

# WHAT DOES THE EQUALITY ACT MEAN FOR BUSINESSES?

## Why is the Equality Act Essential?

Although marriage provides couples with the security and dignity of relationship recognition across the country, LGBTQ people remain vulnerable to discrimination on a daily basis and too often have little recourse. In many states, same-sex couples have the right to marry but have no explicit protection under state law in employment, housing, credit, or public accommodations. In reality, this means that a same-sex couple could legally marry one day and risk being fired from their job, evicted from their apartment, and denied service the next—simply because of who they are. The current patchwork of protections for LGBTQ people across the country is inadequate. LGBTQ people need explicit and equal protection against discrimination under federal law.

The Equality Act is also essential for the estimated 1.4 million LGBTQ business owners who deserve equal access to the American dream—especially those seeking equal access to credit. Having a level playing field to grow a business allows LGBTQ entrepreneurs to increase the over \$1.7 trillion of economic impact and tens of thousands of jobs they already inject into the US economy each year. An equal seat at the table will bring the nation in line with a long-held best practice of corporate America: treating every worker and business owner with equal dignity, respect, and opportunity to succeed as both an economic and moral imperative.

## Who is Protected Under the Employment Section of the Equality Act?

Title VII of the Civil Rights Act of 1964 currently prohibits discrimination in employment on the basis of race, color, religion, sex, and national origin. The Equality Act adds sexual orientation and gender identity explicitly to that list. It codifies the protection against discrimination on the basis of sex stereotyping detailed in *Price Waterhouse v. Hopkins*, a landmark Supreme Court case, as well as recent decisions by courts and the Equal Employment Opportunity Commission affirming workplace protections for LGBTQ people. The Act clarifies and confirms that discrimination based on sexual orientation or gender identity is a form of sex discrimination.

## How Will the Equality Act Impact My Equal Employment Obligations Under Title VII?

The Equality Act updates Title VII by explicitly including sexual orientation and gender identity as protected characteristics. This codifies the existing federal administrative policy and judicial precedent that discrimination against LGBTQ people in hiring, firing, and promotions is unlawful. It also confirms that LGBTQ people must have access to all federal remedies currently available under Title VII. This will not only protect LGBTQ people from discrimination, but it will also help eliminate uncertainty and confusion for businesses by providing employers and employees alike with clear rules that everyone knows and can follow.

## What Does this Mean for Bona Fide Occupational Qualifications?

The Equality Act does not alter the general reach and applicability of the bona fide occupational qualifications (BFOQ) defense. However, when a BFOQ is used to justify employment or training decisions on the basis of sex, individuals must be recognized as qualified in accordance with their gender identity. It is important to note that courts have deemed very few BFOQs to be permissible in practice.

## How Does the Equality Act Impact Sex Segregated Facilities?

Under the Equality Act companies with sex segregated facilities including restrooms and locker rooms must provide access to gender appropriate facilities for individuals in accordance with their gender identity.

## What Actions of an Employer are Covered Under the Equality Act?

The Equality Act adds explicit protections against sexual orientation and gender identity discrimination to Title VII. Therefore, the same standards under existing law apply to sexual orientation and gender identity discrimination. Current law applies to an employer's decisions regarding employment and employment opportunities, such as hiring, firing, promotion, training, or compensation and benefits. The Act requires that an individual's sexual orientation or gender identity may not be a factor in such decisions.

## How Would an Individual Prove Discrimination under the Equality Act?

The Equality Act makes clear that the same standards under existing law apply to sexual orientation and gender identity discrimination. Individuals claiming discrimination bear the burden of proving that discrimination based on sexual orientation or gender identity occurred and that they were otherwise qualified for the opportunity. The employer can present evidence to show the adverse action was taken because of some legitimate, non-discriminatory reason. For example, it is acceptable differential treatment for a company to refuse hire a lesbian who is a teenager for a full time position based on her age. However, it is impermissible discrimination for a company to refuse to hire a woman simply because she is married to another woman.

## Who is Protected in Public Spaces and Services Under the Comprehensive Bill?

The Equality Act adds discrimination on the basis of sex, sexual orientation, and gender identity to Title II of the 1964 Civil Rights Act. This would prohibit discrimination against LGBTQ people and women in places of public accommodation.

## Does the Equality Act Change What is Considered a “Public Accommodation?”

Yes. In addition to the places of public accommodation included in the original 1964 Civil Rights Act, the Equality Act includes providers of goods and services like stores, accountants, and banks as places of public accommodation. Transportation providers including trains, taxis, and airlines are also included within bill and are prohibited from discrimination as places of public accommodation. These revisions make the Equality Act more consistent with the Americans with Disabilities Act as well as many state public accommodation laws.