

# ECONOMIC OPPORTUNITY

More than one in four transgender adults have lost at least one job due to bias, and more than three-fourths have experienced some form of workplace discrimination.<sup>1</sup> Biased refusal to hire, privacy violations, harassment, and even physical and sexual violence on the job are common occurrences, and experienced at even higher rates by transgender people of color. Many report changing jobs to avoid discrimination or the risk of discrimination. Extreme levels of unemployment and poverty lead many to become involved in underground economies—such as sex and drug work—in order to survive.

While 16 states, nearly 150 local jurisdictions, and hundreds of employers have adopted laws and policies to prohibit this discrimination, more than half the nation still lives without these critical protections. And while transgender people face unemployment at even higher rates than the rest of the U.S. workforce,<sup>2</sup> they can also face discrimination in the public jobs programs meant to connect them with jobs.

In recent years, courts and federal agencies have increasingly taken the view that discrimination against transgender people is prohibited by existing laws against sex discrimination<sup>3</sup>. This updated under-

<sup>1</sup> Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 53. Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force (2011).

<sup>2</sup> *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 55.

standing of sex discrimination laws has the potential to be a powerful tool to combat employment bias, and NCTE has and will continue to work to more firmly establish this understanding of the law and the critical protection it can provide. Ultimately, however, passing a federal law to prohibit gender identity discrimination in the most specific terms is essential to ensuring that employers understand and consistently follow the law, and therefore to eliminating anti-trans discrimination.

## Policy steps

- Congress should pass the Employment Non-Discrimination Act (ENDA), which would prohibit discrimination in employment based on gender identity and sexual orientation.
- The President should issue an Executive Order prohibiting federal contractors and subcontractors from discriminating on the basis of gender identity and sexual orientation.
- The Equal Employment Opportunity Commission (EEOC) should investigate and mediate complaints from transgender people based on sex discrimination under Title VII of the Civil Rights Act of 1964.
- Each federal agency should issue a policy directive stating that it will ensure that federal employees will not be discriminated against on the basis of gender identity and that transgender discrimination claims will be processed according to Title VII procedures.
- The Occupational Safety and Health Administration (OSHA) should issue guidance clarifying that employers must provide all workers with full access to sanitary facilities consistent with their gender identity.

# Economic Opportunity

- The Department of Homeland Security, Department of Justice, and other agencies should adopt uniform policies providing for the classification of transgender law enforcement and security officers on the basis of their gender identity for purposes of gender-specific job duties.
  - The Office of Personnel Management should ensure that Federal Employees Health Benefits plans provide coverage for medically necessary transition-related care for federal employees and their partners and dependents.
  - The Department of Labor should adopt clear national guidelines to prohibit discrimination and ensure fair treatment for transgender people at all One-Stop Career Centers.
- The Department of Labor should adopt clear national guidelines to prohibit discrimination and ensure fair treatment for transgender people in all Job Corps programs.
  - The Department of Labor should identify, promote and fund best practices for helping transgender people enter the workforce.
  - The Federal Aviation Administration (FAA) should revise its medical certification procedures to reflect current medical science and eliminate unnecessary obstacles for transgender pilots and others who need FAA medical certification for their jobs.

## Transgender Equality in the Federal Workforce

The United States government is the nation's largest employer, and it has made huge advancements in providing equal opportunity for transgender workers. In June 2009, President Obama issued a memorandum directing federal agencies to take all available steps to ensure equality for LGBT federal workers. In 2010 and 2011, the U.S. Office of Personnel Management (OPM) answered this call by amending the federal government's equal employment opportunity (EEO) policy and issuing detailed guidance to all federal agencies on supporting workplace transitions. NCTE worked to ensure this guidance addressed equal restroom access, dress codes, personnel records, and other critical issues for trans employees. OPM has worked with federal agencies to ensure equal employment opportunity for trans people, and numerous agencies have updated their internal EEO policies and conducted workplace training on transgender issues. These steps represent a strong example of what can and must be accomplished in every workplace.

NCTE and allies are working in 2012 to solidify and extend this progress. Despite new nondiscrimination policies, trans federal workers are still subject to a uniquely discriminatory and baseless across-the-board exclusion of medically necessary transition-related care from the health benefits they've earned. These discriminatory exclusions persist even as they are being increasingly rejected by other large employers, with 33% of companies surveyed for the 2012 HRC Corporate Equality Index providing inclusive benefits compared to less than 9% in 2009. We are also working to address persistent discrimination in some federal security and law enforcement positions and to ensure that policies fully respect trans workers' rights in these sectors. Across the federal government, we continue to press agencies to fully update their internal EEO policies and to raise awareness of trans workers' rights, to ensure that the nation's largest employer is also a leader in equal opportunity for all.