

# Know Your Rights Manual for the Transgender Community: Employment



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This manual is a project of the National Lawyers Guild San Francisco Bay Area Chapter; many additional individuals and organizations made valuable contributions.

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The National Lawyers Guild is an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers, and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of the people, to the end that human rights shall be regarded as more sacred than property interests. The Transgender Know Your Rights Manuals are legal materials designed for transgender community members and their advocates to provide a set of basic, current, and locally-specific legal information about how certain areas of substantive law uniquely affect transgender individuals.

This effort was inspired by Thomas Steel, tireless advocate for the San Francisco Bay Area LGBT community and longtime friend and supporter of the National Lawyers Guild San Francisco Bay Area Chapter. His leadership and vision enabled the work which the Transgender Know Your Rights Manuals seek to further.

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## Contents

DISCRIMINATION IN EMPLOYMENT .....	3
DISCRIMINATION IN THE HIRING PROCESS .....	7
A potential employer has no right to ask about any personal details related to an applicant's past, current, or future transition, nor can the potential employer ask about private details of his or her anatomy.....	7
Background Checks .....	7
Medical Records .....	8
Criminal Records.....	8
References .....	9
DISCRIMINATION ON THE JOB.....	9
Restrooms .....	9
Pronouns .....	11
Privacy .....	11

Job Assignments .....	11
Dress Code .....	12
DISCRIMINATION WHEN TRANSITIONING ON THE JOB.....	12
Sex reassignment surgery expenses .....	13
Name and gender marker change .....	13
TAKING ACTION .....	14
RESOURCES .....	15
San Francisco Resources .....	15
California Resources.....	15
Nationwide Resources.....	17

This information was compiled by law students of the National Lawyers Guild, using statutory law, case law, and the work of numerous legal and non-legal organizations across the country, notably, the National Lawyers Guild San Francisco Bay Area chapter. While the information here is up-to-date through May 2014, it is possible that substantive changes have been made to the laws since it was last updated. Please keep this in mind while using this resource. Source and reference information will be provided for most of the content in this manual to help you verify that the information is still good before relying on it.

This manual was created for use by transgender community members and allies, by service providers who work with the transgender community, and by attorneys and legal workers who provide advocacy and legal services to members of the transgender community. For purposes of this manual, the word “transgender” is used as an umbrella term that includes transgender, gender variant, and intersex people who are at any point of self-identification or physical transition. Occasionally, the text will refer to individuals as “he or she” or “his or her.” This reference does not indicate that a statement applies exclusively to persons who identify as male or female, but instead is used for legibility and accessibility.

The information in this manual does not constitute legal advice; instead, it is meant to serve as a resource to help understand the landscape of transgender law in a particular area, and to help connect readers with the current information needed to verify law or navigate a particular situation. Although we hope that this manual assists service providers and community members in locating information and resources, it is important to note that only licensed attorneys are authorized to give legal advice. If you have a question of law that is outside of the scope of information provided in this manual, you may wish to consult or refer your client to an attorney or, if you are a client, to contact one of the legal support agencies listed in the resource guide in the back. Many of the organizations listed in the resource guide provide referrals to attorneys who are familiar with transgender law and working with the transgender community.

For questions, comments, corrections, and suggestions, please contact [carlos@nlgsf.org](mailto:carlos@nlgsf.org).

## USING THIS MANUAL

This manual was created to be a first-stop reference for lawyers, service providers, and community members who need legal information about a transgender-specific issue or question of law. For ease of use, the content has been divided by common problems or needs. Case law, statutes, print and web resources, and other service organizations can be found embedded throughout the manual, referenced in the footnotes, and listed in the directory at the back of this manual.

This resource was created by and for people in the San Francisco Bay Area, and therefore much of the information is specific to California and San Francisco Bay Area resources and law. We hope that this manual will be a helpful resource to readers outside of California as well because it includes information that is nationally relevant. However, it is important that non-California readers pay close attention to what information appears to be specific to California or the Bay Area, and not presume that the local information contained in this manual will transfer to other cities and states. Non-California readers are encouraged to use the national resources listed in the directory at the back to locate up-to-date information about the laws and precedent in their state or city.

It is important to note that, although the researchers who assembled this information did our best to be accurate on points of both black letter law and how the law tends to play out in the real world, there may be inaccuracies and nothing in this manual should be relied on as legal advice. Legal advice can only come from a lawyer. This manual is, however, a good starting place to understand the law and how it affects transgender people and communities in California and the Bay Area specifically.

## FINDING THE LAW FOR FREE

Legal documents, such as cases and statutes, are actually public documents. This means that everyone (members of the public) has the right to research and read these documents. The problem is that sometimes these documents can be hard to find or access.

If a case is cited in this document and a person wants to find and read the actual case, we can find it by following a series of steps. The first step is to avoid getting flustered by the complicated series of numbers, letters, and punctuation that follows the name of the case. The next step is to simply go to <http://scholar.google.com/>, click the “Legal opinions and journals” button and type in the volume number, the journal name, and the page number from the case citation. For example, to find the case of *State v. Jordan*, 742 N.W.2d 149 (Minn. 2007). We would ignore the name of the case (*State v. Jordan*), and copy the volume number (742), then journal name (N.W.2d), followed by the page number (149). Those three things are all that’s needed to find the case on Google scholar. Sometimes the journal name will be different, but as long as the right information is copied into the search bar, Google Scholar should be able to pull it up.

Again, the information in this manual is not legal advice. We hope that transgender individuals and their allies will use this manual as a first step for beginning to understand applicable law, and identify when legal help is needed.

Many transgender people report barriers to accessing legal services for a number of reasons. The cost of hiring a lawyer is a major issue for many, along with fears that lawyers will not be respectful of transgender clients, will not know enough about how laws specifically affect transgender people, or that the court system is prejudiced against transgender people. While all of these fears are justified, attorneys, activists, and advocates across the country are making huge strides in increasing legal services and resources for transgender people. Many states have lesbian, gay, bisexual, and transgender (LGBT) bar associations that can be helpful in locating legal information or finding lawyers who are knowledgeable about transgender law and sensitive to the specific concerns of transgender clients. Many of the organizations listed in the resource section at the end of this manual are happy to assist individuals in finding legal services. Although legal services often seem too expensive, there are a lot of organizations and individual attorneys committed to making justice more accessible. You may be eligible for pro bono (free of charge) representation or fee structures that work for you (such as contingency fees, where you only pay if you win your case). Additionally, many attorneys are happy to meet with potential clients for free to assess your case. This can be a good way to learn more about your options and whether it's worth it to you to pursue legal action.

## A NOTE TO PROFESSIONALS

This manual was designed to be a resource to clients, but it is our hope that service providers and legal professionals will also find it useful. Attorneys may find this manual to be a helpful starting point for legal research and a useful tool for locating additional resources. All manuals in this series contain footnotes to case law, law review articles, and statutes that we hope will assist you. As with any compilation of research, attorneys are urged to check all cited law before relying on it to make sure there haven't been substantive changes and that it will apply to your client's particular case. Many of the organizations listed in the resource section of this document provide assistance to attorneys representing clients, and can be excellent sources for information and insight. When advocating for transgender clients, attorneys can advocate for the use of appropriate name and pronoun for their client in court and other proceedings.

## DISCRIMINATION IN EMPLOYMENT

Significant strides have been made to reduce the prevalence of gender-based harassment and discrimination in the American workplace. Unfortunately, employment discrimination still exists and transgender individuals may still experience unwanted harassment or discrimination at work on the basis of their real or perceived sex, gender, gender identity, or expression. The U.S. Supreme Court has found that states still continue to rely on gender-based stereotypes in the workplace (specifically in the area of administering leave benefits).<sup>1</sup> “Reliance on such stereotypes cannot justify the States’ gender discrimination in this area.”<sup>2</sup> Moreover, the Court has also held that state action is prohibited if it perpetuates stereotypes about how men and women are supposed to behave.<sup>3</sup>

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<sup>1</sup> Nev. Dep’t of Human Res. v. Hibbs, 538 U.S. 721 (2003).

<sup>2</sup> *Id.* at 730.

<sup>3</sup> Craig v. Boren, 429 U.S. 190 (1976).

In California, the Fair Employment and Housing Act (FEHA) makes it unlawful for an employer with five or more employees to discriminate against transgender people and bars harassment of transgender people regardless of the number of employees.<sup>4</sup> The statute also protects employees that file a complaint or assist in the investigation of an employment discrimination claim against an employer from retaliation. However, 70 percent of the transgender community still reports experiencing workplace harassment or discrimination directly related to their gender identity.<sup>5</sup> Discrimination and harassment is illegal at all times, and might occur during the hiring process, during the course of employment, or in regard to unlawful termination. Verbal, physical, and sexual harassment are all forms of employment discrimination covered under FEHA. The law explicitly outlaws discrimination or harassment based on “race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.”<sup>6</sup> In 2003, the Gender Nondiscrimination Bill (AB 196) amended FEHA<sup>7</sup> to explicitly protect transgender employees by adding a gender identity specification to the definition of “sex.”<sup>8</sup> Relief under FEHA, then, is available to those who file a claim of discrimination based on sex, stereotypes, or gender identity within a year of the incident.

In some localities in California, employees are protected from employer discrimination based on gender identity regardless of the number of people their company employs. San Francisco,<sup>9</sup> Oakland,<sup>10</sup> City and County of Santa Cruz, West Hollywood, San Diego, and other cities have passed laws that explicitly protect employees against gender identity discrimination. All of these ordinances cover employers within the locality. San Francisco extends coverage further to employers who do business with the municipality. Again, a harassment claim, as opposed to a discrimination claim, can always be brought under FEHA regardless of the number of people the company employs. Individuals in states other than California may also be protected against anti-LGBT discrimination depending on their locality or jurisdiction.<sup>11</sup> As of 2012, nearly half of the American population lived in a state or locality with a trans-inclusive nondiscrimination law.<sup>12</sup>

Moreover, a transgender person in California can bring a suit for discrimination or harassment under the current framework of disability laws. Under the FEHA, an employer

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<sup>4</sup> Cal. Gov. Code, §§12900-12996.

<sup>5</sup> State of Transgender California, Transgender Law Center, March 2009, <http://transgenderlawcenter.org/archives/860>, Last visited May 27, 2014.

<sup>6</sup> Cal. Gov. Code, §12940 and Cal. Code Regs. tit. 2, §7287.6.

<sup>7</sup> AB 196: What It Means to You, Transgender Law Center, <http://transgenderlawcenter.org/issues/housing/ab-196-what-it-means-for-you>, Last visited May 27, 2014.

<sup>8</sup> Transgender Employees and Tenants in California: Rights and Responsibilities as Clarified by the Gender Nondiscrimination Act of 2003 (AB 196), National Center for Lesbian Rights and Transgender Law Center, <http://transgenderlawcenter.org/issues/employment/transgender-employees-and-tenants-in-california-rights-and-responsibilities>, Last visited May 27, 2014.

<sup>9</sup> San Francisco Police Code, § Section 3303.

<sup>10</sup> Oakland Mun. Code, ch. 9.44.

<sup>11</sup> State Nondiscrimination Laws in the U.S., Jan. 20, 2012, National Gay and Lesbian Taskforce, [http://www.thetaskforce.org/downloads/reports/issue\\_maps/non\\_discrimination\\_5\\_14\\_color.pdf](http://www.thetaskforce.org/downloads/reports/issue_maps/non_discrimination_5_14_color.pdf), Last visited May 27, 2014.

<sup>12</sup> Jurisdictions with Explicitly Transgender-Inclusive Nondiscrimination Laws, June 11, 2012, National Gay and Lesbian Taskforce, [http://www.thetaskforce.org/downloads/reports/fact\\_sheets/all\\_jurisdictions\\_w\\_pop\\_6\\_12.pdf](http://www.thetaskforce.org/downloads/reports/fact_sheets/all_jurisdictions_w_pop_6_12.pdf), Last visited May 27, 2014.

cannot discriminate against an employee with a disability.<sup>13</sup> In 2001, California passed the Prudence K. Poppink Act, which removed transsexualism and gender identity disorder from the list of conditions that were excluded from disability protections under FEHA.<sup>14</sup> Thus, individuals with gender identity disorder or gender dysphoria are entitled to the same legal protections as persons who have other medical conditions. FEHA provides that an employee may obtain reasonable accommodation in order to perform her or his job, which can include being referred to with the appropriate gender pronouns, being permitted to dress in accordance with gender identity, being permitted to use the appropriate bathroom, or receiving time off for hormone treatment or surgery.

Additionally, all California employers are bound by the California Labor Codes, two of which prohibit employers from forbidding an employee's political activity or punishing an employee due to her or his political activity.<sup>15</sup> In *Gay Law Students Association v. Pacific Telephone and Telegraph Company*, the California Supreme Court interpreted "coming out" by lesbian, gay, and bisexual employees to constitute such protected political activity.<sup>16</sup> Likewise, if someone discloses their gender identity or openly transitions from one gender to another, one may argue that these actions are protected political acts. The Supreme Court of California has held that "the struggle of the [gay] community for equal rights, particularly in the field of employment, must be recognized as a political activity."<sup>17</sup> The courts have not addressed the applicability of these laws to transgender people, but decisions related to lesbian, gay, and bisexual employees are helpful precedent for any such case.

A victim of discrimination or harassment based on gender identity might also find relief under federal law. Title VII, section 703 of the 1964 Civil Rights Act asserts that it is "an unlawful employment practice for an employer to fail or refuse to hire or discharge any individual, or otherwise 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..."<sup>18</sup> In *Price Waterhouse v. Hopkins*, the Supreme Court ruled that harassment directed at a person because that person does not conform to traditional sex stereotypes is a form of sex discrimination prohibited by Title VII.<sup>19</sup> Based on this landmark decision, federal law prohibits discrimination based on sex stereotypes.

To establish such a claim, a transgender person must prove that the discrimination or harassment was due to her or his failure to conform to a gender or sex stereotype. Several circuits, including the Ninth Circuit, which has jurisdiction over California, have interpreted *Price Waterhouse* to mean that a transgender person can bring a claim of action under Title VII based on gender or sex stereotyping.<sup>20</sup> According to the Ninth Circuit, Title VII prohibits

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<sup>13</sup> Cal. Gov. Code § 12940(a).

<sup>14</sup> Cal. Gov. Code § 12926.1

<sup>15</sup> Cal. Lab. Code § 1101-1102.

<sup>16</sup> *Gay Law Students Ass'n. v. Pac. Tel. & Tel. Co.*, 595 P.2d 592, 610 (1979).

<sup>17</sup> *Id.*

<sup>18</sup> Civil Rights Act of 1964, § 703 (1976).

<sup>19</sup> *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989).

<sup>20</sup> *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000); see also *Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir. 2005); *Bibby v. Phila. Coca-Cola Bottling Co.*, 260 F.3d 257, 263-64 (3d Cir.2001); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215-16 (1st Cir. 2000).

“gender stereotyping harassment.”<sup>21</sup> In *Nichols v. Azteca Restaurant Enterprises*, the court held that harassment “based upon the perception that [the plaintiff] is effeminate” is harassment because of sex, in violation of Title VII.<sup>22</sup> There are a number of other circuit courts that have also held that gender stereotyping by employers is prohibited under Title VII.<sup>23</sup>

It is important to be aware that employers may be able to raise defenses that allow them to discriminate against certain groups of people, even if they are classes of individuals protected under Title VII. For instance, an employer may be able to claim that a “bona fide occupational qualification” (or BFOQ) allows them to discriminate based on sex without violating the law. The BFOQ defense is rarely upheld, however, because an employer is required to show that sex-based discrimination is reasonably necessary to the normal operation of a particular business. In other words, it must be related to an individual’s ability to perform a specific job.<sup>24</sup> Conversely, an employer may argue that discrimination did not occur by offering a “legitimate nondiscriminatory reason” (or LNDR) for why they took an adverse employment action against a transgender employee.

On April 20, 2012, the U.S. Equal Employment Opportunity Commission (EEOC) issued a landmark administrative ruling explicitly holding for the first time that discrimination against transgender employees in the workplace is covered under Title VII sex nondiscrimination law.<sup>25</sup> In the decision, the EEOC concluded, “intentional discrimination against a transgender individual because that person is transgender is, by definition, discrimination ‘based on ... sex’ and such discrimination ... violates Title VII.”

### Examples of Cases Under Sex Stereotyping and Gender

- *Price Waterhouse v. Hopkins*, the Supreme Court found that Hopkins was passed over for a promotion at her accounting firm because she did not conform to sex stereotypes. Hopkins used foul language and was too “macho.” The Court held that the firm’s failure to promote Hopkins because she did not conform to traditional sex stereotypes was a form of unlawful sex discrimination under Title VII.<sup>26</sup>
- *Ulane v. Eastern Airlines, Inc.*,<sup>27</sup> the 7th Circuit held that a male-to-female transsexual airline pilot was not protected under Title VII because discrimination against

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<sup>21</sup> *Rene v. MGM Grand Hotel, Inc.*, 305 F.3d 1061, 1069 (9th Cir. 2002) (en banc) (Pregerson, J., concurring).

<sup>22</sup> *Nichols v. Azteca Restaurant Enterprises*, 256 F.3d 864, 874-75 (9th Cir. 2001) (overruling *DeSantis v. Pacific Telephone & Telegraph Company, Inc.*, 608 F.2d 327 (9th Cir. 1979)).

<sup>23</sup> See *Dawson v. Bumble & Bumble*, 398 F.3d 211, 218 (2d Cir. 2005) (citing *Smith v. City of Salem, Ohio*, 378 F.3d 566, 575 (6th Cir. 2004); *Prowel v. Wise Bus. Forms, Inc.* 579 F.3d 285, 290 (3rd Cir. 2009); *Doe v. Belleville*, 119 F.3d 563, 580 (7th Cir. 1997), vacated and remanded on other grounds, 523 U.S. 1001 (1998); *Hamm v. Weyauwega Milk Prods., Inc.*, 332 F.3d 1058, 1062 (7th Cir. 2003); *Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 261 n.4 (1st Cir. 1999); *Medina v. Income Support Division*, 413 F.3d 1131, 1135 (10th Cir. 2005) (citing *Bibby v. Philadelphia Coca Cola Bottling Co.*, 260 F.3d 257 (3d Cir. 2001)); *Schmedding v. Tnemec Co., Inc.* 187 F.3d 862, 865 (8th Cir. 1999); *Spearman v. Ford Motor Co.* 231 F.3d 1080, 1085 (7th Cir. 2000); but see also *Etsitty v. Utah Transit. Auth.*, 502 F.3d 1215 (10th Cir. 2007); *Vickers v. Fairfield Med. Ctr.*, 453 F.3d 757 (6th Cir. 2006).

<sup>24</sup> See *Int’l Union v. Johnson Controls*, 499 U.S. 187 (1991); *Dothard v. Rawlinson*, 433 U.S. 321 (1977).

<sup>25</sup> *Macy v. Holder*, 2012 WL 1435995 (E.E.O.C.), or available online:

<http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt>, Last visited May 27, 2014.

<sup>26</sup> *Price Waterhouse v. Hopkins*, 490 U.S. 228.

<sup>27</sup> *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081, 1085-86 (7th Cir. 1984).



transgender individuals is based on “gender” and not “sex” under the law. *Ulane* was a decorated U.S. Army pilot that began serving as a pilot and flight instructor with Eastern after being discharged from the military. Her employer was unaware of her transition until after she returned to work from having sex reassignment surgery. Although *Ulane* has not been overruled in the 7th Circuit, it has been criticized by several courts in other circuits.<sup>28</sup> For a 9th Circuit case similar to *Ulane*, see *Holloway v. Arthur Anderson & Company*<sup>29</sup>. Both cases may have limited applicability today and do not preclude a claim of discrimination based on gender-stereotyping.

- *Smith v. City of Salem, Ohio*, the 6th Circuit found in favor of Smith, a male-to-female transsexual lieutenant for the Salem Fire Department after she was questioned at work for her appearance and for not being “masculine enough.” Her employer attempted to terminate her from her job. The court held that Title VII bars “discrimination based on a failure to conform to stereotypical gender norms.”<sup>30</sup>

## DISCRIMINATION IN THE HIRING PROCESS

Discrimination during the hiring process is a very significant obstacle for transgender people. An applicant should be aware of any change in behavior or attitude toward him or her between the point of contact based on a resume or application, to a phone interview, and then to an in-person visit. Often, potential employers will note that the applicant's voice might not match his or her identification, and such a discovery could be the turning point in a potential employer's attitude toward the applicant.

A potential employer has no right to ask about any personal details related to an applicant's past, current, or future transition, nor can the potential employer ask about private details of his or her anatomy.

### Background Checks

In California, FEHA prohibits any non-job-related inquiries that could directly or indirectly discriminate as to disability or sex, among other characteristics.<sup>31</sup> If an employer attempts to ask such questions directly to an applicant, on a job application, or to a former employer, the employer's conduct is illegal. However, this may not stop a potential employer from claiming that inconsistencies between gender presentation during an interview and gender markers revealed through an applicant's background check should disqualify transgender individuals from employment for failure to disclose accurate information.<sup>32</sup> Some employers may even use the background check process to discourage or discriminate against transgender individuals during the hiring process.<sup>33</sup> Such discrimination has been ruled to violate Title VII when it causes an employer to withdraw a job offer after discovering the transgender status of an employee.<sup>34</sup>

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<sup>28</sup> See *Tronetti v. TLC Healthnet Lakeshore Hosp.*, 2003 U.S. Dist. Lexis 23757 (W.D.N.Y. Sept. 26, 2003).

<sup>29</sup> *Holloway v. Arthur Anderson & Company*, 566 F.2d 659, 661-63 (9th Cir. 1977).

<sup>30</sup> *Smith v. City of Salem*, 378 F.3d 566, 573 (6th Cir. 2004).

<sup>31</sup> Cal. Gov. Code, § 12940(d).

<sup>32</sup> *Lopez v. River Oaks Imaging & Diagnostic Group, Inc.*, 542 F.Supp.2d 653 (2008) (employer rescinded offer of employment after claiming background check revealed transgender applicant failed to disclose biological sex).

<sup>33</sup> *Schroer v. Billington*, 577 F.Supp.2d 293, 298-99 (2008).

<sup>34</sup> *Id.* at 308.

California law requires employers who are conducting a background check (regardless of whether the employer hires an outside agency to run the check or they do it themselves) to provide the applicant with written notice that the background check is being performed and, upon conclusion of the report, send the applicant a copy.<sup>35</sup> It is important for an applicant to see what the employer is seeing about his or her background because often times the information may be inaccurate or misleading.

### Medical Records

A potential employer may not access the medical records of an applicant. In California, medical records are confidential. There are only a few instances when a medical record can be released without an applicant's knowledge or authorization. If the potential job requirements have nothing to do with the applicant's anatomy or medical history (as is most often the case), the law prohibits the applicant from being required to disclose any such information.<sup>36</sup> One exception may occur if an employee requests an accommodation at work related to a disability; if the need for accommodation is not "obvious," an employer may request medical documentation of the disability.<sup>37</sup>

### Criminal Records

California employers cannot seek from any source the arrest record of a potential employee. They can and will, however, ask about past criminal convictions and a potential employee must answer these questions. Specifically, the California Labor Codes mandate that an employer (public or private) cannot:

- Ask an applicant to disclose information that they were referred to and/or participated in a pretrial or post trial diversion program; or
- Use any record of arrest or detention that did not result in conviction or any record regarding a referral to or participation in pretrial or post trial diversion programs, to determine any condition of employment, including hiring, promotion, and termination.<sup>38</sup>

There is an exception for jobs in the health care industry. If the job would require the applicant to have access to patients, the employer has a right to find out about an applicant's sex-related arrests. Certain other employers, such as public utilities, law enforcement, security guard firms, and childcare facilities have access to criminal records or "rap sheets." Otherwise, this information is not public.<sup>39</sup>

In the San Francisco Bay Area, an applicant may be eligible to have his or her criminal record improved through an initiative called the Clean Slate Program. Governmental agencies and nonprofit organizations across California and throughout the country have begun offering similar criminal record improvement programs and initiatives. Individuals interested in improving their criminal record should research if such programs are offered through their local courts, county public defender's office, or through nonprofit legal aid

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<sup>35</sup> Cal. Civ. Code, § 1786.

<sup>36</sup> Cal. Civ. Code, § 56.

<sup>37</sup> 2 CCR 7294.0(c) (2)

<sup>38</sup> Cal. Lab. Code, § 432.7.

<sup>39</sup> Cal. Lab. Code, § 432.7; Cal. Pen. Code, §§ 11105, 13300.

groups. People who have been arrested, convicted of a crime, or been found delinquent in Juvenile Court could be eligible to have their criminal record "cleansed" by a simple process. Some records, such as marijuana possession and juvenile offenses, can be totally destroyed. Other records can be changed from felony to misdemeanor status.<sup>40</sup> Information about the San Francisco Clean Slate Program can be found here:

<http://sfpublicdefender.org/wp-content/uploads/2013/02/Application.Packet.Feb..2013.pdf>.

Through initiatives modeled after the Clean Slate Program, some cities, counties, hospitals, and nonprofit groups now also offer free or low cost tattoo removal services for individuals seeking employment who are facing the stigma associated with visible tattoo markings.

## References

Discrimination in the hiring process could occur when a potential employer calls a past employer for a reference. The potential employers' questions must be limited to performance-related issues. California law protects those who may have a soured relationship with a past employer. It is a misdemeanor for a former employer to misrepresent information about a former employee in order to prevent them from obtaining employment.<sup>41</sup>

## DISCRIMINATION ON THE JOB

Many transgender people face discrimination in various employment-related situations after they are hired. Below are some specific examples of discrimination in such a setting, and the legal regulations that act to prevent them.

### Restrooms

In 1998, the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA) released a strongly worded memorandum clarifying that all workers should have unrestricted access to a convenient restroom, suggesting that a walk of over 1/4 mile for an employee to use the restroom is too far.<sup>42</sup> However, the courts are divided on whether or not an employee has a right to use a restroom that corresponds to their gender identity. In 2001, the Minnesota Supreme Court ruled that an employer could require employees to use restrooms corresponding to their "biological gender," despite the fact that Minnesota bans discrimination based on sexual orientation.<sup>43</sup> In 2007, the 10<sup>th</sup> Circuit Court of Appeals ruled that an employer's firing of a transgender employee for using restrooms that it determined did not correspond to her "biological sex" was a legitimate, non-discriminatory reason for firing her.<sup>44</sup> On the other hand, at least one federal court has stated that segregating restrooms by sex and then refusing to allow an individual to use a restroom because of

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<sup>40</sup> California State Resources, Papillon Foundation, <http://www.papillonfoundation.org/statespecificinfo/california.html>, Last visited May 27, 2014

<sup>41</sup> Cal. Lab. Code § 1050, (prohibits employers from intentionally interfering with former employees' attempts to find jobs by giving out false or misleading references).

<sup>42</sup> OSHA Interoffice Memorandum from John B. Miles Re: Interpretation of 29 CFR 1910.141(c)(1)(i): Toilet Facilities, Apr. 6, 1998, [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=22932&p\\_text\\_version=FALSE](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22932&p_text_version=FALSE), Last visited May 27, 2014.

<sup>43</sup> Goins v. West Group, 635 N.W. 2d 717, 725 (Minn. 2001).

<sup>44</sup> Etsitty v. Utah Transit Auth., 502 F.3d 1215, 1224-25. (10<sup>th</sup> Cir. 2007).

employer expectations regarding appropriate gender behavior or anatomy is a violation of Title VII's protections against sex discrimination.<sup>45</sup> A New York court similarly found that an AIDS non-profit could state a claim for sex discrimination under state law when a landlord refused to renew their lease because they allowed transgender clients to use restrooms in the building, after the landlord sought to prohibit them from doing so.<sup>46</sup>

No California court has ruled definitely on the issue of bathrooms and there is no certainty as to how a court might rule. However, there is some support for the notion that California businesses are engaging in unlawful sex discrimination under California's Unruh Civil Rights Act when excluding transgender individuals from certain public accommodations.<sup>47</sup> The California Fair Employment and Housing Commission noted in a 2006 decision that it was unlawful for a business to use a gender-based dress code to discriminate against patrons they perceived to be transgender.<sup>48</sup> Transgender people should have the right to use the bathroom that corresponds with his or her preferred gender identity, regardless of his or her sex assigned at birth.<sup>49</sup> If an employer has provided a unisex single stall bathroom for use by any employee who desires increased privacy, a transgender person has the right to use it but cannot legally be required to do so. If a bathroom-related issue arises in employment, employees should consider documenting the issue<sup>50</sup> and speaking with an attorney. It is likely that the court will be guided by favorable decisions outside of California and that the employee's case could create precedent in California.

Based on rulings outside of California, and the protection against gender identity discrimination in accommodations under the Unruh Civil Rights Act<sup>51</sup>, a court ought to rule that an employer does not have the right to prohibit a person's use of the bathroom that corresponds to his or her gender identity, even if he or she has not completed sexual reassignment surgery. While genitalia are an indicator of sex, they are not determinative. For an employer to require sexual reassignment surgery before granting access to a particular bathroom is to create an illegitimate definition of sex which conflicts with current California law.

Furthermore, an employer is within its rights to allow transgender employees to use the restroom matching their presentation over the general objections of other employees, especially when considering that alternative accommodations are available to the complaining employees (i.e. gender neutral restrooms, other restroom facilities not utilized by the transgender employee, etc.).<sup>52</sup> Also, regardless of an employer's definition of sex,

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<sup>45</sup> *Kastl v. Maricopa Cnty. Cmty. Coll. Dist.*, 325 Fed.Appx. 492, 493 (9th Cir. 2009). (However restroom ban upheld for "safety" concerns.)

<sup>46</sup> *Hispanic AIDS Forum v. Estate of Bruno*, 16 Misc. 3d 960, 964-65 (N.Y. Sup. Ct. 2007).

<sup>47</sup> *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Marion's Place*, 2006 WL 1130912 (Cal.F.E.H.C.).

<sup>48</sup> *Id.* at \*30-31.

<sup>49</sup> *Transgender Rights Toolkit: A Legal Guide for Trans People and Their Advocates*, "Equal Access to Public Restrooms," Lambda Legal Defense and Education Fund, [http://www.lambdalegal.org/publications/trt\\_equal-access-to-public-restroomsf](http://www.lambdalegal.org/publications/trt_equal-access-to-public-restroomsf), Last visited May 27, 2014.

<sup>50</sup> See *People in Search of Safe and Accessible Restrooms (PISSAR) Checklist*, document hosted by the University of California Lesbian, Gay, Bisexual, Transgender, and Intersex Association, <http://www.uclgbtia.org/pissarChecklist.pdf>, Last visited May 27, 2014.

<sup>51</sup> Cal. Civ. Code § 51(e) (5)

<sup>52</sup> *Cruzan v. Special School District, No. 1*, 294 F.3d 981 (8th Cir. 2002).

unless such knowledge directly relates to the nature of the job, the employer has no right to know about private details of an employee's anatomy in the first place.

## Pronouns

Employers, and even courts in some instances, may not always understand the importance of referring to transgender individuals by their preferred gender pronouns or may be uncomfortable with pronoun usage around transgender people.<sup>53</sup> Nonetheless, a transgender employee has the right to be addressed by the name and pronoun that corresponds to the employee's full time gender identity. Obtaining court-ordered name and gender changes can only help in successfully bringing a discrimination suit, but it is not necessary. While state law does not likely prohibit other employees from making inadvertent slips or honest mistakes about a person's name or gender, it may outlaw intentional or persistent refusal to respect a coworker's or employee's gender identity. The Supreme Court has held that "severe or pervasive" harassment which creates an abusive working environment is an actionable form of discrimination under Title VII.<sup>54</sup> Intentionally addressing a co-worker or employee by the incorrect name or pronoun after having been informed of that person's gender identity may be an actionable form of discrimination.<sup>55</sup>

## Privacy

A job applicant has no legal duty to reveal her or his biological sex to the prospective employer. Akin to the hiring process, a transgender employee has the right to keep private the intimate details of his or her anatomy throughout the course of employment. Article 1, Section 1 of the California Constitution expressly protects a person's right to privacy, a right which can be interpreted to protect information regarding a person's transsexual status or intimate details of his or her anatomy.<sup>56</sup> The privacy of a person's body is among the most fundamental of privacy rights; both the right to be clothed and the right to keep information about your body private from others. Unless knowledge of an employee's private anatomical details is an integral part of the job, or the employer can claim a compelling state interest in soliciting such information, the employee does not need to share this information at any time during the hiring process, employment, or transition.

## Job Assignments

Issues may arise when employers claim that, while they are comfortable with employing a transgender person, their customers will be uncomfortable, which will adversely affect the company. One common consequence is that employers will place transgender employees on job assignments that keep them away from customer interaction. In some employment settings, this has little affect but, in others, there could be a significant pay difference or discrepancy in career advancement opportunities. Intentionally assigning a transgender employee to a lower paying or less desirable position based on his or her transgender status constitutes employment discrimination. California law prohibits employers from assigning an

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<sup>53</sup> See *Farmer v. Brennan*, 511 U.S. 825 (1994) (Court avoided referring to Dee Farmer, a male-to-female transsexual, as either "he" or "she," instead referring to her as "petitioner" throughout opinion).

<sup>54</sup> *Harris v. Forklift Sys.*, 510 U.S. 17, 21 (1993).

<sup>55</sup> *Advancements in State and Federal Law Regarding Transgender Employees*, April 2006, National Center for Lesbian Rights & Transgender Law Center, <http://www.nclrights.org/wp-content/uploads/2013/07/complianceguideemployers1.pdf>, Last visited May 27, 2014.

<sup>56</sup> Cal. Const. art. I, § 1.

employee to a particular position based solely on his or her gender identity.<sup>57</sup> An employer may be able to claim that having a specific sex is a “bona fide occupational qualification” for a position. However, under both state and federal law, an employer can only utilize this defense if they can show a “high correlation between sex and ability to perform job functions.”<sup>58</sup>

## Dress Code

California state law explicitly prohibits an employer from denying an employee the right to dress in a manner suitable to that employee’s gender identity. In *Jespersen v. Harrah’s Operating Company, Inc.*, the Ninth Circuit, sitting en banc, held that sex specific dress and grooming codes can constitute sex stereotyping if the evidence demonstrates that the “policy was adopted to make women [employees] conform to a commonly accepted stereotypical image of what women should wear.”<sup>59</sup> Therefore, an employer who enforces gender-based dress codes must do so in a non-discriminatory manner. This means not only allowing a transgender woman, for instance, to dress the same as other women, but that her compliance with such a dress code cannot be judged more harshly than the compliance of other women.<sup>60</sup> An employer may also not put appearance standards into place which are less favorable to one gender than another.<sup>61</sup> However, employees must demonstrate that sex or gender identity, and not grooming policy violations, are the reason for any adverse employment action taken against them.<sup>62</sup>

## DISCRIMINATION WHEN TRANSITIONING ON THE JOB

Transgender people have the right to transition on the job and have the right to be treated equally while out in the workplace as a transgender person. A good working relationship before transition can be a key factor to avoid any conflicts. However, after an employee does begin transitioning, problems may still arise, especially if the employer is uncomfortable with gender non-conformity or transgender issues.<sup>63</sup> If an employee is in bad standing, the employer could take advantage of this relationship to let the person go, when in reality the employer is motivated by prejudice which would constitute illegal discrimination. A good working relationship can also have a positive influence on the court as they attempt to determine if the employee was discriminated against. Transgender at Work’s *Checklist for Transitioning in the Workplace* is a helpful list of steps for transgender employees to consider during the process of planning to or undergoing a transition while on-the-job: <http://www.tgender.net/taw/tggl/checklist.html>.

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<sup>57</sup> Cal. Gov. Code, §12940(a).

<sup>58</sup> Int’l Union v. Johnson Controls, 499 U.S. 187, 202 (1991).

<sup>59</sup> *Jespersen v. Harrah’s Operating Company, Inc.*, 444 F.3d 1104, 1112 (9th Cir. 2006) (en banc).

<sup>60</sup> Cal. Gov. Code, § 12949.

<sup>61</sup> *Frank v. United Airlines*, 216 F.3d 845, 854 (9th Cir. 2000) (airline could not require female flight attendants to be slimmer than was required of male flight attendants).

<sup>62</sup> *Creed v. Family Express Corp.*, No. 3:06-CV-465RM, 2009 U.S. Dist. LEXIS 237 (N.D. Ind. Jan. 5, 2009) (transgender employee was terminated after being told that “she could no longer present herself in a feminine manner at work” had failed to prove that her gender, not grooming policy violations, motivated her termination).

<sup>63</sup> *Glenn v. Brumby*, 663 F.3d 1312 (8th Cir. 2011) (supervisor testified he fired employee transitioning from male to female because he considered it “inappropriate” for her to appear at work dressed as a woman).

## Sex reassignment surgery expenses

California's Insurance Gender Non-Discrimination Act, enacted in 2006, prohibits insurance plans and healthcare service plans from discriminating on the basis of gender in the provision of benefits or coverage.<sup>64</sup> Enacted in 2010, the Affordable Care Act (ACA) prohibited such discrimination at the federal level for the first time, however the effects of such legislation remain to be seen.<sup>65</sup> Only the District of Columbia and six states, California included, have formally issued bulletins clarifying that they are interpreting section 1557 of the ACA to mean coverage of transition-related care.<sup>66</sup>

Some private employers may provide insurance that includes coverage for sex reassignment surgeries (SRS) but there is no law that requires private health providers to award payments for SRS's. The policy to which a private employee subscribes will vary from employer to employer and, very often, will not include such coverage. As of 2011, however, 207 major companies surveyed by the Human Rights Campaign, or 33% of the total, offered insurance coverage for sex reassignment surgery.<sup>67</sup>

In terms of public employers, the City of San Francisco was the first jurisdiction in the United States to remove the exclusion for gender identity disorder from its health coverage of city and county employees. State health programs such as Medi-Cal will cover some procedures, such as sex reassignment surgery and hormone treatment. It is true that Medi-Cal regularly tries to deny coverage for sex reassignment procedures. However, California courts have, on several occasions, overruled these denials and ordered Medi-Cal to pay for the procedures.<sup>68</sup>

In addition, San Francisco began covering sex reassignment surgery for uninsured residents in 2012, with such surgeries to be administered by the San Francisco Department of Public Health at San Francisco General Hospital.<sup>69</sup>

## Name and gender marker change

Some employers believe that an employee must get a court order to legally change the employee's name, but this is not correct. California explicitly recognizes "common law" name changes for a majority of people in the state. A common law name change means that, without going through the court system, a person can legally change his or her name simply by using the new name consistently and exclusively.<sup>70</sup> Furthermore, an employee does not need to get court recognition of a change of gender prior to requesting that an

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<sup>64</sup> Cal. Ins. Code § 10140. See also Gender Non-discrimination Regulations, Transgender Law Center, <http://transgenderlawcenter.org/wp-content/uploads/2013/04/CDI-Gender-Nondiscrimination-Regulations.pdf>, Last visited June 2, 2014.

<sup>65</sup> National Women's Law Center, Nondiscrimination in the Affordable Care Act: Section 1557, <http://www.nwlc.org/resource/nondiscrimination-protection-affordable-care-act-section-1557>, Last visited June 6, 2014.

<sup>66</sup> Tara Murtha, The Problem With Obamacare for Some Transgender Policyholders, Last visited June 6, 2014.

<sup>67</sup> Lisa Leff, Gender Reassignment: Number of Big U.S. Companies Covering Transgender Surgery Rises, Huffington Post, Dec. 8, 2011, [http://www.huffingtonpost.com/2011/12/08/gender-reassignment-operation-coverage\\_n\\_1135951.html](http://www.huffingtonpost.com/2011/12/08/gender-reassignment-operation-coverage_n_1135951.html). Last visited May 27, 2014.

<sup>68</sup> Medi-Cal and Gender Reassignment Procedures, Community Health Advocacy Project and Transgender Law Center, May 2002, <http://transgenderlawcenter.org/issues/health/medical-fact-sheet>. Last visited May 27, 2014.

<sup>69</sup> City and County of San Francisco Health Commission Resolution No. 12-12, Nov. 6 2012, <http://www.sfdph.org/dph/files/hc/HCRes/Resolutions/2012/hsf%20tran%20exclusion%20removal.pdf>. Last visited May 27, 2014.

<sup>70</sup> Cal. Civ. Proc. Code § 1279.5. See also *In Re Weingand*, 231 Cal. App. 2d 289, 294 (1964).

employer change the employee's gender marker in records and on identity documents. An employer should also not require such an order prior to effectuating such a request.<sup>71</sup>

## TAKING ACTION

Before entering into a potentially expensive legal battle, it is important for an employee to determine whether the issue can be resolved out of court. If the discrimination happened on the job, he or she should notify a supervisor and contact a Human Resources representative to report the abuse. Employees that feel they are being discriminated against in the workplace should be sure to document all incidents of discrimination and any efforts to alleviate them. Another helpful resource might be an Employee Assistance Program (EAP) or Employee Resource Group (ERG), which typically offer free or low cost help to employees in the workplace, if EAP, ERG, or similar services are offered by the employer. Sometimes, something as simple as a carefully worded letter from your attorney about problems in the workplace can help make employers aware of and more likely to act on the concerns raised by their employees regarding workplace harassment or discrimination.<sup>72</sup>

If these attempts do not solve the problem, a legal course of action may be appropriate. Depending on the person's residency and the location of his or her employer, he or she can file local, state, and federal claims. In San Francisco, employees should file a complaint with the **San Francisco Human Rights Commission** reporting a violation of Article 33 of the San Francisco Charter and Administrative Code. Outside of San Francisco, victims of employment discrimination should contact the municipality's local human rights commission and, if they don't have one, check with the City or County Clerk. Unfortunately, local laws like these often are of limited value to victims because California state law bars someone from bringing a lawsuit under these local laws. Therefore, if investigation or mediation does not result in a satisfactory resolution, the Human Rights Commission or similar agency can take no further action to enforce the law, and the employee has no other recourse under local law. He or she must therefore pursue the complaint with the appropriate state or federal agency.<sup>73</sup>

For a state claim, a person must first file a complaint with the **California Department of Fair Employment and Housing** (DFEH) in order to report the Fair Employment and Housing Act (FEHA) violation. There is no charge to file a complaint, and one can do so without an attorney. FEHA requires that individuals must exhaust their administrative remedies with DFEH before filing a lawsuit. Upon investigation, if DFEH cannot alleviate the situation, they will issue a "right-to-sue" letter that enables the individual to file a lawsuit. DFEH will accept requests for an immediate DFEH "right-to-sue notice" from people who have decided to proceed in court without going through the DFEH investigation. The DFEH complaint must be filed within one year from the last act of discrimination or he may lose his

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<sup>71</sup> Advancements in State and Federal Law Regarding Transgender Employees: A Compliance Guide for Employers and Employment Law Attorneys, National Center for Lesbian Rights and Transgender Law Center, <http://www.nclrights.org/wp-content/uploads/2013/07/complianceguideemployers1.pdf>, Last visited May 27, 2014.

<sup>72</sup> Sample Letter to Employer Re: Transgender Discrimination and Harassment, Transgender Law & Policy Institute, <http://www.transgenderlaw.org/resources/employerletter.htm>, Last visited May 27, 2014.

<sup>73</sup> Gender Identity Discrimination: Employment Rights for Transgender Workers Fact Sheet, Legal Aid Society's Employment Law Center, <http://www.las-elc.org/factsheets/gender-id.html>, Last visited May 27, 2014.



right to file a lawsuit under the FEHA. The individual should be sure to request that DFEH cross file the claim with the **Equal Employment Opportunity Commission (EEOC)** in order to obtain a similar “right-to-sue” notice for a federal claim. If you are in a state that does not have a Fair Employment and Housing office, you can file your complaint directly with the EEOC within 180 days of the incident of discrimination or harassment. Federal claims, brought to allege a violation of Title VII of the Civil Rights Act, may only be brought against employers or companies with 15 or more employees.

## RESOURCES

Below is a brief list of resources that may be especially helpful. This collection is only a small representation of transgender-welcoming services in California and the United States. Searching online for additional resources may yield more specific information or assistance. Resources are divided by California-specific organizations, national organizations, and general resources. For ease of use, we have specified whether organizations provide direct or support services, and to what extent they serve the LGBT communities, and specifically, to what extent they serve transgender communities. National Lawyers Guild Interns spoke with representatives of almost all of these organizations to ensure that our description of their services is correct and up-to-date, and that they are explicitly welcoming of transgender community members.

### San Francisco Resources

#### San Francisco Human Rights Commission

To File a Complaint: <http://www.sf-hrc.org/index.aspx?page=85>

25 Van Ness Avenue, Room 800

San Francisco, CA 94102

Phone: (415) 252-2500

E-mail: [hrc.info@sfgov.org](mailto:hrc.info@sfgov.org)

The San Francisco Human Rights Commission works to provide leadership and advocacy to secure, protect, and promote human rights for all people. The Human Rights Commission is charged with investigating complaints of discrimination based on gender identity. Staff are also available to provide training and education, and to help create implementation plans for agencies, business establishments, and organizations seeking to comply with the law.

### California Resources

#### California Department of Fair Employment and Housing,

[http://www.dfeh.ca.gov/Complaints\\_eCompProc.htm](http://www.dfeh.ca.gov/Complaints_eCompProc.htm)

Complaint Line: (800) 884-1684

Email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

The Department of Fair Employment and Housing (DFEH) receives and investigates discrimination complaints in its six offices throughout California. Three regional/district offices handle employment, public accommodations and hate violence cases, two district offices handle housing cases, and a special investigations unit focuses on systemic discrimination cases statewide. In addition, there are three legal offices that prosecute

cases. The DFEH routinely provides technical assistance to employers, business establishments and housing providers regarding their responsibilities under the law.

**Legal Aid Society's Employment Law Center, [www.las-elc.org](http://www.las-elc.org)**

180 Montgomery Street, Suite 600

San Francisco, CA 94104

Phone: (415) 864-8848

Workers' Rights Clinics Information Line: (415) 864-8208 or Toll-Free at (866) 864-8208  
Holds regular workers' rights clinics throughout San Francisco and other cities in California to provide information to low-income workers about their legal rights, and helps LGBTQ workers address discrimination and harassment they face at work. They also offer specialized assistance in the areas of family medical leave, domestic violence and employment, and language rights at work.

**Out & Equal Workplace Advocates, [www.outandequal.org](http://www.outandequal.org)**

155 Sansome Street, Ste. 450

San Francisco, CA 94104

Phone: (415) 694-6500

E-Mail: [info@outandequal.org](mailto:info@outandequal.org)

Out & Equal Workplace Advocates champions safe and equitable workplaces for lesbian, gay, bisexual, and transgender (LGBT) people. They advocate building and strengthening successful organizations that value all employees, customers and communities and provide diversity trainings for employers, many of which focus on transgender issues. They also provide online webinars on LGBT workplace issues.

**Transgender Economic Empowerment Initiative, [www.teeif.org](http://www.teeif.org)**

LGBT Community Center

1800 Market Street

San Francisco, CA 94102

Phone: (415) 865-5632

E-Mail: [clairf@sfcenter.org](mailto:clairf@sfcenter.org)

TEEI is designed to assist transgender individuals find financial self-sufficiency through stable employment in jobs by linking them with employers. TEEISF provides support for transgender job seekers and newly placed employees, and assists in improving the safety in San Francisco workplaces. Services provided include job search workshops, job fairs, and one-on-one job search support.

**Transgender Law Center, [www.transgenderlawcenter.org](http://www.transgenderlawcenter.org)**

1629 Telegraph Avenue, Suite 400

Oakland, CA 94612

Phone: (415) 865-0176

Email: [info@transgenderlawcenter.org](mailto:info@transgenderlawcenter.org)

The Transgender Law Center (TLC) is a civil rights organization advocating for transgender communities. TLC provides direct legal services, engages in public policy advocacy and education and works to change laws and systems that fail to incorporate the needs and experiences of transgender people.

## Nationwide Resources

### **National Employment Law Project, [www.nelp.org](http://www.nelp.org)**

75 Maiden Lane, Suite 601

New York, NY 10038

Phone: (212) 285-3025

Fax: (212) 285-3044

E-Mail: [nelp@nelp.org](mailto:nelp@nelp.org)

*California Office*

405 14th Street, Suite 1400

Oakland, CA, 94612

Phone: 510-663-5700

The National Employment Law Project (NELP) has advocated for over 30 years on behalf of low-wage workers, the poor, the unemployed, and other groups that face significant barriers to employment and government systems of support.

### **National Center for Lesbian Rights, [www.nclrights.org](http://www.nclrights.org)**

870 Market Street, Suite 370

San Francisco, CA 94102

Legal Helpline: (415) 392-6257 (9 am to 5 pm PST)

Toll Free Helpline: (800) 528-6257 (9 am to 5 pm PST)

Legal Helpline request form: <http://www.nclrights.org/legal-help-resources/>

The National Center for Lesbian Rights (NCLR) helps LGBT individuals and families nationwide through litigation, public policy advocacy, and public education. NCLR offers a legal helpline during regular business hours, and the best way to request assistance is by filling out an online help form on NCLR's website. NCLR provides referrals, assistance locating LGBT-aware attorneys, and offers limited direct services.

### **National Center for Transgender Equality, [www.transequality.org](http://www.transequality.org)**

1325 Massachusetts Avenue NW, Suite 700

Washington, DC 20005

Phone: (202) 903-0112

Fax: (202) 393-2241

The National Center for Transgender Equality is a national social justice organization devoted to ending discrimination and violence against transgender people through education and advocacy on national issues of importance to transgender people.

### **Sylvia Rivera Law Project, [www.srlp.org](http://www.srlp.org)**

147 West 24<sup>th</sup> Street, 5<sup>th</sup> Floor

New York, NY 10011

Phone/Legal Helpline: (212) 337-8550

SRLP provides free legal services to transgender, intersex and gender nonconforming low-income people and people of color in the New York area. SRLP provides advice and referral for a wide variety of legal issues. Sometimes, they can also provide more help, such as advocacy, help with a case you are bringing on your own, or, more rarely, representation in a legal action.

**U.S. Equal Opportunity Employment Commission,**

<http://www.eeoc.gov/employees/howtofile.cfm>

131 M Street, NE

Washington, DC 20507

Phone: (800) 669-4000 or 1-800-669-6820 (TTY)

Email: [info@eeoc.gov](mailto:info@eeoc.gov)

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered. The laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.