

LGBT RIGHTS IN THE WORKPLACE

Frequently Asked Questions



Most adults spend roughly half their waking hours in the workplace and are sometimes faced with employers who want to exert authority over their employees' private lives. For LGBT individuals, these encroachments on their basic rights and threats of discrimination occur all too often. Fortunately, there are a number of laws that protect employees' rights. Below are answers to some frequently asked questions about workers' rights that may be most applicable to members of the LGBT community.

Q. May my employer discriminate against me on the basis of my sexual orientation?

A. In most places of employment, the answer is "no." Under the Fair Employment Practices Act (FEPA), gay men, lesbians and bisexuals have the same protections and remedies as people discriminated against in employment on grounds of race, color, religion, sex, disability, age or country of ancestral origin. The remedies can include hiring or reinstatement, back pay, compensatory damages and attorney's fees. All government entities, any private entity employing four or more people, people "acting in the interest of an employer directly or indirectly," employment agencies and labor organizations are prohibited from engaging in discriminatory activities under FEPA.

Q. May an employer discriminate against transgender persons?

A. No. In addition to providing protection on the basis of sexual orientation, state law prohibits discrimination on the basis of gender identity or expression, which is defined to include "a person's actual or perceived gender, as well as a person's gender identity, gender-related self image, gender-related appearance, or gender-related expression."

Q. Are there any limits on the types of questions I can be asked when I apply for a job?

A. Yes. Rhode Island's Fair Employment Practices Act makes it illegal for an employer to use any application form or otherwise attempt to find out information, directly or indirectly, about your sex, sexual orientation, gender identity or expression, race or color, religion, disability, age or country of ancestral origin. In addition to preventing discrimination, this law helps protect your privacy and your ability to maintain the confidentiality of personal information that should be irrelevant to the employment application process. Some employers may ask job applicants to sign a consent form giving the employer unrestricted access to medical, school, employment and/or criminal records that pertain to the applicant. Such blanket consent forms are probably illegal.

Q. Can my employer require me to take a test for HIV?

A. No. State law specifically forbids employers from requiring employees or job applicants to be tested for HIV, the virus responsible for AIDS, or from discriminating against an individual based on a positive HIV test "or perception of a positive test." This means it is also illegal for an employer to discriminate against a gay man or lesbian based on outmoded and prejudicial fears about HIV.

Q. Do I have any recourse if an employer disseminates medical information about me?

A. Probably. With only a few narrow exceptions, the Americans with Disabilities Act sets very strict limits on the release by employers of information obtained from post-offer and post-hire medical examinations of employees. Whether such a disclosure also rises to the level of a constitutional violation will often depend on the seriousness of the medical issue at hand. In addition, Rhode Island has a health care confidentiality act, which limits the dissemination, by an employer or others, of your medical records without your consent. The statute authorizes persons whose confidentiality has been violated to sue for damages, and successful suits have been brought under the law.

Q. Can my employer tell me how to dress or wear my hair on the job?

A. If you are a private employee, you generally must follow your employer's dress and grooming codes. Even policies that would appear discriminatory – such as ones requiring short hair on men but not on women – have generally been deemed permissible as long as they have some justification in commonly accepted social norms and are reasonably related to business needs. However, dress and grooming codes may violate federal law if their discriminatory burden is particularly great or if certain exceptions are not made. Dress codes may also be subject to challenge based on a state law prohibiting discrimination on the basis of “gender-related self image” or “gender-related appearance.”

Q. May an employee be dismissed for having sexual relations with a person to whom he or she is not married?

A. The law does not prevent a private employer from discharging an employee who engages in extra-marital sex. Private sector employers have great discretion in deciding to terminate their associations with people they consider “immoral.” However, a violation of the law may exist if the employer dismisses a gay or lesbian employee for taking part in an “affair,” but takes no action against a heterosexual employee, or makes inquiry about “affairs” of applicants or employees of only one sex, sexual orientation or gender identity. In the public sector, the employer typically cannot discharge an employee without cause. Moreover, the public employee may assert constitutional rights of due process and privacy in support of his or her right not to be dismissed.

Q. How does the law protect victims of domestic violence from workplace discrimination?

A. In response to stories of employers further victimizing victims of domestic violence, a state law was enacted which recognizes that it is up to the victim, not his or her employer, to decide whether to seek help in the courts for this problem. The law bars employers from firing, refusing to hire or otherwise discriminating against a person solely because she or he sought or obtained, or refused to seek or obtain, a domestic violence restraining order. This law, as well as all other domestic violence laws, apply equally to same-sex and opposite sex couples.

For more information about employees' rights, check out the ACLU's free booklet, “Your Rights to Workplace Privacy in Rhode Island” available online at www.riaclu.org or by calling the ACLU of RI office (831-7171).