

DISCRIMINATION AT THE WORKPLACE, FROM APPLICATION TO TERMINATION



**A Report on the Employment
Experiences of Transgender and
Gender Non-Conforming People**

**MAKE THE ROAD NEW YORK,
October 2013**



EXECUTIVE SUMMARY

“The LGBTQ community does not have the same rights that the majority of workers enjoy. It is not fair that solely because of my gender identity that I have fewer rights than other residents of NY.”

- Jocelyn Mendoza, Transgender latina woman from Brooklyn

In the spring and summer of 2013, Make the Road New York surveyed over 250 LGBTQ and gender non-conforming identified individuals about their experiences with gender identity/expression employment discrimination. The individuals surveyed had applied for jobs in a variety of different industries, including retail, finance, and education. We also surveyed more than 100 non-LGBTQ identified individuals. Surveys were conducted at local community organizations, LGBTQ support groups, and public events. Finally, we collected in-depth testimonies from transgender and gender non-conforming identified individuals about their experiences with employment discrimination. Those testimonies are included in this report.

Make the Road New York also partnered with the Attorney General’s Office to conduct match pair testing in retail and food service businesses. Since the analysis of the testing is still underway, we will not be publishing findings at this point but will publish an addendum once the project is complete. To date, we have investigated a total of thirteen retail and food establishments in the Jackson Heights/Corona and Elmhurst sections of Queens.

Results

- We conducted a matched pair test. In five locations, the gender conforming, or control, tester received a more favorable outcome than the transgender/ gender non-conforming applicant despite the fact that the two were materially indistinguishable in all other objective characteristics and in job-related credentials.
- We also conducted a survey. While over two thirds of heterosexual, gender conforming and over half of all LGBTQ respondents reported being employed, only 46% of transgender and gender non-conforming individuals had jobs and 43% were looking for employment.
- Survey results show that 40% of transgender and gender non-conforming respondents indicated that they had experienced discrimination in being considered for jobs or promotions based on their gender identity or sexual orientation. Slightly more than one quarter of LGBTQ respondents (27.3%) as a whole reported similar discrimination.

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- 32% of transgender and gender non-conforming survey respondents reported having been fired from at least one job based on their actual or perceived gender identity and expression.
 - 44% reported that they faced such serious discrimination on the job because of their gender identity and expression that they were forced to quit.
 - 41% of all transgender and gender non-conforming respondents reported experiencing some form of harassment on the job, compared to 29% of all LGBTQ respondents as a whole

Recommendations

Our findings reveal that even though transgender and gender non-conforming New Yorkers are supposed to be protected under NYC Human Rights law, this is not the reality for many of them, specifically if they are Latino/a or African American.

- We urge federal legislators to pass the transgender inclusive ENDA (the Employment Non Discrimination Act-Polis HR 1755/Merkly S815) which would prohibit employment discrimination nation wide based on sexual orientation and gender identity/expression. ENDA was recently passed out of committee in the Senate in July 2013. We urge the Senate and the Congress to take immediate action.
- We urge the NYS Legislature to Pass GENDA (the Gender Expression non Discrimination Act- S.195A Squadron/A.4226A Gottfried) immediately in the next legislative session. GENDA passed in the Assembly in June 2013. We urge the NYS Senate to Act immediately on this legislation
- We also urge the NYS Legislature to pass the Whistleblower Protection Bill (S.3862 Klein/A.5696 Benedetto), which would protect workers who are reporting discrimination based on sexual orientation, gender identity and or gender expression from retaliation by their employer. We urge both the Assembly and the Senate to take immediate action on this legislation
- New York City should offer comprehensive training about discrimination based on gender identity and expression to all students in the public school system. In the long run, education about homophobia and trans phobia is the only way to address the root causes of discrimination. The Dignity in All Schools Act (DASA), passed by the City Council in 2005 but never implemented, requires the Department of Education to address bullying based on sexual orientation and gender identity. Mayor Michael Bloomberg vetoed it twice, calling it "silly law, that doesn't make sense" The new NYC mayor should sign NYC DASA into law and implement it immediately.

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- All employers in New York City should adopt policies and practices which explicitly address gender identity/gender expression discrimination, including training for employees, notice to job applicants of their rights, and protection from on-the-job harassment.
 - Make enforcement of City anti-discrimination laws covering transgender and gender non-conforming individuals a high priority use of enforcement resources. Using methods such as matched pair testing, community organizations and government agencies such as the Commission on Human Rights should proactively identify gender identity and expression discrimination in various sectors of the New York City economy and by prominent employers. Evidence collected through techniques such as matched pair testing should be used to enforce the law in target industries and workplaces where problems are documented.
 - The Commission on Human Rights should increase distribution of information on workplace rights to transgender workers and employers, especially in low-wage industries. Educational materials should be provided in plain language and should also be made available in the most commonly spoken languages in New York City. Additionally, outreach should be conducted in the community to break the barriers that often isolate the most vulnerable community members and that prevent them from seeking help.