



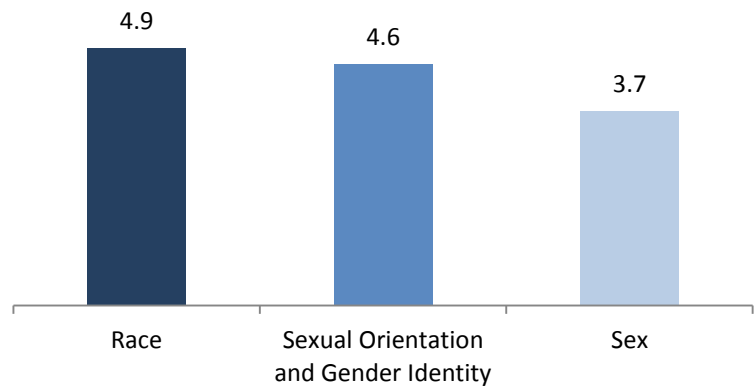
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Executive Summary

As of October 2015, twenty-two states and the District of Columbia expressly prohibited employment discrimination on the basis of sexual orientation.¹ Of those states, nineteen and the District of Columbia also expressly prohibited discrimination on the basis of gender identity.² This report measures how frequently these laws are used by LGBT people, compared to how frequently race non-discrimination laws are used by people of color, and sex non-discrimination laws are used by women.

National Population-Adjusted Complaint Rates (per 10,000)



An aggregation of all available state-level data shows that sexual orientation and gender identity employment non-discrimination laws are used by LGBT people at a similar rate to the use of race non-discrimination laws by people of color and sex discrimination laws by women. Nationally, on average, approximately 4.6 complaints of sexual orientation and gender identity discrimination are filed for every 10,000 LGBT workers each year, compared to approximately 4.9 complaints of race discrimination filed for every 10,000 workers of color, and 3.7 complaints of sex discrimination filed for every 10,000 female workers.

The findings refute the argument that discrimination against LGBT people does not occur often enough to establish a need for protective laws. Additionally, even with similar filing rates, sexual orientation and gender identity complaints will not overwhelm government agencies because the absolute number of such complaints filed is low. The annual average number of sexual orientation and gender identity complaints for all 14 states that provided data was 1,600, compared to 9,800 complaints of race discrimination and 13,700 complaints of sex discrimination.

Introduction

In the U.S., nearly 6.5 million workers identify as LGBT. Just under half of these workers (49%) live in the twenty-two states that expressly prohibit employment discrimination based on sexual orientation, and approximately 40% live in states that expressly prohibit employment discrimination based on gender

identity. Over half (51%) of the LGBT workforce in the U.S. is not covered by state-level laws that provide express protection from employment discrimination based on sexual orientation or gender identity.

Previous studies have analyzed discrimination complaints filed with administrative agencies in those states that prohibit sexual orientation and gender identity discrimination.³ These studies have shown that when adjusted for population size, sexual orientation and gender identity laws are used by LGBT workers at similar rates as sex discrimination laws are used by female workers, and that race discrimination complaints are filed at slightly higher rates. The results of these studies, when combined with other research documenting discrimination against LGBT people, support that there is both a need for laws that prohibit discrimination on the basis of sexual orientation and gender identity, and that prohibiting these forms of discrimination will not overwhelm administrative enforcement agencies.

This report updates these prior studies by applying a similar methodology to more recent data on administrative complaints. In the present study, overall, we find that sexual orientation and gender identity employment discrimination complaints are filed by LGBT people at a similar rate to the rate of sex discrimination filings by women and race discrimination filings by people of color. The filing rate for sexual orientation and gender identity discrimination complaints is 4.6 per 10,000 LGBT workers, compared to 3.7 sex discrimination complaints per 10,000 female workers and 4.9 race discrimination complaints per 10,000 workers of color. The findings of this study are consistent with the findings of the prior studies.

Methodology

This study largely replicates the methodology used in the two prior studies. Slight changes were made to the previous methodologies because better data on the size of the LGBT population in each state has since become available.

First, we collected data on employment discrimination complaints from the administrative agencies responsible for enforcing non-discrimination laws in states that prohibited sexual orientation and gender identity discrimination by statute at the time of data collection. Specifically, we collected data on the number of employment discrimination complaints filed each year, from 2008 through 2014, based on race, sex, sexual orientation and gender identity. In many cases, state agencies made this information available in their annual reports published online. Where the data were not available online or only limited data were available, we contacted the state agencies directly and requested the information. We were able to collect data, either online or through direct contact with the agencies, from 14 of 21 states that prohibited discrimination based on sexual orientation or gender identity at the time of data collection (Appendix). For 10 states, we were able to gather complete data for all years; for the other four states we were able to gather data for at least four years. One state, Utah, was excluded from our analysis because the sexual orientation and gender identity non-discrimination law had not been in effect for a full year at the time of data collection. Additionally, we did not obtain information about the number of complaints that alleged discrimination based on more than one of the studied characteristics. That is, we do not know the number of complaints alleging, for example, discrimination

based on both sexual orientation and sex. For purpose of this analysis, complaints of discrimination based on multiple characteristics are counted as individual complaints under each characteristic.

Next, we divided the number of complaints filed each year on each basis by the number of people most likely to file these types of discrimination complaints in the state's workforce, and then multiplied that figure by 10,000 to get the rate of complaints filed per 10,000 workers. We assume that race discrimination complaints are most likely to be filed by people of color, sex discrimination complaints are most likely to be filed by women, and sexual orientation complaints are most likely to be filed by LGBT people. We used yearly data from the American Community Survey (ACS) to find the workforce population totals for women and people of color each year. For the underlying population for race discrimination complaints, we included all non-whites and all Hispanic or Latino-identified people in in the workforce. People in the armed forces were excluded from workforce totals because they are not covered by state-level non-discrimination laws.

The ACS does not collect data on sexual orientation or gender identity, so it is not possible to determine the size of the LGBT workforce directly from ACS data. In order to estimate the number of LGBT workers in each state, we applied the percentage of people in the workforce who identified as LGBT in Gallup polling data collected between 2012 and 2014 to the number of people each state's workforce from yearly ACS data (again, we excluded people in the armed forces).

We subtracted the estimated number of transgender workers from the LGBT workforce in several states where gender identity complaint data were not available, so that our underlying population for purposes of adjusting sexual orientation complaints was LGB only. First, we subtracted transgender workers from the LGBT workforce for all years in four states because three of the states do not include gender identity in their non-discrimination statutes (New Hampshire, New York, and Wisconsin) and one state did not add the protections until October 2014 (Maryland), so these four states did not collect any data on gender identity discrimination complaints during the time period of this study.⁴ Second, we subtracted transgender workers from the LGBT workforce in two other states (Connecticut and Hawaii) for the years before gender identity protections were added to their laws.⁵ Finally, we subtracted transgender workers in California for four years of data (2008-2011) because the state could not provide the number of complaints filed on the basis of gender identity for those years. We estimated the number of transgender workers in these states by applying the percentage of the U.S. population that identifies as transgender (0.3%)⁶ to the state's workforce number, excluding people in the armed forces.

This methodology was followed for each of the 14 states from which we were able to collect data on discrimination complaints, across all years of complaint data. After all annual population-adjusted complaint rates were determined for a state, we averaged the annual rates by filing basis. This provided annual population-adjusted complaint rates for sexual orientation and gender identity complaints, race discrimination complaints, and sex discrimination complaints in 14 states.

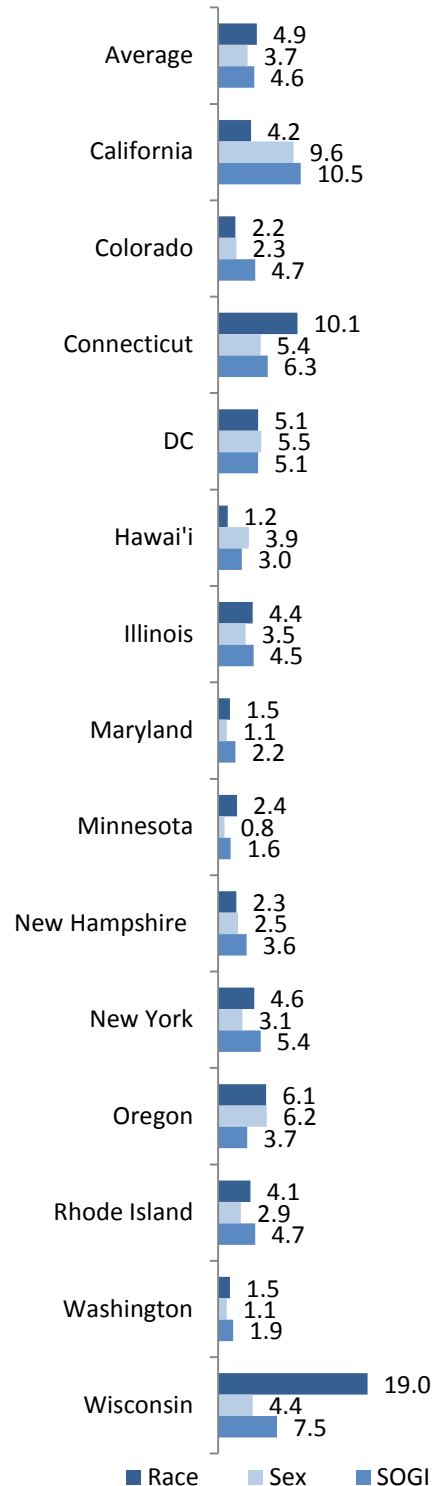
We were unable to analyze the per capita rate of gender identity complaints separately because very few states were able to provide separate data on complaints filed on the basis of sexual orientation and complaints filed on the basis of gender identity. Most states combine these filing bases in their records.

Findings

When the size of the LGBT workforce is incorporated into the analysis of complaint rates, our measure shows that per capita sexual orientation and gender identity employment discrimination complaints are filed at similar rates to sex and race discrimination complaints.

- At the national level, on average, approximately 4 to 5 complaints per 10,000 protected workers are filed per year: 4.6 complaints of sexual orientation and gender identity discrimination are filed for every 10,000 LGBT employees each year; 4.9 complaints of race discrimination are filed for every 10,000 workers of color; and 3.7 complaints of sex discrimination filed for every 10,000 female workers.
- The adjusted rate for sexual orientation and gender identity complaints is similar to, although on average slightly higher than, the adjusted rate for sex discrimination complaints.
- The adjusted rate for sexual orientation and gender identity discrimination is similar to, though on average slightly lower than, the adjusted rate for race discrimination complaints.

Population-Adjusted Complaint Rates (per 10,000)



Population-adjusted complaint rates provide an important context in which to analyze the raw complaint data

Population-adjusted complaint rates provide the context in which we can effectively analyze discrimination complaint rates based on race, sex, and sexual orientation and gender identity. The raw data alone suggest that the number of sexual orientation discrimination complaints is small compared to large numbers of complaints based on race and sex. However, even the most disparate adjusted rates significantly decrease the differences suggested by the raw data.

For example, in California from 2008 through 2014, an average of 4,561 complaints of race discrimination and 8,250 complaints of sex discrimination were filed annually. By contrast, an average of 946 complaints of sexual orientation discrimination and gender identity discrimination were filed each year.

TABLE 1: Sex and Sexual Orientation & Gender Identity (Complaints Per 10,000 Workers)		
	Sexual Orientation & Gender Identity	Sex
Average	4.6	3.7
California	10.5	9.6
Colorado	4.7	2.3
Connecticut	6.3	5.4
DC	5.1	5.5
Hawai'i	3.0	3.9
Illinois	4.5	3.5
Maryland	2.2	1.1
Minnesota	1.6	0.8
New York	3.6	2.5
New Hampshire	5.4	3.1
Oregon	3.7	6.2
Rhode Island	4.7	4.7
Washington	1.9	1.9
Wisconsin	7.5	7.5

Those raw numbers suggest that sex discrimination complaints are filed almost nine times more often than sexual orientation and gender identity complaints, and race discrimination complaints are filed almost five times more often than sexual orientation and gender identity complaints. But the number of people of color in California's workforce (11,548,044 in 2014) is higher than the number of women (8,853,538 in 2014) and both populations are greater than the number of LGBT people in the state's workforce (944,559 in 2014). Once we adjust the data for the workforce population of each group, we are able to make more relevant comparisons. Adjusted rates show that annually, on average, 9.6 complaints of sex discrimination were filed per 10,000 female workers, 4.2 complaints of race discrimination were filed per 10,000 workers of color, and 10.5 sexual orientation and gender identity discrimination complaints were filed per 10,000 LGBT workers. Although a seemingly small number of sexual orientation and gender identity discrimination complaints were filed, they are actually filed by LGBT workers at a higher frequency than race discrimination complaints and sex discrimination complaints.

Sexual orientation and gender identity discrimination complaints are filed at a rate similar to, although on average slightly higher than, sex discrimination complaints

Table 1 compares the adjusted rate for sexual orientation and gender identity complaints with that for sex discrimination complaints in the 14 states for which data were collected. On a national level, the adjusted complaint rate for sexual orientation and gender identity is similar to, though on average slightly higher than, the adjusted complaint rate for sex discrimination complaints. In 11 states (California, Colorado, Connecticut, Illinois, Maryland, Minnesota, New Hampshire, New York, Rhode Island, Washington, and Wisconsin), sexual orientation and gender identity complaints were filed at a slightly higher rate than sex discrimination complaints. The disparities in filing rates in the remaining states are small, varying from approximately one to three more complaints of sex discrimination than sexual orientation and gender identity discrimination per 10,000 protected workers each year.

Sexual orientation and gender identity discrimination complaints are filed at a rate similar to, although on average slightly lower than, race complaints

Table 2 compares the adjusted rates for sexual orientation and gender identity complaints with that for race discrimination complaints in the 14 states for which data were collected. In eight states (California, Colorado, Hawaii, Maryland, New Hampshire, New York, Rhode Island, and Washington), sexual orientation and gender identity complaints were filed at a higher rate than race discrimination complaints. In two additional states, sexual orientation and gender identity discrimination complaints were filed at the same, or nearly the same, rate as race discrimination complaints (DC and Illinois). The disparities in filing rates in the remaining states varied from approximately one to eleven more complaints of race discrimination than sexual orientation and gender identity discrimination per 10,000 protected workers each year.

TABLE 2: Race and Sexual Orientation & Gender Identity (Complaints Per 10,000 Workers)

	Sexual Orientation & Gender Identity	Race
Average	4.6	4.9
California	10.5	4.2
Colorado	4.7	2.2
Connecticut	6.3	10.1
DC	5.1	5.1
Hawai'i	3.0	1.2
Illinois	4.5	4.4
Maryland	2.2	1.5
Minnesota	1.6	2.4
New York	3.6	2.3
New Hampshire	5.4	4.6
Oregon	3.7	6.1
Rhode Island	4.7	4.1
Washington	1.9	1.5
Wisconsin	7.5	19.0

Comparison of findings to previous reports

Our findings are consistent with findings of two previous studies which analyzed older data using a similar methodology, *Evidence of Employment Discrimination on the Basis of Sexual Orientation and Gender Identity: Complaints Filed with State Enforcement Agencies 1999-2007* (2008)⁷ and *Do Gay Rights Matter?: An Empirical Assessment* (2001).⁸

Our findings are more similar to the more recent (2008) study's findings. Our study and the 2008 study found that, nationally, race, sex, and sexual orientation and gender identity complaints are all filed at average rates of about 4 to 7 complaints per 10,000 protected workers each year. The sexual orientation and gender identity complaint rate found in the present study is nearly identical to the rate found in the 2008 study: 4.6 complaints per 10,000 LGBT workers in the present study compared to 4.7 complaints per 10,000 LGB workers in the 2008 study. The rates of sex discrimination complaints and race discrimination found in the present study are slightly lower than the rates found in the 2008 study: 3.7 complaints of sex discrimination per 10,000 female workers in the present study compared to 5.4 complaints in the 2008 study, and 4.9 complaints of race discrimination per 10,000 workers of color in the present study compared to 6.5 complaints in the 2008 study. All three studies found that race discrimination complaints are filed at the highest rates.

The findings of the present study are less similar to, but still consistent with, the findings of the 2001 study. Generally, the complaint rates found in the 2001 study, across all types of discrimination, were higher than the rates found in the present study as well as the 2008 study. The 2001 study calculated a range for the sexual orientation complaint rate because data available at that time did not allow for reliable estimates of the size of the LGBT workforce in each state. The range was from 3.4 complaints to 18.2 complaints per 10,000 LGB workers. Our finding on the sexual orientation complaint rate, along with that of the 2008 study, is at the low end of this range. The rate of sex discrimination complaints found in the present study was slightly lower than, but similar to, the rate found in the 2001 study (3.7 complaints per 10,000 female workers compared to 5.4 complaints). The rate of race discrimination complaints found in the 2001 study was approximately four times greater than the rate of race complaints found in the present study: 20.2 complaints per 10,000 workers of color in the 2001 study compared to 4.9 complaints per 10,000 workers in the present study.

Potential Impact of Complaints Alleging More than One Type of Discrimination

From the data provided by the agencies, we were unable to determine how many complaints alleged discrimination based on more than one of the studied characteristics. For example, we could not determine how many complaints of gender identity discrimination also alleged sex discrimination. In the data provided, complaints alleging more than one type of discrimination were considered separate complaints of each type of discrimination. Because there may be overlap in complaints alleging discrimination based on sexual orientation or gender identity and another characteristic protected under state law (such as race, sex, or disability), the addition of sexual orientation and gender identity to existing state non-discrimination laws may result in fewer new complaints filed with state agencies than our estimate suggests.

Limitations on the separate analysis of gender identity employment discrimination complaint rates

Various studies have found that transgender individuals experience substantially higher rates of employment discrimination than LGB people. However, due to inadequate data collection and recording methods, we were unable to analyze the rate of gender identity complaints filed by transgender employees separately. This is a result of most states combining data on sexual orientation and gender identity discrimination filings. Of the 14 states that provided data for this study, only three states (Colorado, DC, and Rhode Island) were able to provide separate data on gender identity complaints for at least three years. Additionally, there are no reliable data on the percentage of the workforce that identifies as transgender in each state, making it difficult to accurately estimate the underlying population numbers for a population-adjusted complaint rate. The omission of a separate analysis of gender identity discrimination complaints in this report indicates a need for further research on the transgender population.

Conclusion

When comparing population-adjusted rates for filing employment discrimination complaints with state enforcement agencies, we find that LGBT people file complaints of sexual orientation and gender identity discrimination at a rate similar to women filing sex discrimination complaints and people of color filing race discrimination complaints. At the national level, based on the states with available data, the average adjusted complaint rates for each type of discrimination are around 4 to 5 complaints per 10,000 protected workers per year. The findings of this report are consistent with earlier studies that applied a similar methodology to older data.

Endnotes

¹ These states are: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Washington, and Wisconsin. For purposes of this report, DC is considered a “state.”

² All states listed above except New Hampshire, New York, and Wisconsin.

³ CHRISTOPHER RAMOS, M.V. LEE BADGETT & BRAD SEARS, WILLIAMS INST., EVIDENCE OF EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY: COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES 1999-2007 (2008), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Ramos-Emply-Discrim-1999-2007-Nov-08.pdf>; William B. Rubenstein, *Do Gay Rights Laws Matter? An Empirical Assessment*, 75 S. Cal. L. Rev. (2007), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Rubenstein-Do-Gay-Rights-Laws-Matter-2001.pdf>.

⁴ Connecticut added gender identity protections to its non-discrimination law in 2011, but the Connecticut Commission on Human Rights and Opportunities did not begin reporting gender identity complaints until fiscal year 2013. H.B. 6599, 2011 Gen. Assem., Jan. Sess. (Conn. 2011). *Compare* CONN. COMM. ON HUM. RIGHTS AND OPPORTUNITIES, FISCAL YEAR JULY 1, 2011 TO JUNE 30, 2012: CASE PROCESSING REPORT, CUMULATIVE DATA (2012), *available at* http://www.ct.gov/chro/lib/chro/2011-2012_Finished.pdf to CONN. COMM. ON HUM. RIGHTS AND OPPORTUNITIES, FISCAL YEAR JULY 1, 2012 TO JUNE 30, 2013: CASE PROCESSING REPORT, CUMULATIVE DATA (2013), *available at* http://www.ct.gov/chro/lib/chro/2012-2013_Finished.pdf. Hawaii clarified that the sexual orientation provisions of the state’s non-discrimination law also prohibit discrimination based on gender identity. H.B. 546, 26th Leg., Reg. Sess. (Haw. 2011).

⁵ S.B. 212, 2014 Gen. Assem., Reg. Sess. (Md. 2014).

⁶ GARY J. GATES, WILLIAMS INST., HOW MANY PEOPLE ARE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER? 1 (2011), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

⁷ CHRISTOPHER RAMOS, M.V. LEE BADGETT & BRAD SEARS, WILLIAMS INST., EVIDENCE OF EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY: COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES 1999-2007 (2008), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Ramos-Emply-Discrim-1999-2007-Nov-08.pdf>.

⁸ William B. Rubenstein, *Do Gay Rights Laws Matter? An Empirical Assessment*, 75 S. Cal. L. Rev. (2007), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Rubenstein-Do-Gay-Rights-Laws-Matter-2001.pdf>.

Appendix

Sexual Orientation and Gender Identity, Race, and Sex Discrimination Complaints Filed with State Enforcement Agencies

California	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted Rate (per 10,000)
Sexual Orientation	821	807	717	727	880	1309	1360	946	10.5
Race	4208	3541	3668	3427	4030	6567	6488	4561	4.2
Sex	7151	7170	7156	7000	6966	11233	11074	8250	9.6

Source: California Department of Fair Employment and Housing

Colorado	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted Rate (per 10,000)
Sexual Orientation & Gender Identity	52	47	44	43	51	62	54	50	4.7
Race	220	166	192	140	129	139	153	163	2.2
Sex	332	316	261	230	304	297	316	294	2.3

Source: Colorado Civil Rights Division

Connecticut	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted Rate (per 10,000)
Sexual Orientation & Gender Identity	49	44	53	38	47	45	65	49	6.3
Race	544	490	517	564	541	534	538	533	10.1
Sex	551	516	483	518	437	479	544	504	5.4

Source: Connecticut Commission on Human Rights and Opportunities

DC	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted Rate (per 10,000)
Sexual Orientation & Gender Identity	30	25	22	18	15	19	22	22	5.1
Race	NA	104	109	79	63	63	103	201	5.1
Sex	NA	175	101	89	65	76	90	99	5.5

Source: District of Columbia Office of Human Rights

Hawaii	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation & Gender Identity	8	9	15	9	12	3	4	9	3.0
Race	59	66	62	75	60	61	57	63	1.2
Sex	139	137	125	87	92	154	146	126	3.9

Source: Hawaii Civil Rights Commission

Illinois	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation & Gender Identity	80	143	125	165	135	98	96	124	4.5
Race	1008	1138	1009	932	1025	906	851	981	4.4
Sex	1145	1259	1289	1095	1153	1017	913	1124	3.5

Source: Illinois Department of Human Rights

Maryland	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation	24	23	22	26	24	28	15	23	2.2
Race	241	237	193	161	230	222	174	208	1.5
Sex	199	173	188	144	169	201	111	169	1.1

Source: Maryland Commission on Human Relations

Minnesota	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation & Gender Identity	NA	NA	NA	6	5	6	2	5	1.6
Race	NA	NA	NA	10	22	14	7	13	2.4
Sex	NA	NA	NA	6	3	5	2	4	0.8

Source: Minnesota Department of Human Rights

New Hampshire	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation	7	4	8	12	9	11	4	8	3.6
Race	NA	NA	17	4	10	17	13	12	2.3
Sex	NA	NA	90	91	109	69	78	87	2.5

Source: New Hampshire Commission for Human Rights

New York	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation	263	227	247	234	215	228	204	231	3.6
Race	2252	2153	1191	1683	1871	1990	1734	1839	2.3
Sex	1666	1675	1624	1349	1460	1538	1281	1513	2.5

Source: New Hampshire Commission for Human Rights

Oregon	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation & Gender Identity	28	42	40	31	26	30	55	36	3.7
Race	301	190	263	255	197	231	255	242	6.1
Sex	623	551	616	577	599	521	554	577	6.2

Source: Oregon Civil Rights Division

Rhode Island	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation & Gender Identity	11	NA	7	NA	7	14	14	11	4.7
Race	50	NA	48	NA	37	64	51	50	4.1
Sex	84	NA	64	NA	51	102	103	81	2.9

Source: Rhode Island Commission for Human Rights

Washington	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation & Gender Identity	25	23	15	45	37	26	40	30	1.9
Race	158	129	67	242	112	109	103	131	1.5
Sex	208	199	111	246	147	172	172	179	1.1

Source: Washington Human Rights Commission

Wisconsin	2008	2009	2010	2011	2012	2013	2014	Annual Average	Population-Adjusted (per 10,000)
Sexual Orientation	57	69	82	59	69	63	54	65	7.5
Race	878	849	782	877	769	706	711	796	19.0
Sex	703	730	635	712	633	603	576	656	4.4

Source: Wisconsin Civil Rights Bureau