

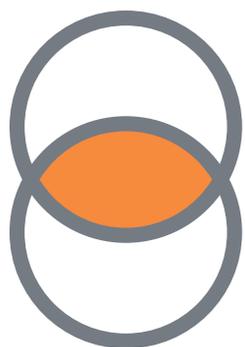


# ALABAMA LGBTQ FAMILY LAW

## A Resource Guide for LGBTQ-Headed Families

November 2016

Prepared by Family Equality Council in partnership  
with Birmingham AIDS Outreach



**FAMILY**  
**EQUALITY**  
**COUNCIL**



# TABLE OF CONTENTS

INTRODUCTION .....	2
RELATIONSHIP RECOGNITION .....	3
Federal Benefits After <i>United States v. Windsor</i> and <i>Obergefell v. Hodges</i> .....	3
Relationship Recognition Resources .....	4
CHILDREN AND PARENTAGE .....	5
Adoption.....	6
Joint Adoption.....	6
Second-Parent Adoption.....	6
Stepparent Adoption.....	8
Parental Presumption.....	8
Surrogacy.....	8
Assisted Reproduction .....	9
Birth Certificates.....	9
Applying for a Social Security Number and Card for a Child.....	10
Applying for a Passport for a Child .....	10
Documentation.....	11
NONDISCRIMINATION PROTECTIONS.....	12
Employment .....	12
Federal Law .....	12
Company Policies.....	13
Housing .....	14
Federal Law .....	14
Public Accommodations .....	15
Federal Law .....	15
SCHOOL POLICIES AND ANTI-BULLYING .....	16
State Law .....	16
Federal Law.....	16
HEALTHCARE.....	18
Federal Law .....	18
Healthcare Resources.....	19
HATE CRIMES PROTECTIONS.....	19
FAMILY AND/OR PARENTING LEAVE .....	20
NAME CHANGES .....	21
FAMILY SAFETY AND GUN LAWS .....	21
RECOMMENDED LEGAL DOCUMENTS FOR SAME-SEX COUPLES .....	23
Last Will and Testament .....	23
Advance Directive for Healthcare.....	23
Financial Power of Attorney.....	24
Co-Parenting Agreement.....	24

# INTRODUCTION

This guide was drafted by Family Equality Council, on behalf of Birmingham Aids Outreach. It addresses many of the legal rights and issues that affect LGBTQ families currently living in Alabama. As LGBTQ equality advances across the nation there are still significant gaps in the rights of LGBTQ individuals and their families, especially at the state level. Unfortunately, the climate in Alabama remains largely

hostile towards the LGBTQ community, despite recently gaining access to marriage equality. LGBTQ families are still denied equal access to education, employment, housing, healthcare, and public accommodations, without fear of discrimination. In this type of an environment it is important to understand the law in each area and how you can protect your family.

## DISCLAIMER

This information presented in this guide provides an overview of the current state of LGBTQ family law in Alabama, but should not be interpreted as legal advice. The law is changing quickly and dynamically so it is important to consult an attorney or contact the authors to discuss your particular circumstances and to ensure that information provided herein is still accurate.



# RELATIONSHIP RECOGNITION

In 1998, the State of Alabama passed the “Marriage Protection Act”, stating that marriage “is a sacred covenant, solemnized between a man and a woman,” that no marriage license would be issued to same sex couples, and that no marriage between same-sex couples performed elsewhere would be recognized. In 2006, the State of Alabama ratified Amendment 774 (Sanctity of Marriage Amendment) to amend the Alabama State Constitution to ban all legal recognition of marriage between same-sex couples and any non-marriage unions such as domestic partnerships and civil unions. This includes a same-sex marriage or domestic partnership entered into in another state that does recognize these unions.

Prior to the Supreme Court’s ruling in *Obergefell v. Hodges* on June 26, 2015, which recognized same-sex marriage for all U.S. states and territories<sup>1</sup>, the U.S. District Court for the Southern District of Alabama ruled on January 23, 2015 that the Marriage Amendment and the Marriage Protection Act are unconstitutional because they violate the Due Process and Equal Protection clauses of the Fourteenth Amendment to the U.S. Constitution.<sup>2</sup> Following *Obergefell*, Alabama and all other states must grant marriage licenses to same-sex couples and must also recognize same-sex marriages performed in other states.

1 *Obergefell v. Hodges*, 135 S. Ct. 2584, (U.S. 2015)

2 *Searcy v. Strange* (S.D. Ala. Jan. 23, 2015)

## Federal Benefits After *United States v. Windsor* and *Obergefell v. Hodges*

In 2013, the United States Supreme Court, in *United States v. Windsor*<sup>3</sup>, found that Section 3 of the federal “Defense of Marriage Act” (DOMA), the law that denied federal marriage benefits to married same-sex couples, was unconstitutional. In 2015, the Supreme Court found in *Obergefell v. Hodges* that same-sex couples have a fundamental right to marry under the U.S. Constitution, creating same-sex marriage and recognition of same-sex marriages nationwide.

Because of the 2013 *Windsor* decision, married same-sex couples who live in Alabama are recognized by the federal government for federal benefits purposes. Such benefits include, but are not limited to, Social Security and Veterans Administration benefits, all federal tax purposes, health insurance and retirement benefits for same-sex spouses of all federal employees, and spousal benefits for same-sex spouses of military service members.

Following *Obergefell*, all federal marriage benefits have been extended to married same-sex couples nationwide.

While many federal benefits are available only to legally married spouses, one federal benefit is available only to unmarried partners. The Federal Adoption Tax Credit (\$13,460 per child in 2016) is not available if

3 *United States v. Windsor*, 133 S. Ct. 2675 (2013)

Find more information at:

[www.familyequality.org](http://www.familyequality.org)

[www.birminghamaidsoutreach.org](http://www.birminghamaidsoutreach.org)

**ALABAMA LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

“a taxpayer pays to adopt the child of the taxpayer’s spouse,” which is often the case in a second-parent adoption. Therefore, some couples choose not to marry until after their second-parent adoption.

For more information about how to access federal marriage benefits please see the Post-DOMA Fact Sheets published by Family Equality Council:  
[http://www.familyequality.org/get\\_informed/advocacy/after\\_dom/](http://www.familyequality.org/get_informed/advocacy/after_dom/)

## Relationship Recognition Resources

For more information about the Federal Adoption Tax Credit, see:  
<https://www.irs.gov/taxtopics/tc607.html>

### IMPORTANT:

It should be noted that some federal benefits are available to married couples **ONLY**. Unmarried couples are unable to access spousal benefits from these programs. However, because same-sex marriage is now recognized nationwide, married couples living in Alabama should be able to access federal benefits provided by these federal agencies, as well as any others. Please alert the authors if you find such benefits have been denied to you, as a result of the agency failing to recognize your marriage.



# CHILDREN AND PARENTAGE

LGBTQ people and same-sex couples form families in various ways. Some have children from prior different-sex or same-sex relationships. Some LGBTQ people are single parents by choice. Some same-sex couples adopt or use assisted reproductive technologies to build their families together. At present, Alabama law has not accounted for these changes in what families look like, which leaves many families vulnerable. While spousal rights certainly accompany marriage, it is currently unclear which, if any, parentage rights flow directly from the marriage relationship.

Many of Alabama's laws dealing with parentage reference married couples in explicitly gendered terms like "husband", "wife", "mother," and "father." With the arrival of marriage equality for same-sex couples, the state of Alabama should now interpret these statutory provisions in a gender neutral manner (i.e. "spouse" and "parent"), but it is not yet clear if that will be the case.

Alabama's rules involving the interpretation of a law require that when the "plain language" of the law contradicts constitutional principles (as the marriage ban contradicted the principle of equal protection of the laws), and if there is a reasonable way to interpret the law so that it is constitutional, then the state must interpret the law in that way. This may have to be resolved through litigation and court action, however.

If you are unsure where to find an experienced LGBTQ family law attorney, please contact the authors:

## **Birmingham AIDS Outreach**

Phone: (205) 322-4197

Website:

[www.birminghamaidsoutreach.org](http://www.birminghamaidsoutreach.org)

## **Family Equality Council**

Phone: (617) 502-8700

Email: [info@familyequality.org](mailto:info@familyequality.org)

Website: [www.familyequality.org](http://www.familyequality.org)

Please consult an attorney experienced in LGBTQ law, or the authors, if you experience discrimination from state agencies in recognizing your family relationships on the basis of your same-sex marriage.

Likewise, if you are an LGBTQ person or same-sex couple thinking about fostering and/or adopting children either from the public child welfare system (foster care) or through private adoption, it is critical that you hire an adoption attorney who is experienced in LGBTQ family law in Alabama.

It is not enough to simply hire an experienced family law attorney. There are issues unique to LGBTQ family law in Alabama that can, and should, only be managed by an attorney with particular experience and expertise in this area of the law.

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[www.birminghamaidsoutreach.org](http://www.birminghamaidsoutreach.org)

**ALABAMA LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

## ADOPTION

Alabama has a long history of being hostile to adoption by LGBTQ people. In 1998, the Alabama legislature passed a non-binding Joint Resolution, HJR 35, approved by the Governor, which was “An Act expressing legislative intent to prohibit adoptions by homosexual couples.”<sup>4</sup> After marriage equality became the law of the land, legislation was introduced in 2016 that would allow child care service providers (foster care and adoption agencies) to discriminate against LGBTQ couples based on religious belief. That bill was defeated.

Alabama adoption law states that, “any adult person or husband and wife jointly who are adults may petition the court to adopt a minor”<sup>5</sup>. While there is no language in the law that explicitly prohibits LGBTQ people and married same-sex couples from adopting, there is also nothing in the law that prohibits adoption agencies from discriminating against prospective foster or adoptive parents simply because they are LGBTQ.

### Joint Adoption

As stated above, according to state law, a “...husband and wife jointly who are adults may petition the court to adopt a minor.” With the arrival of nationwide marriage equality, it is currently unclear how the state of Alabama’s adoption statutes will be interpreted given the specificity of the language “husband and wife.” Married

4 1998 Al. ALS 439, 1998 Ala. Acts 439, 1998 Al. Pub. Act 439, 1998 Al. HJR 35

5 Code of Ala. § 26-10A-5: Who May Adopt

same-sex couples *should* be treated equally to married different-sex couples. In this case, a reasonable way to interpret the language of Alabama’s adoption statute is: “a married couple who are adults may petition the court to adopt a minor.” Again, please consult an attorney experienced in LGBTQ family law in Alabama if you are considering adoption.

While it is critical to hire an adoption attorney who is experienced in LGBTQ family law in Alabama, it is equally important to engage with foster and adoption agencies who are welcoming and affirming to LGBTQ people and same-sex couples. Please research adoption agencies and service providers before engaging in the foster care and/or adoption process.

### Second-Parent Adoption

Second-parent adoption is the adoption of a child by an additional parent in the home who is not married to the legal parent of the child, and to whom the child shares no legal or biological relationship. A second-parent adoption allows a non-legal parent to adopt a child without the legal parent losing any parental rights. While there is no law that explicitly prohibits second-parent adoption, they are currently unavailable in Alabama.

In 2016, the United States Supreme Court determined that other jurisdictions – explicitly Alabama – must recognize a same-sex second-parent adoption validly granted in Georgia. In *V.L. v. E. L.*, the plaintiff and the defendant were a former lesbian couple. The defendant had given

An adoption decree is the single best irrefutable and undeniable proof of parentage. We strongly recommend that married same-sex couples with children ALWAYS complete a stepparent adoption.

birth to three children and the plaintiff adopted them through a second parent adoption with a formal adoption decree from the state of Georgia. The couple relocated to Alabama and split up, at which point the defendant restricted the plaintiff's access to the children. The Supreme Court of Alabama sided with defendant, declaring the Georgia adoption decree void. However, the United States

Supreme Court unanimously reversed that decision, determining that the adoption is valid.<sup>6</sup> The U.S. Supreme Court's decision was based on the fact that the full faith and credit clause of the U.S. Constitution requires each State to recognize valid judgments (orders) rendered by the courts in other states.

<sup>6</sup> V.L. v. E.L., 136 S. Ct. 1017 (U.S. 2016)



Find more information at:  
[www.familyequality.org](http://www.familyequality.org)  
[www.birminghamaidsouthreach.org](http://www.birminghamaidsouthreach.org)

**ALABAMA LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

## Stepparent Adoption

Stepparent adoption is the legal adoption of a child by the spouse of the child's legal parent. Alabama law states that, "Any person may adopt his or her spouse's child according to the provisions of this chapter..."<sup>7</sup> There is nothing in Alabama's stepparent adoption statute that would prohibit a same-sex spouse from completing a stepparent adoption of their spouse's child. Consent to the adoption is required by:

- the adoptee, if 14 years of age or older, except where the court finds that the adoptee does not have the mental capacity to give consent;
- the adoptee's mother; and
- the adoptee's presumed father.<sup>8</sup>

## Parental Presumption

The Alabama Uniform Parentage Act has a provision called "Presumption of Paternity" which states that a man is presumed to be the natural father to a child if he and the child's mother were married when the child was born.<sup>9</sup>

This "parental presumption" exists in most states and in many states where same-sex couples can marry, the parental presumption applies equally to married same-sex and different-sex couples. For example, in Maryland, if one spouse in a lesbian marriage gives birth to a child then the non-birth spouse is considered the second legal parent to the child. The

<sup>7</sup> Code of Ala. § 26-10A-27: Stepparent Adoptions

<sup>8</sup> Ala. Code § 26-10A-7

<sup>9</sup> Code of Ala. § 26-17-204: Presumption of Paternity

non-birth parent's name is placed on the birth certificate and all rights and responsibilities of parentage apply.

It is unclear at this time whether Alabama's "Presumption of Paternity" will be interpreted using gender-neutral language to apply to married same-sex couples. In other states, where the state government has failed to recognize the parental presumption, courts have required them to do so.<sup>10</sup>

## SURROGACY

Alabama law is silent on the issue of surrogacy. At least one state court has acknowledged the parental rights of the intended (i.e. the non-birth) parents in a surrogacy arrangement because the court believed that result would be in the "best interests" of the child, a legal standard commonly used in custody and family law cases.

Surrogacy law in Alabama is far from settled and is even more tenuous with regard to same-sex couples. But because there is no outright prohibition on surrogacy, there are a number of surrogacy services operating within the state.

<sup>10</sup> See e.g.: *Miller-Jenkins v. Miller-Jenkins*, 2006 VT 78, 180 Vt. 441, 912 A.2d 951 (2006); *Hunter v. Rose*, 463 Mass. 488, 975 N.E.2d 857 (2012); *Wendy G-M. v. Erin G-M.*, 2014 NY Slip Op 24122, 45 Misc. 3d 574, 985 N.Y.S.2d 845 (Sup. Ct.); *Barse v. Pasternak*, No. HHBFA124030541S, 2015 Conn. Super. LEXIS 142 (Super. Ct. Jan. 16, 2015); *McLaughlin v. Jones*, No. 2 CA-SA 2016-0035, 2016 Ariz. App. LEXIS 256 (Ct. App. Oct. 11, 2016)

With little to no regulation on the industry, however, it is critical that LGBTQ people and same-sex couples engaging in a surrogacy arrangement do so with the assistance of an experienced family law attorney well-versed in LGBTQ surrogacy and family law issues in Alabama.

## ASSISTED REPRODUCTION

The Alabama Uniform Parentage Act provides that “a donor who donates to a licensed physician for use by a married woman is not a parent of a child conceived by means of assisted reproduction. A married couple who, under the supervision of a licensed physician, engage in assisted reproduction through use of donated eggs, sperm, or both, will be treated at law as if they are the sole natural and legal parents of a child conceived thereby.”<sup>11</sup> This provision, referencing married “couples” and the donation of “eggs, sperm, or both” clearly covers lesbian couples who form their families using donated sperm, as long as it is under the supervision of a licensed physician.

Although the above law would give a married lesbian couple full legal status as “sole natural and legal parents” within the State of Alabama, it is not certain that other states would recognize that relationship. Consequently, because an adoption decree is irrefutable proof of parentage and valid everywhere in this country, we strongly recommend that any married same-sex couples using assisted reproduction to

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<sup>11</sup> Code of Ala. § 26-17-702: Parental Status of Donor

have children complete a stepparent adoption as soon as possible.

## BIRTH CERTIFICATES

Alabama law states that for the purposes of the birth certificate, the mother is deemed to be the woman who gives birth to the child, unless otherwise determined by law, and if the mother was married at the time of either conception or birth, the name of the “husband” shall be entered on the birth certificate.<sup>12</sup> Because the law is unsettled with regard to the parental presumption, it also remains unsettled with regard to issuance of birth certificates to children born to married same-sex couples.

The law regarding issuance of new birth certificates after an adoption, however, is unambiguous. The statutory language uses gender neutral terminology and therefore clearly allows for two same-sex parents to be listed. As stated above, whenever possible, we strongly urge married same-sex couples to complete a stepparent adoption to ensure irrefutable recognition of both parents’ rights and responsibilities to the child.

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<sup>12</sup> Code of Ala. § 22-9A-7: Birth Certificates

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.birminghamaidsoutreach.org](http://www.birminghamaidsoutreach.org)

**ALABAMA LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

## APPLYING FOR A SOCIAL SECURITY NUMBER AND CARD FOR A CHILD

To apply for a Social Security Number and Card for your child, you will need to provide your local Social Security Administration (SSA) office with a number of different documents, personal information about you, your child, and any other legal parent to the child, and a completed SS-5 application form.

You can apply at this link from the SSA website:  
<http://www.ssa.gov/pubs/EN-05-10023.pdf>

You can provide SSA with these documents via letter or in person by visiting your local SSA office:  
<https://secure.ssa.gov/apps6z/FOLO/fo001.jsp>

Two same-sex parents may be listed on the application for a Social Security Card or Number. However, only parents listed on the child's birth certificate, or on a court-ordered adoption decree, are permitted to be included on the application.

For more information on the application process, please see Family Equality Council's FAQ:  
[http://www.familyequality.org/get\\_informed/advocacy/know\\_your\\_rights/ssa\\_faqs/](http://www.familyequality.org/get_informed/advocacy/know_your_rights/ssa_faqs/)

You can also contact the SSA at 1-800-722-1213 or 1-800-325-0778 or visit the SSA website:  
<http://www.socialsecurity.gov>

If you have difficulty obtaining a Social Security Card or Number for your child, please contact the authors for assistance.

## APPLYING FOR A PASSPORT FOR A CHILD

To apply for a passport for your child, you must provide the State Department with documentary evidence, a completed DS-11 form, a photograph of the child, and personal information about you, your child, and the child's other legal parent. You must provide these documents to the State Department in person at the nearest accepted facility or regional passport agency, listed here:  
<http://iafdb.travel.state.gov/>

The materials you must provide are listed here:  
<http://travel.state.gov/content/passports/english/passports/under-16/under-162.html>

Two same-sex parents may be listed on the application for a child's passport. However, only parents listed on the child's birth certificate, or on a court-ordered adoption decree, are permitted to be included on the application. However, if the adoptive (or legal) parent of the child is unavailable, the Department of State permits a non-adoptive parent who stands in loco parentis

to the child to complete the DS-11 form and application. In loco parentis means an adult with day-to-day responsibilities to care for and financially support a child, but with whom the child does not have a biological or legal relationship.

If you have questions about the application process, acceptable materials, or how to best proceed with your child's passport application, you can contact the National Passport Information Center at 1-877-487-2778. You can also visit the State Department website here: <http://travel.state.gov/>

This information and more is located in our FAQ on applying for a U.S. passport for your child, located here: [http://www.familyequality.org/get\\_informed/advocacy/know\\_your\\_rights/passport\\_faq/](http://www.familyequality.org/get_informed/advocacy/know_your_rights/passport_faq/)

If you have difficulty obtaining a passport for your child, please contact the authors for assistance.

## DOCUMENTATION

If you and your spouse/partner are raising children together in Alabama we recommend keeping copies of the following documents easily accessible:

- Adoption decree
- Birth certificate
- Guardianship agreement
- Co-parenting agreement
- Marriage License
- Medical Powers of Attorney



Find more information at:  
[www.familyequality.org](http://www.familyequality.org)  
[www.birminghamaidsoutreach.org](http://www.birminghamaidsoutreach.org)

# NONDISCRIMINATION PROTECTIONS

There are currently no federal laws that explicitly prohibit discrimination of LGBTQ people in employment, housing, and public accommodations. Existing federal civil rights laws have been interpreted to provide some limited protections in housing, employment, education and even in health care, but without explicit and fully inclusive federal protections against discrimination based on sexual orientation and gender identity, LGBTQ people and our families remain vulnerable under the law.

Alabama provides no statewide protections in any of these areas, which means that state law does not protect LGBTQ people from being fired, denied housing, refused service in a restaurant, or bullied at school simply because they are LGBTQ. Again, in some instances (explained in detail below), federal law and policy may nevertheless provide protections for LGBTQ Alabamians from discrimination.

Furthermore, Alabama is a “Dillon’s Rule” state which means that municipal and county governments are prohibited from acting unless affirmatively granted the power to do so by the State.<sup>13</sup> Dillon’s Rule prohibits local governments from enacting ordinances that would provide nondiscrimination protections for LGBTQ people that go beyond those provided by the State – so local municipalities throughout Alabama are prevented from passing any LGBTQ nondiscrimination protections to protect their residents.

<sup>13</sup> Alabama Const. Art. IV, Sec. 44

## EMPLOYMENT

Alabama state law does not protect LGBTQ people from discrimination based on sexual orientation or gender identity in the workplace. Even with the arrival of marriage equality, LGBTQ people are at risk and the simple act of filing an amended W-4 with your employer could inadvertently out you, leading to discrimination in the workplace or the loss of a job.

### Federal Law

While there is no explicit federal law that bars discrimination against LGBTQ people in the workplace, the definition of “sex” in Title VII of the Civil Rights Act of 1964 has been interpreted to provide employment protections for LGBTQ people in limited circumstances. The Equal Employment Opportunity Commission (EEOC) hears and investigates complaints of employment discrimination under Title VII, and looks into claims against all private employers, state and local governments, federal government agencies, employment agencies, and labor unions, as long as they have fifteen or more employees or members.

In 2012, in *Macy v. Holder*, the EEOC ruled that discrimination against a transgender woman was within Title VII’s prohibition on discrimination based on sex. In *Veretto v. U.S. Postal Service* and *Castello v. U.S. Postal Service*, the EEOC held that employment

discrimination on the basis of sexual orientation violated prohibitions on sex-discrimination because it constituted discrimination based on sex-stereotypes. These EEOC decisions suggest that LGBTQ individuals are protected under Title VII, and may file a claim of employment discrimination utilizing the law's inclusion of "sex" as a protected class. Most recently, the EEOC strengthened the protections for those who may face discrimination on the basis of sexual orientation by ruling in *Complainant v. Foxx*<sup>14</sup> that claims of discrimination based on sexual orientation inherently amount to claims of sex discrimination and are therefore actionable under Title VII.

If you believe that you have been the victim of discrimination in hiring or in the workplace based on your sexual orientation or gender identity, you must file a Charge of Discrimination with your local EEOC office before you can file a law suit in court alleging discrimination. The EEOC office serving Alabama is located in Birmingham, AL, and can be reached at 1-800-669-4000.

In filing a complaint with the EEOC, you must list the basis for your claim as discrimination on the basis of your "sex." Generally, you must file your Charge of Discrimination within 180 days of each instance of discriminatory treatment. You can read more about the EEOC process, and your rights and responsibilities after filing a claim with the EEOC, here: <http://www.eeoc.gov/employees/charge.cfm>

<sup>14</sup> No. 0120133080, 2015 WL 4397641 (E.E.O.C July 16, 2015)

Do note that federal employees and job applicants are subject to a different timeline for making a claim (typically 45 days) and procedures for filing, which you can read about here:

[http://www.eeoc.gov/federal/fed\\_employees/complaint\\_overview.cfm](http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm)

Alabamians working for companies that contract with the federal government have access to additional protections against discrimination in employment. These protections stem from a 2014 Executive Order issued by President Obama, prohibiting federal contractors from discriminating against current or prospective employees on the basis of sexual orientation or gender identity.

Contractors who do business with the federal government employ 20% of American workers, all of whom are now covered by non-discrimination protections. If you believe that you have been the victim of discrimination by an employer that contracts with the federal government, you can file a complaint and learn more about the complaint process here:

<http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm>

## Company Policies

Many employers, especially ones that operate in multiple states, have enacted their own internal nondiscrimination policies that prohibit discrimination against LGBTQ employees. While these policies may not be legally binding, they can often give an employee some recourse where there would otherwise be none. A

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**ALABAMA LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

company's nondiscrimination policy should be available in the company's employee handbook or through the human resources department. You should therefore familiarize yourself with your employer's own human resources policies to see if they cover discrimination against LGBTQ employees.

In every case, if you believe that you have been the victim of discrimination on the basis of your sexual orientation or gender identity you should contact an attorney familiar with LGBTQ employment law.

## HOUSING

There are currently no express prohibitions in the Alabama Housing Code that prohibit discrimination against LGBTQ people. The code does, however, prohibit discrimination on the basis of sex. As described above, in the EEOC employment discrimination cases, it is currently being argued that prohibition on discrimination of sex includes LGBTQ individuals, because of "sex-stereotyping".

There is little history on how judges within Alabama have addressed such claims of discrimination but nationally

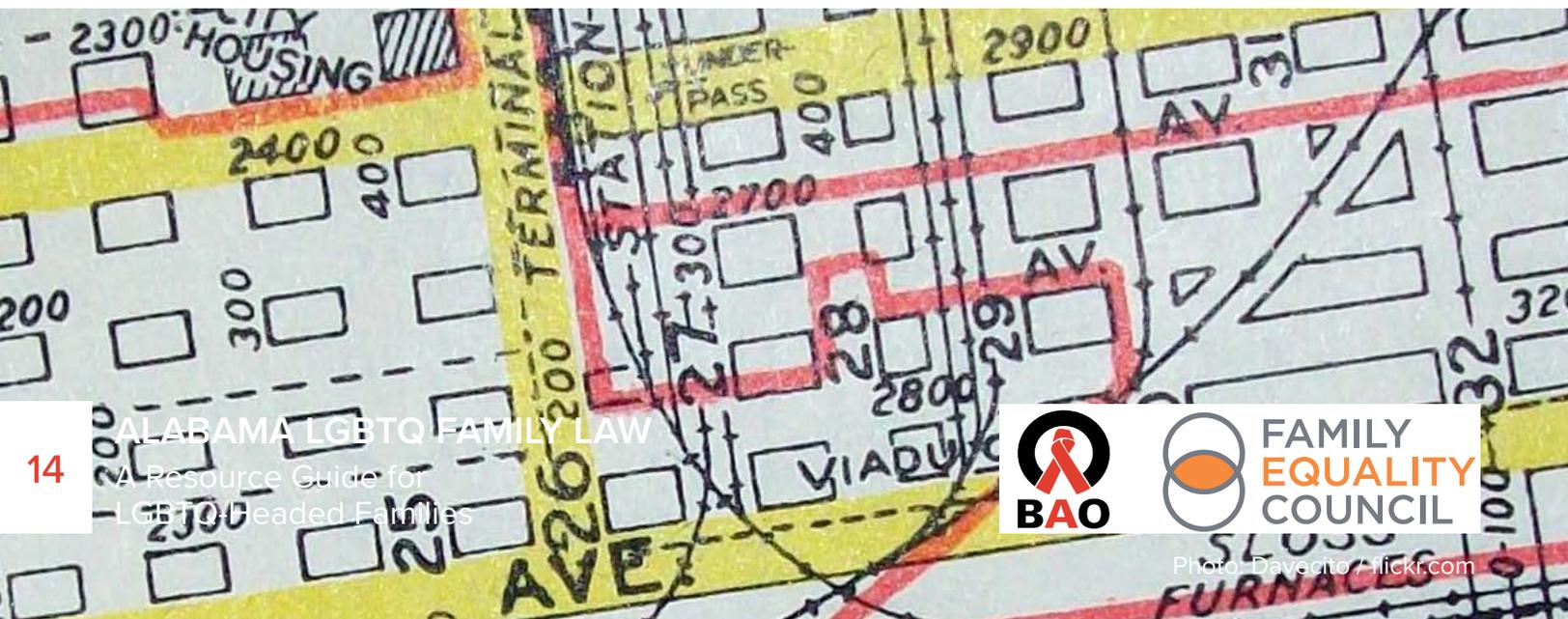
there has been increasing recognition that discrimination of LGBTQ people qualifies as sex discrimination. As such, if you have been denied housing because of your sexual orientation or gender identity, you should file a claim with the municipal housing authority.

## Federal Law

The federal Fair Housing Act was enacted as Title VIII of the Civil Rights Act of 1968 and is enforced by the Department of Housing and Urban Development (HUD).<sup>15</sup> The Act does not explicitly prohibit discrimination against LGBTQ people and their families. However, an LGBTQ person experiencing discrimination on the basis of sexual orientation or gender identity may still be covered by the Fair Housing Act on the basis of such discrimination constituting discrimination on the basis of "sex," similar to the employment context.

In 2012, HUD issued the "Equal Access Rule," which prohibits discrimination on the basis of sexual orientation or gender identity by any housing or service provider that receives funding or insurance from HUD. It also prohibits lenders from determining a borrower's eligibility for Fair

15 V.T.C.A., Housing Code § 301.021



Housing Act (FHA) insurance on the basis of sexual orientation or gender identity. For example, any landlord receiving funding through the Department of Housing and Urban Development (HUD) is prohibited from refusing to rent, offering unequal and inflated rental prices, or mistreating potential renters based on their sexual orientation, gender identity, or HIV/AIDS status. Further, any lender or operator of HUD-assisted housing is prohibited from inquiring as to the sexual orientation or gender identity of an applicant, and is barred from using such criteria in assessing an application.<sup>16</sup> A violation of this rule may result in HUD pursuing a number of remedies, including sanctions against the violator.

HUD allows individuals to submit housing discrimination complaints by telephone (1-800-669-9777), or online at:  
[http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_discrimination](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination)

Complaints may also be submitted by mail to the HUD Office of Fair Housing and Equal Opportunity Alabama Field Office, located at 950 North 22nd St, Birmingham, AL 35203. To learn more about filing a complaint, as well as details regarding taking your claim to court, please read this page:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/complaint-process](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/complaint-process)

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<sup>16</sup> Equal Access in HUD Programs – Regardless of Sexual Orientation or Gender Identity, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=5359-F-02EqAccessFinalRule.pdf>

## PUBLIC ACCOMMODATIONS

Public accommodations are generally defined as entities, both public and private, that are used by the public. Examples include retail stores, restaurants, educational institutions, recreational facilities, etc. Private clubs and religious institutions are generally exempt from the definition.

Alabama law does not protect LGBTQ people from discrimination in places of public accommodation.

### Federal Law

Federal public accommodations protection provisions can be found in Title II of the Civil Rights Act of 1964 and Title III of the Americans with Disabilities Act of 1990. Unfortunately, neither contains protections on the basis of sexual orientation or gender identity. However, in 1998, the Supreme Court ruled that being HIV positive is a physical disability covered by the Americans with Disabilities Act, even if the infection has not yet progressed to the symptomatic phase.<sup>17</sup> Businesses that hold themselves open to the public (restaurants, stores, hotels, etc.) are therefore prohibited from refusing service or business to individuals because they are HIV positive.

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<sup>17</sup> *Bragdon v. Abbott*, 524 U.S. 624 (U.S. 1998)

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
[www.birminghamaidsoutreach.org](http://www.birminghamaidsoutreach.org)

# SCHOOL POLICIES AND ANTI-BULLYING

## STATE LAW

Although Alabama has enacted state-level anti-bullying policies these policies do not enumerate the bases on which bullying is prohibited, specifically failing to mandate that schools recognize harassment of an LGBTQ student for his or her sexual orientation, or the sexual orientation of his or parents, as bullying. Alabama has not passed any laws that specifically prohibit discrimination based on sexual orientation or gender identity in public state schools.

In addition, Alabama sex education teachers are instructed by law to discourage homosexuality. Alabama law states that:

*“(c) Course materials and instruction that relate to sexual education or sexually transmitted diseases should include all of the following elements: ... (8) An emphasis, in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under the laws of the state.”<sup>18</sup>*

It should be noted that, following the U.S. Supreme Court’s ruling in *Lawrence v. Texas*, in 2003, the State of Alabama has ruled its statute criminalizing homosexual conduct unconstitutional.<sup>19</sup>

<sup>18</sup> Ala. Code § 16-40A-2

<sup>19</sup> *Williams v. State*, 184 So. 3d 1064 (Ala. Crim. App. 2015)

Because school district policies are determined at the local level, there can be wide variations on how proactive and protective a school is towards bullying and LGBTQ students, or students with LGBTQ parents. It can therefore be helpful and important to find out what the school district’s policies and history on the issue are.

## FEDERAL LAW

While Alabama state law fails to provide comprehensive protections for LGBTQ students, federal law – specifically Title IX of the United States Education Amendments of 1972 – does provide some protections and support to students facing bullying or discrimination based on their sexual orientation or gender identity. Title IX specifically prohibits discrimination against students in schools and other programs that receive federal funding, where that discrimination is based on a student’s sex or gender.

While Title IX does not explicitly include sexual orientation or gender identity as bases for a claim of discrimination, the law has been applied to prohibit discrimination where a student is mistreated for being sex or gender non-conforming – meaning the student faces discrimination because of his or her failure to meet the stereotypical notions of femininity or masculinity.

On these grounds, the Department of Education has specifically stated that transgender students are protected by Title IX, and lesbian, gay, and bisexual students have successfully filed claims of discrimination under Title IX.

If you believe that you or another person have been the victim of sexual orientation or gender identity discrimination in a program or activity that receives funding from the Department of Education (such as a public school, a publicly-run sports team or program, public afterschool programming, etc.), you can file a complaint with the Alabama Department of Education Office of Civil Rights (OCR) located in Atlanta, GA. (Tel. 404-974-9406).

You must file within 180 days of the last instance of discrimination, and you may file a complaint on behalf of yourself, a group, or another person facing discrimination. Since Title IX does not explicitly cover sexual orientation or gender identity, your complaint must list “sex” as the basis (or one of the bases) of your claim.

You can find more details on drafting a complaint, as well as an electronic complaint form, at the OCR website, located here:

<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>



Find more information at:

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**ALABAMA LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

## FEDERAL LAW

Each year, the federal government opens enrollment for individual and family healthcare coverage under the Affordable Care Act (ACA). Typically, enrollment for the following year opens in mid-November and closes mid-February of the following year – although you may be able to enroll for a given year at another time if you experience a life event that qualifies you for an ACA special enrollment period. For detailed information about plans, special enrollment periods, or to find out where and how to enroll, select your state of residence at the federal healthcare website: <http://www.healthcare.gov>

Under the ACA, insurers and marketplace navigators – the people whose job it is to help you select an insurance plan that best matches the needs of you and your family – are prohibited from discriminating against consumers based on their sexual orientation or gender identity, or the sexual orientation or gender identity of a family member. In many states, LGBTQ-headed families are eligible to enroll in family plans; in the few states that do not offer this option, federal tax credits are available to help cover the cost of purchasing multiple plans.

Under the ACA, no individual or family may be denied coverage because of a pre-existing condition. This includes a current or history of chronic illness or disease, HIV status, receiving or having received

transgender-related care, or a prior pregnancy. However, it is important to note that, despite the fact that the ACA prohibits insurance providers from discriminating against individuals and families by denying them the ability to obtain healthcare coverage, the ACA does not mandate that insurance plans offer coverage that is inclusive of the many needs of LGBTQ individuals and families. For example, the ACA does not require insurers to cover transgender-related care, or treatment for HIV and AIDS.

While insurers are not required to cover these treatments, they may offer plans that do so; we encourage you to speak with a navigator and investigate plans thoroughly to find the option that works best for you and your family. Further, definitions of “family” may be too narrow to include many dependents in an LGBTQ family structure, given the myriad LGBTQ family structures that exist.

The ACA prohibits discrimination based on sex in all health programs and activities receiving Federal financial assistance.<sup>20</sup> It prohibits discrimination based upon gender identity, requiring that any healthcare provider receiving federal funding, (such as Medicaid or Medicare), any health program administered by the federal government, and any health insurance marketplace, must treat individuals consistent with their

<sup>20</sup> <http://www.hhs.gov/sites/default/files/1557-summary-508.pdf>

gender identity.<sup>21</sup> It also clearly prohibits discrimination based on sex stereotyping, providing potential protections to lesbian, gay, and bisexual people.

## Healthcare Resources

For more information on how the Affordable Care Act and the insurance marketplaces benefit LGBTQ-headed families, see Family Equality Council's resource guide *The Affordable Care Act and LGBT Families: Everything You Need to Know*:

<http://www.familyequality.org/get>

<sup>21</sup> <http://www.hhs.gov/sites/default/files/1557-summary-508.pdf>

[informed/advocacy/know\\_your\\_rights/affordable\\_care\\_act\\_guide/](http://www.familyequality.org/informed/advocacy/know_your_rights/affordable_care_act_guide/)

You can also access additional LGBTQ-specific guidance and plan information at *Where to Start, What to Ask: A Guide for LGBT People Choosing Health Care Plans*: <http://www.familyequality.org/asset/70kgjf/Where-to-start-what-to-ask.pdf>

The healthcare advocacy organization Out2Enroll also offers many valuable resources:

<http://www.out2enroll.org>

## HATE CRIMES PROTECTIONS

Alabama state law does not define a crime motivated by homophobia or transphobia as a hate crime. However, in 2009, Congress enacted the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which expands federal hate crimes to LGBTQ people.

The law allows Federal law enforcement agencies, such as the FBI, to investigate and prosecute hate crimes against LGBTQ individuals when local or state authorities fail to act. If you or your family has been the victim of a hate crime you should report the crime both to the local authorities and the FBI. The FBI maintains field offices in Mobile and Birmingham, Alabama:

### **FBI Birmingham**

1000 18th Street North  
Birmingham, AL 35203  
Phone: (205) 326-6166  
Fax: (205) 279-1590  
E-mail: [birmingham@ic.fbi.gov](mailto:birmingham@ic.fbi.gov)

### **FBI Mobile**

200 North Royal St,  
Mobile, AL 36602  
Phone: (251) 438-3674  
Fax: (251) 415-3235

Find more information at:

[www.familyequality.org](http://www.familyequality.org)

[www.birminghamaidsoutreach.org](http://www.birminghamaidsoutreach.org)

**ALABAMA LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

# FAMILY AND/OR PARENTING LEAVE

Alabama does not require employers to provide paid family leave. However, the federal Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Eligible employees are entitled to up to 12 unpaid work weeks of leave in a 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- the care of the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job; and
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty or call to covered active duty status.<sup>22</sup>

The Act also entitles eligible employees to 26 work weeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

In 2010, the Department of Labor issued a clarification of the definition of "son or daughter" to include anyone who has day-to-day responsibility for a child, regardless of whether or not there is a legal or biological relationship. This clarification ensures the ability of a same-sex parent and/or partner has the ability to take time off from work to care for their child without fear of losing their job. You can read the text of the Department of Labor's clarification here:

[http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010\\_3.htm](http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm)

In 2014, following the *Windsor* decision and the repeal of the Defense of Marriage Act, the FMLA's benefits were extended to married same-sex couples. Because of this, married same-sex couples became entitled to take time off to care for their spouses. This was solidified further in 2015 when the definition of "spouse" in the FMLA was expanded to include all employees in a same-sex marriage regardless of whether their state of residence recognized their marriage. Finally, the *Obergefell* decision led to all federal marriage benefits being extended to all same-sex couples across the country.

<sup>22</sup> <https://www.dol.gov/whd/regs/compliance/whdfs28.htm>

## NAME CHANGES

Transgender individuals may request an amended birth certificate to reflect their true sex and name but only may do so after they have undergone a “surgical procedure”.<sup>23</sup>

<sup>23</sup> Ala. Code § 22-9A-19(d) (2004).

The amended birth certificates will also note that the sex on the certificate has been changed.

## FAMILY SAFETY AND GUN LAWS

The authors believe that gun laws and the enforcement thereof are vital issues to the welfare and safety of our families. As such, we include this summary of Alabama’s gun laws for your information.

According to the Centers for Disease Control and Prevention, Alabama had the 4th highest ranking in the nation of per capita deaths by firearm in the most recently reported year, 2014.<sup>24</sup>

Alabama is a basic “open-carry” state, meaning that no license or permit is generally required to carry a firearm on your person. The state preempts all firearm laws in the state and local authorities cannot have Laws/Ordinances against open carry.

You must have a license in order to conceal-carry or to carry a firearm in a motor vehicle. A person licensed to carry a handgun in any state shall be authorized to carry a handgun in Alabama. A license holder from another state shall carry the handgun in compliance with the laws of Alabama.<sup>25</sup>

<sup>24</sup> <http://www.cdc.gov/nchs/pressroom/sosmap/firearm.htm>

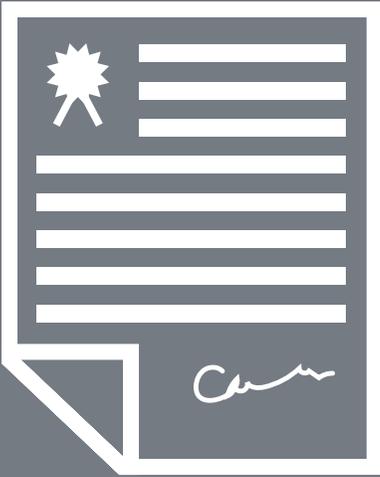
<sup>25</sup> Ala. Code § 13A-11-85

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**ALABAMA LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families



## TIPS FOR LEGAL DOCUMENTS

- ✓ Always have copies of these forms with you, we recommend carrying electronic copies on a thumb drive attached to your keychain or available on your phone, through email or in the cloud.
- ✓ Keep several signed original copies of the forms, except for your Will (which you may keep copies of, but the original must be kept in a safe place, known to your executor).
- ✓ Write with a blue pen when completing or signing forms so health care providers don't question whether the document is an original.
- ✓ Always have original copies with you when you travel out of state.
- ✓ Keep copies online on a secure server.

# RECOMMENDED LEGAL DOCUMENTS FOR SAME-SEX COUPLES

## LAST WILL AND TESTAMENT

A Will is a legal document by which a person directs how real estate and personal property will be distributed upon death. Unmarried same-sex couples must have Wills in which their partners are designated beneficiaries, so that the partner will be able to inherit any of the deceased partner's property. Even if married, it is best to have a Will. In addition to deciding property distribution, a Will also provides the opportunity to designate who should become guardian to any minor children. If you are not both legal parents, and the legal parent dies, a judge will decide who the guardian will be. Naming your partner in your Will expresses your wishes and increases the likelihood that a judge will respect those wishes about who should raise your children after your death.

A Will does not affect beneficiaries you have designated on bank accounts, insurance policies, or retirement accounts. The company that holds those funds will disburse them to your designated beneficiary. You should make sure such designations are up to date.

More information is available from the State Bar of Alabama, at:  
[https://www.alabar.org/assets/uploads/2014/08/last\\_will.pdf](https://www.alabar.org/assets/uploads/2014/08/last_will.pdf)

## ADVANCE DIRECTIVE FOR HEALTHCARE

An Advance Directive for Healthcare allows Alabamians to direct whom they want to make medical decisions for them, as well as providing for end-of-life choices in the event they are unable to express that intent at the time that care is required. You can find more information and guidance on drafting an Advance Directive for Healthcare specifically for the State of Alabama at:

[https://www.alabar.org/assets/uploads/2014/08/Advance-healthcareplanning\\_01162012.pdf](https://www.alabar.org/assets/uploads/2014/08/Advance-healthcareplanning_01162012.pdf)

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[www.birminghamaidsoutreach.org](http://www.birminghamaidsoutreach.org)

**ALABAMA LGBTQ FAMILY LAW**

A Resource Guide for  
LGBTQ-Headed Families

## FINANCIAL POWER OF ATTORNEY

It is important that partners consider providing each other with the power to handle personal finances on their behalf through a “financial power of attorney” in the event that a partner becomes unable to manage their own finances due to sickness, disability, etc.

**We recommend consulting an Alabama attorney in drafting this document.**

## DOMESTIC PARTNERSHIP AGREEMENT

A Domestic Partnership Agreement expresses a couple’s understanding as to how they will share income, expenses, assets, and liabilities. It also discusses a plan for how those things will be divided in the event the couple separates.

## CO-PARENTING AGREEMENT

A Co-Parenting Agreement expresses a couple’s understanding of how they will raise children and what each parent’s rights and obligations are with respect to each child while they are together and in the event that the parents separate.

Although the Co-parenting and Partnership agreements are not “standard” and will require the advice of an LGBTQ aware attorney licensed in Alabama (and, could still prove to be not legally binding) they are often useful to have. These documents can establish clear understanding between the parties and can provide clarification about the intent and wishes of all involved. They may be useful, at some future time, should an issue ever come before a court/judge in the case of death or dissolution of the relationship, etc.



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