

How the Family and Medical Leave Act Affects Your LGBTQ Employees

OVERVIEW

The United States is still the only developed country lacking a guaranteed paid leave policy. Commemorating the 25th anniversary of the federal Family and Medical Leave Act (FMLA) being signed into law, The Human Rights Campaign (HRC) published an important report, [The 2018 LGBTQ Paid Leave Survey](#), detailing findings of a year-long online survey of HRC social media followers about their direct experiences obtaining benefits promised by the FMLA.

The FMLA provides 12 weeks of unpaid leave each year without risk of losing a job. Unpaid leave is classified into three categories: parental leave, family care leave, and medical leave.

Still, FMLA only covers about 60% of the workforce—[it does not apply](#) to those who work part-time, for small businesses, or who have not yet been employed by their current workplace for 12 months. While many employers and even some state legislatures have worked to fill the protection gaps, millions of U.S. workers remain uncovered and vulnerable. Many simply cannot afford to go without the income, even if guaranteed they can return to their job.

Notable additional findings from the survey:

- Of the 5,400 respondents, only 45% reported that their employers offered LGBTQ-inclusive leave policies
- 1 in 5 respondents were fearful that requesting time off for certain issues, including caring for a loved one, might reveal their LGBTQ identity
- LGBTQ individuals can be denied requested paid or unpaid leave due to their sexual orientation or gender identity

WHY THIS MATTERS FOR LGBTQ EMPLOYEES

While access to paid leave is an important issue for all Americans, LGBTQ individuals are particularly affected by a lack of access to paid leave. LGBTQ individuals already face higher rates of discrimination, maltreatment in the workplace, and poverty—all of which can be compounded by a lack of access to paid or unpaid leave.

WHAT YOUR COMPANY NEEDS TO KNOW

- Not all family care, medical, and parental leave is inclusive of LGBTQ individuals:
 - Parental leave may not cover both genders equally. For example, a policy may cover birth mothers, but not gay fathers, parents who adopt, or become parents through other means.
 - Family care may be restricted to legal guardians or spouses, failing to include domestic partners and other close family members.
 - Medical leave may be denied to transgender employees seeking transition related care.
- [An inclusive definition of family leave](#) must include “domestic partnership” as it is still unsafe for same-sex couples to get married in many states. While marriage equality has been legalized across the country, individuals in 28 states can be fired for being lesbian, gay, or bisexual, and fired for being transgender in 30 states.

WHAT YOUR COMPANY CAN DO

- Confirm that your paid and unpaid leave policies are inclusive of LGBTQ individuals and equitably applied.
- Include domestic partnerships in your leave policies.
- Include sexual orientation and gender identity in your anti-discrimination policies. This is critical in ensuring your employees are protected from unlawful termination due to leave requests.
- This issue highlights the importance of collecting LGBTQ data. Implement the collection of Self-ID data within your company to ensure you can benchmark your LGBTQ inclusion efforts.
- While the survey has clear limitations—for example, the survey itself did not evaluate non-LGBTQ respondents—it raises important concerns surrounding the LGBTQ community. To increase awareness and knowledge of these critical issues and others, support efforts to develop important research regarding the LGBTQ workforce.
- Out & Equal provides consultation, training, and research opportunities for companies looking to implement self-ID or tailor their policies and programs to be more LGBTQ inclusive. For more information about how to receive these resources or support Out & Equal research initiatives, contact university@outandequal.org.

WHO SHOULD ENGAGE AT YOUR COMPANY

- HR
- D&I
- ERGs