. Moreover, the Trump administration made matters worse by creating exclusions to deny transgender people medical care, permit workplace discrimination against LGBTQI+ workers, prevent the families of LGBTQI+ people from enjoying their own benefits, and even ban transgender troops from serving in the military.¹³⁸



By building equity for LGBTQI+ workers in public sector jobs now, [the federal government] can show the private sector how business ought to be done.

The Biden-Harris administration has already reversed several of these actions.¹³⁹ But there are more steps that the federal government can take to empower LGBTQI+ people in its workforce and offer a model for good jobs for private firms eager to demonstrate goodwill to the community.

Ensure that LGBTQI+ federal employees have equal access to health care

In June 2021, President Biden signed an Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce.¹⁴⁰ The EO includes a wide range of equity measures, including a section focused on LGBTQI+ employees of the federal government that directs agencies to review their policies to ensure equitable access to health care, insurance, and paid leave for LGBTQI+ employees and their families; embed support services for transgender, nonbinary, and gender-nonconforming employees who wish to transition; and facilitate access to and reduce administrative burdens for employees to access identity credentials.

Furthermore, in order to ensure that the LGBTQI+ workers already employed by the federal government receive equitable access to the benefits they earn, it is important to

eliminate health insurance exclusions that impose massive costs on transgender workers and repeal religious exemptions nakedly used to discriminate. The Federal Employees Health Benefits (FEHB) Program, which offers health insurance coverage to most of the federal workforce, frequently denies transgender employees and dependents access to medically necessary gender-affirming services despite the exclusions constituting a violation of antidiscrimination law.¹⁴¹ Even when transgender people do have access to coverage, they or other LGBTQI+ people can be legally denied care by hospitals or other providers taking advantage of religious exemptions. However, by implementing President Biden's EO 13988 and repealing excessive religious exemptions, the federal government can ensure that its LGBTQI+ workers are able to enjoy equal access to health care.¹⁴²

In addition, it is vital for OPM to issue a new carrier letter directing FEHB plans to eliminate all remaining transgender-related exclusions—including exclusions for all surgeries, or for specific surgeries, that single out transgender people—and to adhere to the standards of care found in both the World Professional Association for Transgender Health's "Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People,"¹⁴³ the transgender care guidelines developed by the Endocrine Society,¹⁴⁴ and the Center of Excellence for Transgender Health guidelines.¹⁴⁵ Other federal benefits should treat LGBTQI+ workers and their families equally by incorporating a definition of family that reflects the diversity of LGBTQI+ family types and includes found family as beneficiaries.¹⁴⁶

Finally, the administration should provide guidance directing agencies to review their policies on the display of gender markers in federal identification documents to ensure that employees can self-select an "M," "F," or "X" designation. It should also consider phasing out the display of personal gender information on documents that do not require that information.

SEE ALSO

REPORT

Protecting and Advancing Health Care for Transgender Adult Communities

Aug 18, 2021

Caroline Medina, Thee Santos, Lindsay Mahowald,

+ 1 More

Support federal employees' right to come together in unions

Public sector unions play a prominent role in protecting LGBTQI+ workers and should be strengthened. Unions not only negotiate for higher wages and benefits but also raise wages and benefits most for workers suffering from discrimination, especially people of color and women. President Trump issued executive orders that sought to weaken public sector unions by allowing federal employers to fire their workers faster, cutting the hours workers can spend as labor representatives, cutting workers' access to their unions in government buildings,¹⁴⁷ and instructing agencies to renegotiate collective bargaining agreements under the guise of trimming "wasteful" terms.¹⁴⁸ The Trump administration even attempted to remove LGBTQI+ worker protections from the contract being negotiated with the union representing workers at the National Labor Relations Board itself.¹⁴⁹ Fortunately, when Biden assumed office, he almost immediately reversed those Trump-era executive actions.¹⁵⁰

Even though many of Trump's executive actions have been rolled back,¹⁵¹ there is much more to be done. Federal agencies should work with unions to restore critical protections, strengthen bargaining protections for federal employees, and affirm the rights of LGBTQI+ workers in future contracts. For example, the recently released

White House Task Force on Worker Organizing and Empowerment recommends several policies to remove unnecessary obstacles to federal employee organizing; reinstitute labor management forums to allow federal agencies and unions to work collaboratively on innovations to improve public service delivery; and extend collective bargaining protections to more federal workers.¹⁵²

Increase LGBTI+ workers' access to high-quality public sector jobs

Finally, public sector training partnerships created by labor unions of public employees and government agencies can pave the way to good jobs for historically underserved groups, including the LGBTQI+ community. These joint training programs have a proven track record of recruiting and retaining a skilled workforce while improving the quality of services—and often reducing costs—for state and local agencies.¹⁵³ Crucially, they also allow both unions and the government to target diverse communities of workers with higher barriers of entry to the public sector, who have limited access to well-paying jobs that give them a voice in the workplace. Some jurisdictions have built model programs for recruiting LGBTQI+ workers: For instance, the Worker Education and Resource Center (WERC), a training center instituted by Los Angeles County in partnership with Service Employees International Union (SEIU) Local 721, specifically trains a range of underserved groups, including LGBTQI+ workers. This partnership demonstrates how federal public sector training and apprenticeship programs can help the LGBTQI+ community reach good union jobs while also offering value for the government and the public.¹⁵⁴



The Biden-Harris administration has the opportunity to transform work for LGBTQI+ people through executive action.

Conclusion

Although LGBTQI+ Americans have been left out of the economy for decades, the Biden-Harris administration has the opportunity to transform work for LGBTQI+ people through executive action. This report outlines six areas in which the administration can enforce high-quality job standards and ensure that the federal government includes LGBTQI+ workers in the economic recovery, increasing access to good jobs. While these recommendations are far from exhaustive—LGBTQI+ people, especially transgender Americans, need and deserve the clear and comprehensive protections that would be secured by the Equality Act—they are necessary in creating decent pathways to good federally funded jobs that work for everyone, including through long-standing federal initiatives and critical new policies that invest in America's workforce.

Endnotes

Expand ▾

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AUTHORS

Aurelia Glass

Research Assistant

Sharita Gruberg

Vice President, LGBTQI+ Research and Communications Project

Caroline Medina

Senior Policy Analyst

Karla Walter

Senior Director, Employment Policy

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