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## Marriage Certificates, Wedding Bells & Unemployment Lines: Employment Discrimination Issues Post Marriage Equality

Joel Viramontes-Gallegos

On June 26, 2015, the United States Supreme Court held that same-sex marriage was the law of the land.<sup>1</sup> The Court required all states to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed in another state.<sup>2</sup> Prior to this decision, the lesbian, gay, bisexual, and transgender (LGBT) community actively and persistently fought to attain marriage equality for years. However, despite this major triumph, there is additional work that must be done before our nation is deemed of truly serving its entire people adequately.

As it stands, sexual orientation and gender identity are not directly listed as protected categories under Title VII of the Civil Rights Act of 1964 that prohibits discrimination based on gender identity or sexual orientation by private companies in employment, public accommodations, or housing. This means that under federal law employers can dismiss an employee after learning that the employee married his or her same sex partner, after learning of an employee's gender identity or sexual orientation or because they do not agree with the employee's gender identity or sexual orientation.<sup>3</sup>

While Illinois, and more specifically Chicago, have adopted ordinances that prohibit such discrimination, the lack of a federally specific ban on such discrimination allows for the language of existing law to be manipulated and wrongfully applied.<sup>4</sup> The lack of a said specific federal law highlights the fact that the battle for full equality for the LGBT community is far from over.

### TRANSGENDER EMPLOYMENT DISCRIMINATION

The issue with employment discrimination specifically among the transgender community is one that must be brought to the forefront of policy mak-

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<sup>1</sup> *Obergefell v. Hodges*, 576 U.S. \_\_ (2015).

<sup>2</sup> *Obergefell*, 576 U.S. \_\_ (2015).

<sup>3</sup> Arlene Zarembka, *Advising Same-Sex Couples after Obergefell and Windsor*, GP SOLO, July/Aug. 2015, [http://www.americanbar.org/publications/gp\\_solo/2015/july-august/advising\\_same\\_sex\\_couples\\_after\\_obergefell\\_and\\_windsor.html](http://www.americanbar.org/publications/gp_solo/2015/july-august/advising_same_sex_couples_after_obergefell_and_windsor.html).

<sup>4</sup> Zarembka, *supra* note 3.

ers' attention so that there can be a resolution put in place. In the opening paragraph of the majority opinion of *Obergefell*, Justice Kennedy proclaimed that, "the Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity."<sup>5</sup>

However, the lack of support for members of the transgender community within the workplace has led to a huge disparity in their presence in the corporate mainstream.<sup>6</sup> Allowing for a transgender individual to be identified by their self-determined gender instead of the gender that society has assigned to them often creates a rift that leads to discrimination within the workplace.<sup>7</sup> Transgender employees are often faced with a range of unfair labor practices on a daily basis, including being accused of utilizing the incorrect bathroom, harassed for not conforming to one's designated birth gender or being in an office that does not provide for medically necessary health care.<sup>8</sup>

A 2011 survey conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force, reported that 90 percent of transgender respondents experienced workplace discrimination and 26 percent lost work because of their gender expression.<sup>9</sup> This does not take into account the number of instances of transphobia that go unreported due to the victim's decision to limit further exposure to their situation.<sup>10</sup>

Another study reported that 14 percent of transgender individuals are unemployed, which sits at more than double the national unemployment rate.<sup>11</sup> That figure correlates to transgender individuals being four times more likely to live in extreme poverty, a statistic that goes on to double for transgender people of color.<sup>12</sup>

<sup>5</sup> *Obergefell*, at 6-7.

<sup>6</sup> *Workplace Rights & Wrongs*, LAMBDA LEGAL, 2015, available at [http://www.lambdalegal.org/sites/default/files/2015\\_workplace-fs-v5-singlepages.pdf](http://www.lambdalegal.org/sites/default/files/2015_workplace-fs-v5-singlepages.pdf).

<sup>7</sup> Hunter Clauss and Charles Jefferson, *Local Organization Helps Transgender People Find Work*, CHICAGO TONIGHT-WTTW, July 8, 2015, <http://chicagotonight.wttw.com/2015/07/08/local-organization-helps-transgender-people-find-work>.

<sup>8</sup> LAMBDA LEGAL, *supra* note 6.

<sup>9</sup> *Id.*

<sup>10</sup> Andre Perez, *Trans (Un)Employment – a Primer (Part 1)*, GENDERQUEER CHICAGO, <http://genderqueerchicago.blogspot.com/2010/05/trans-unemployment-a-primer-part-1.html>.

<sup>11</sup> H. Kapp-Klote, *A Local Start-Up is Tackling Transgender Unemployment*, CHICAGO READER, Oct. 25, 2014, <http://www.chicagoreader.com/Bleader/archives/2014/10/27/a-local-start-up-is-tackling-transgender-unemployment>.

<sup>12</sup> *Id.*

Given the high unemployment and poverty rate among transgender individuals, some are forced to commit crimes such as sex work and theft in order to survive.<sup>13</sup> If they resort to and then are convicted of these crimes, it will further hinder their ability to gain employment, and increase the already unsettling statistics.<sup>14</sup>

### ILLINOIS POLICIES AND FEDERAL NON-DISCRIMINATION

Non-discrimination practices within the workplace should go beyond assigning gender-neutral restrooms—they should encompass establishing a supportive, accepting environment and recognize that discrimination against a transgender individual is a form of sex discrimination that is prohibited by federal law.<sup>15</sup> While there has been vast attention to the transgender community brought on by the media that will hopefully educate and eliminate some of the negative preconceived notions, it is necessary to eliminate the potential for misinterpretation of federal statutes to enable discrimination within the workplace.

The Illinois Human Rights Act, Cook County Human Rights Ordinance, and the Chicago Human Relations Ordinance all prohibit discrimination on the basis of sexual orientation and gender identity.<sup>16</sup> As Mike Ziri from Equality Illinois states, “the laws here in Illinois work, and they have for the last 10 years. It is important to care about the laws in Indiana, Missouri, Kentucky and the other states, because when a LGBT Illinoisan goes to work in Indiana or anywhere else that does not have these protections, they essentially lose those rights.”<sup>17</sup> Making the need to have a federal statute that explicitly bars LGBT discrimination in the workplace that much more important.

### CONCLUSION

Chicago has the opportunity to set an even greater precedent by showing that explicit sexual orientation and gender identity anti-discrimination ordinances can reduce the number of unemployed transgender individuals nationwide. But to do this, Chicago must also require businesses, both private and

<sup>13</sup> Clauss and Jefferson, *supra* note 7.

<sup>14</sup> *Id.*

<sup>15</sup> LAMBDA LEGAL, *supra* note 6.

<sup>16</sup> *Civil Rights*, 2015, [http://www.tsamislaw.com/civil\\_rights.html](http://www.tsamislaw.com/civil_rights.html) (last visited Nov. 30, 2015).

<sup>17</sup> Mike Ziri, Personal Communication (Nov. 30, 2015).

public, to adopt written guidelines that document firm policies on issues such as name changes, restroom accommodations, dress codes, and harassment.

Having a written and practiced policy in place will allow for transgender individuals to know that they are supported and allow them to fully engage within the workplace. A written and practiced policy will further establish a work environment where they will not feel embarrassed to bring attention to themselves by reporting unjust employment practices and therefore allow them to have equal footing within their work community.