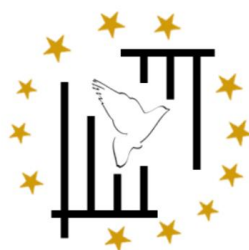


**ASSEDEL**



**Association Européenne  
pour la Défense des Droits et des Libertés**

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## **CONTRIBUTION TO THE UN CALL FOR INPUT ON DISCRIMINATION AGAINST LGBTI PEOPLE IN THE CONTEXT OF BUSINESS ACTIVITIES**

This report, crafted by ASSEDEL's Working Group on LGBTI rights, seeks to examine the challenges encountered by LGBTI individuals in diverse business settings and to identify strategies and best practices aimed at upholding their rights and dignity. Respecting the rights of LGBTI persons in the context of commercial activities means adopting policies, practices, and measures that ensure that LGBTI persons are treated fairly and respectfully in the workplace and business operations. However, the reality often falls short of this ideal, with LGBTI individuals frequently encountering various forms of human rights violations and discrimination.

To gain a thorough understanding of the issue at hand, it is beneficial to examine the survey<sup>1</sup> conducted by the **European Union Agency for Fundamental Rights**. This survey provides a comprehensive and overarching view of the phenomenon. The report presents select findings from the 2019 survey on LGBTI people in the EU, North Macedonia, and Serbia, with almost 140,000 participants and it inquired whether participants experienced discrimination due to their LGBTI status while seeking employment, as well as separately while already employed. The results show that twenty years after the adoption of the Employment Equality Directive<sup>2</sup>, employment continues to be an area of life where LGBTI people experience high rates of discrimination. In the year before the 2019 survey, **21 %** of respondents felt discriminated against at work. Moreover, **10 %** feel discriminated against when looking for work, and one in four (**26 %**) respondents hide being LGBTI

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<sup>1</sup> EU-LGBTI II - *A long way to go for LGBTI equality*, European Union Agency for Fundamental Rights, 2019, pp.31-32: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-lgbti-equality-1\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf)

<sup>2</sup> This directive sets out a general framework to ensure equal treatment of individuals in the European Union (EU) at the workplace regardless of their religion or belief, disability, age or sexual orientation: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>

at work. Significantly higher shares of trans (35 %) and intersex respondents (32 %) felt discriminated at work.

In the light of the evidence, LGBTI individuals often face human rights impacts in the workplace, especially within the sphere of business activities and it can occur in several ways.

LGBTI individuals may encounter discrimination when seeking employment or even being fired based on their sexual orientation, gender identity, or expression. According to the research "*Lgbt people's experiences of workplace discrimination and harassment*"<sup>3</sup> developed and published in 2021 by the **Williams Institute**, more than 8 million workers in the U.S. identify themselves as LGBTI. The research examined experiences of **discrimination and harassment** against LGBTI workers, using a survey of 935 LGBTI adults. The results indicate that **29.8%** of workers have reported experiences of at least one form of discrimination faced during their lifetime (such as firing or not hiring) because of their sexual orientation or gender identity. For instance, in the *Bostock case* (2020)<sup>4</sup>, three separate instances of alleged discrimination against LGBTI employees were considered together by the Supreme Court and addressed in a single ruling. Gerald Bostock, who worked as a child welfare services coordinator, was fired from his position after his employer discovered he had joined a gay softball league. Donald Zarda, a skydiving instructor, was dismissed after his employer became aware of his sexual orientation as a gay man. In a case brought by the Equal Employment Opportunity Commission (EEOC), funeral director Aimee Stephens was fired from her employment after her employer learned she was planning to transition from male to female.

Furthermore, LGBTI workers can experience types of discrimination that actually **affect their career path and success**: even if LGBTI individuals are hired, they may not have the same opportunities for advancement or access to benefits and privileges as their heterosexual and cisgender counterparts. Indeed, the same survey participants report as forms of discrimination not being promoted, not receiving increases, having their schedules changed or reduced, and being excluded from corporate events. All of this, other than damaging the mental health and professional growth of LGBTI employees, can create **economic disadvantages**, including lower wages and fewer job opportunities. According to the study "*Bias in the workplace: Consistent evidence of sexual orientation and gender identity discrimination 1998-2008*"<sup>5</sup> by the **University of North Carolina School of Law**, another sign indicating strong discrimination is just a wage or income gap between LGBTI people and heterosexual people with the same job and personal characteristics. In fact, for example, analyses have shown that gay men earned **10% to 32%** less than heterosexual men.

A further factor affecting the human rights of LGBTI employees is a **hostile work environment**. Some workplaces foster a hostile environment for LGBTI individuals, where they may experience bullying, exclusion, or even violence. In this case, we can talk about *microaggressions*, which are divided into three categories: microassaults, microinsults, and microinvalidations<sup>6</sup>.

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<sup>3</sup> Sears, Brad, et al. *LGBT People's Experiences of Workplace Discrimination and Harassment*. Williams Institute UCLA School of Law, 2021.

<sup>4</sup> Supreme Court of the United States, *Bostock v. Clayton County, Georgia*. Certiorari to the United States Court of Appeals for the Eleventh Circuit no. 17–1618. argued October 8, 2019—decided June 15, 2020: [https://www.supremecourt.gov/opinions/19pdf/17-1618\\_hfci.pdf](https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf)

<sup>5</sup> Badgett, M. V. "Bias in the workplace: Consistent evidence of sexual orientation and gender identity discrimination 1998-2008." *Chi.-Kent L. Rev.* 84 (2009).

<sup>6</sup> Galupo, M. Paz, and Courtney A. Resnick. "Experiences of LGBT microaggressions in the workplace: Implications for policy." *Sexual orientation and transgender issues in organizations: Global perspectives on LGBT workforce diversity* (2016).

Microassaults aim at hurting the victim through direct insults, avoidant behaviors, or intentional discriminatory actions. An example would be to refer to a LGBTI colleague with discriminatory terms such as "fag," "dyke," or "tranny". One of the many events that confirm this research is precisely the episode of discrimination that occurred in Wal-Mart against a transgender worker Charlene Bost<sup>7</sup>, who accused the large retail chain of having fired her for reporting harassment.

Mrs Bost claimed that her colleagues called her "sir," "that thing with an attitude" and "shim," a slur combining "she" and "him." She also said her male boss subjected her to unwanted physical advances and referred to her as "it." These insults can also happen indirectly, in fact, the **Williams Institute** also shows in the same survey that **67.5%** of LGBTI employees have become indirectly aware of microassaults at least once in their lifetime, such as negative comments or "jokes" just mentioned.

Microinsults and microinvalidations are instead much more subtle than microassaults. Microinsults are described as communications that convey rudeness or insensitivity and demean a person's identity—these are likely occurring unbeknownst to the perpetrator, but clearly disparage the recipient. For example, if a supervisor repeatedly ignores or fails to acknowledge the ideas and opinions of their LGBTI employees, a message of worthlessness is sent. Lastly, microinvalidations are defined as communications that negate or nullify the psychological thoughts, feelings, or experiential reality of the marginalized group. If an employee discloses their sexual orientation to a colleague and in response hears, "Wow, I'm so surprised. You don't look or sound gay!" the message is one that questions the authenticity of the employee's identity and experience (Paz and Resnick, 2016).

One of the solutions to eliminate or at least mitigate these significant problems is **workplace policies**. Despite this, workplace policies could be an additional factor affecting the rights of LGBTI people in the business environment: the same companies may have discriminatory policies or practices that have a negative impact on LGBTI individuals, such as the lack of inclusive non-discrimination policies, limited diversity and inclusion initiatives, or the absence of benefits for same-sex couples. According to the research "*Inclusion des LGBTI en entreprise: l'Inquiétante régression*"<sup>8</sup> (2020) of the **Boston Consulting Group**, with the support of **Têtu**, it emerges that LGBTI people believe that large companies are more advanced on the issue of inclusiveness than micro-companies, startups, small and medium enterprises (SMSB). Companies use their charters to make statements of intent towards better integration of LGBTI people, but these statements are insufficient, and they are not made by all companies. The lack of concrete actions from companies to integrate LGBTI people prevents them from achieving equality of chances with their non-LGBTI colleagues.

These serious working conditions only lead many LGBTI employees to **hide their gender identity and sexual orientation in the workplace** to avoid hostile treatment and protect their physical and mental health, as well as their professional growth. Indeed, as specified by the **Boston Consulting Group**, there is a clear regression in the business world on what concerns the full expression of the identity of LGBTI people. The survey is based on responses from 1053 LGBTI participants, of which only **43%** of the LGBTI people interviewed are out in their workplace (previous studies say it was around **55%** in 2018) and **38%** consider that being out in their workplace represents a disadvantage for their evolution within the company. Indeed, **43%** of the non-out LGBTI people interviewed consider that being out in the workplace can negatively impact their careers.

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<sup>7</sup> REUTERS – "Wal-Mart settles discrimination lawsuit by transgender worker", 2018 :

<https://www.reuters.com/article/us-walmart-lawsuit-idUSKCN1J22TA/>

<sup>8</sup> BCG – "*Inclusion des LGBTQ+ en entreprise : l'inquiétante régression*", 2020 :

[Inclusion des LGBTQ+ en entreprise : l'inquiétante régression \(bcg.com\)](https://www.bcg.com/fr/fr/actualites/actualites/2020/01/inclusion-des-lgbtq-en-entreprise-l-inquietante-regression)

The survey<sup>9</sup> of the **Williams Institute** also adds that LGBTI employees, in addition to hiding their identity, have even changed their physical appearance to conform to gender norms, have changed where, when or how frequently they used the bathroom, tried to avoid talking about their family and social life at work, or quit their jobs or considered doing so.

In light of the above, LGBTI people are still feeling unsafe in the workplace which violates *Article 7* of the *International Covenant on Economic, Social and Cultural rights* (ICESCR). The indicated article outlines the rights that workers should have, specifically emphasizing their right to fair and just working conditions. In particular, it highlights the need for safe and healthy working environments, ensuring that workers are not exposed to conditions that could threaten their health or safety (*b*). Furthermore, Article 7 also emphasizes the importance of equal opportunities for advancement in the workplace. It states that everyone should have the chance to be promoted in their employment, provided that they meet the criteria of seniority and competence. This means that promotions should not be based on discriminatory grounds, but rather on factors such as an individual's experience and qualifications (*c*).

Also, it is important to mention that *Principle 12* of *Yogyakarta Principles* may not always be followed. Under this principle, states and other relevant authorities are invited to take all necessary steps, which may include legislative, administrative, and other measures, to eliminate and prevent discrimination based on sexual orientation or gender identity in various aspects of employment. These aspects may include vocational training, recruitment, promotion, firing, terms of employment, and compensation.

Moreover, discrimination of LGBTI people within the context of business activities occurs not only as employees but also as **consumers**. According to the article "*Why LGBTQ representation should be a priority for business and media*"<sup>10</sup> of the **World Economic Forum** published in May 2022, one of the problems that affect the lives of LGBTI people is the **lack of visibility and representation**. More than half of the LGBTI community consider that LGBTI people are not authentically represented in business' narratives and companies' ads. This lack of representation affects the ability of LGBTI people to consume on an equal basis with non-LGBTI consumers, they tend to avoid consuming products of brands they see as not inclusive, ending up being marginalized as consumers. Moreover, this significant lack affects how non-LGBTI people perceive LGBTI people too. The **63%** of non-LGBTI people tend to consider the LGBTI community as one big group with the same identity and needs, even though LGBTI is a community made of several sub-groups with different issues, needs, and revendications.

In this context, media coverage and business advertisement have a role to play in the development of LGBTI people as consumers and as a part of a society shared with non-LGBTI people, since visibility and representation of the LGBTI community in business' image and ads promote a higher education of people on diversity and humanize marginalized minorities (ethnics groups, nationality groups, LGBTI community, etc).

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<sup>9</sup> Williams Institute, "*LGBT people's experiences of workplace discrimination and harassment*", 2021 : <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf>

<sup>10</sup> World Economic Forum, "*Why LGBTQ representation should be a priority for business and media*", 2022 : <https://www.weforum.org/agenda/2022/05/why-lgbtq-representation-should-be-a-priority-for-business-and-media/>

In conclusion, discrimination against LGBTI people in the workplace and business activities continues to be an unacceptable reality. It manifests itself in various forms such as direct employment discrimination, bullying in the workplace, or absence of representation in business narratives.

Discrimination against LGBTI people in the workplace and business activities has a significant impact on their relationship with the workplace. Their mental and physical health are at risk due to microaggression at work. But LGBTI people also suffer greater economic and social disadvantage due to having less chances of being employed and, if employed, less chances of being socially integrated in their workplace. Finally, the number of LGBTI people choosing not to out themselves at work is blatant evidence of how of an unsafe environment the workplace can be for them. According to those findings, it seems appropriate to say that the right to work of LGBTI people protected by Article 7 of the IESCR and Principle 12 of the Yogyakarta Principles is not yet respected. In this sense, a number of key recommendations should be made to improve the situation of LGBTI people in the workplace:

- Employment discrimination based on sexual orientation and gender identity must be banned from business practices.
- Companies must promote and respect LGBTI-friendly work policies including staff awareness, especially micro-companies, start-ups, SMSB.
- Business narratives and media coverage must ensure equal representation of the LGBTI community to facilitate their integration as workers and consumers within the society.