



# LOUISIANA LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed Families  
Living in Louisiana

December 2017

**FORUM FOR  
E=QUALITY**



**FAMILY  
EQUALITY  
COUNCIL**

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# INTRODUCTION

This guide was drafted by Family Equality Council, in collaboration with Forum for Equality. It addresses many of the legal rights and issues that affect LGBTQ families currently living in Louisiana. 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. Louisiana has very few laws in place to protect LGBTQ families from discrimination and ensure equal access to education, employment, housing, healthcare, and public accommodations. In this type of environment, it is important to understand what the law in each area is and how best to protect your family.

## DISCLAIMER

This handbook is not intended to be legal advice but an overview of the current state of LGBTQ-family law in Louisiana. The law is changing quickly and dynamically, so it is important to consult an attorney or contact the authors to discuss the details of your particular situation and to ensure that information provided herein is still accurate.



# RELATIONSHIP RECOGNITION

In 2004, the Louisiana legislature passed a state “Defense of Marriage Act” seeking to amend the Louisiana Constitution to define marriage as solely between one man and one woman, to prohibit civil unions, and to refuse to recognize marriage licenses for same-sex couples issued in other states.<sup>1</sup> Later that same year, 78% of Louisiana voters approved passage of the Act.<sup>2</sup> In 2005, the Supreme Court of Louisiana upheld the constitutionality of the amendment, reversing a lower court decision which found the same amendment unconstitutional.<sup>3</sup>

After the United States Supreme Court’s decision in 2013 striking down Section 3 of the Defense of Marriage Act (DOMA), which barred same-sex couples from being recognized as spouses under federal law,<sup>4</sup> the constitutionality of Louisiana’s constitutional amendment was again challenged in two separate cases – one in federal court and one in state court. In the federal case, which was decided on September 3, 2014, a district court upheld the constitutional amendment.<sup>5</sup> However, just three weeks later in the other case, a Louisiana state

court ruled that the amendment was unconstitutional.<sup>6</sup> While both cases were pending appeal, the U.S. Supreme Court issued its ruling in *Obergefell v. Hodges*, recognizing marriages of same-sex couples nationwide.<sup>7</sup> As such, the appeal of the state case striking down the Louisiana amendment was dismissed,<sup>8</sup> and the federal court decision upholding the ban was reversed.<sup>9</sup> By July 6, 2015, all parishes in Louisiana were issuing marriage licenses to same-sex couples. However, Louisiana still does not recognize civil unions.

Under Louisiana’s Religious Freedom Restoration Act (RFRA), known as the Preservation of Religious Freedom Act (PRFA), and the First Amendment of the U.S. Constitution, ministers have the right to refuse to marry a couple based on their religious beliefs.<sup>10</sup>

For more information on how to access federal marriage benefits please see the post-*Obergefell* fact sheets at:  
<https://marriageequalityfacts.org>

1 Louisiana Act No. 926 (2004): <https://www.legis.la.gov/legis/ViewDocument.aspx?d=528784>

2 *Forum for Equality PAC v. McKeithen*, 893 So.2d 715 (La. 2005).

3 *Forum for Equality PAC v. McKeithen*, 893 So.2d 715 (La. 2005).

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

5 *Robicheaux v. Caldwell*, 2 F. Supp. 3d 910 (E.D. La. 2014)

6 *Costanza v. Caldwell*, No. 2013-0052 D2 (La 15th Jud. Dist 2013).

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

8 *Costanza v. Caldwell*, 167 So.3d 619 (La. 2015).

9 *Robicheaux v. Caldwell*, 791 F.3d 616 (5th Cir. 2015).

10 Louisiana SB No. 606, *Louisiana Preservation of Freedom Act* (2010): <http://www.legis.la.gov/legis/ViewDocument.aspx?d=722893>

Find more information at:

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

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## FEDERAL BENEFITS AFTER *UNITED STATES V. WINDSOR* AND *OBERGEFELL V. HODGES*

As discussed above, in 2013 in *United States v. Windsor*, the U.S. Supreme Court found Section 3 of DOMA unconstitutional, overturning the law that denied federal marriage benefits to married same-sex couples. This case laid the foundation for marriage equality nationwide, which was won two years later.

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, mandating that same-sex couples be permitted to marry and have their marriages recognized throughout the U.S.<sup>11</sup> Following *Obergefell*, all federal marriage benefits have been extended to married same-sex couples nationwide. Such benefits include, but are not limited to, Social Security and Veterans Administration benefits, all federal tax benefits, health insurance and retirement benefits for same-sex spouses of all federal employees, and spousal benefits for same-sex spouses of military service members.



### IMPORTANT

Because marriages of same-sex couples are now recognized nationwide, married couples living in Louisiana should be able to access federal benefits that are attendant to marriage. Please alert the authors if you find such benefits have been denied to you as a result of an agency failing to recognize your marriage.



<sup>11</sup> *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).



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# 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. While there is much progress to be made in Louisiana with regard to parental recognition for LGBTQ individuals and couples, there are some state rules, cases, and statutes in place that recognize and reflect the evolving landscape of modern families and their diverse family structures.

All same-sex individuals and couples raising children in Louisiana should keep copies of the following documents easily accessible:

- Adoption decree
- Birth certificate
- Guardianship agreement
- Co-parenting agreement
- Marriage License
- Medical Powers of Attorney
- Provisional Custody by Mandate, if applicable



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

Likewise, if you are an LGBTQ person or same-sex couple thinking about fostering and/or adopting children either from the child welfare system or through private adoption, it is critical that you hire a Louisiana adoption attorney who has experience working with LGBTQ people and couples. It is not enough to simply hire an experienced family law attorney. There are issues unique to LGBTQ family law in Louisiana that can, and should, only be managed by an attorney with particular experience and expertise in this area of the law. If you are unsure where to find an experienced LGBTQ family law attorney, please contact Family Equality Council ([www.familyequality.org](http://www.familyequality.org)) and we will do our best to help you find one.

# ADOPTION

Adoption decrees are irrefutable and undeniable proof of parentage and, once validly issued in one state, must be recognized in every state.<sup>12</sup>

Louisiana law provides that “a single person, 18 years or older, or a married couple jointly may petition to adopt a child” either through an agency<sup>13</sup> or privately.<sup>14</sup> Louisiana law does not expressly prohibit LGBTQ individuals or couples to adopt, but there is no statutory protection against discrimination. Since Louisiana law requires that adoption agencies carry out pre-placement home studies in order to evaluate, among other factors, “the moral... fitness” of the petitioner,<sup>15</sup> it is possible that a LGBTQ parent’s petition to foster or adopt a child could improperly be denied on the basis of the petitioner’s sexual orientation or gender identity. For this and other reasons, it is advisable to contact an adoption attorney experienced in LGBTQ family law in Louisiana and to engage with foster and adoption agencies who are welcoming and affirming to LGBTQ people and couples.

## Joint Adoption

As stated above, Louisiana law allows married couples to petition to adopt jointly.<sup>16</sup> Since marriage equality is recognized nationwide, same-sex married couples

<sup>12</sup> *V.L. v E.L.*, 136 S.Ct. 1017 (2016).

<sup>13</sup> LSA-Ch.C. Art. 1198.

<sup>14</sup> LSA-Ch.C. Art. 1221.

<sup>15</sup> LSA-Ch.C. Art. 1207(A)(4); LSA-Ch.C. Art. 1229(A)(4).

<sup>16</sup> LSA-Ch.C. Art. 1198.

must be permitted to adopt under the same terms and conditions as different-sex married couples. Thus, so long as the couple is married and meets the requirements for petitioning for adoption, a same-sex couple is eligible for joint adoption. Louisiana law at present does not permit unmarried couples to petition to adopt jointly, whether same-sex or different-sex.

## Second-Parent Adoption

Second-parent adoption is the adoption of a child by an additional parent who is not married to the legal parent of the child. In a second-parent adoption, the additional parent can be recognized as such without the first parent losing any parental rights.

Louisiana statutory law does not explicitly allow second-parent adoptions. However, in a 2016 case, a state appellate court recognized that a non-legal parent who has intentionally parented a child as a “second parent” with a biological parent since the child’s birth may have a custody interest in that child.<sup>17</sup> As this is an evolving area of the law, consultation with an attorney experienced in adoptions for LGBTQ couples is essential.

Although there is no explicit provision on second parent adoption in Louisiana, validly-granted second-parent adoptions issued in other states should be recognized in Louisiana.<sup>18</sup>

<sup>17</sup> *Ferrand v. Ferrand*, 221 So.3d 909 (La. App. 5 Cir. 2016).

<sup>18</sup> *V.L. v E.L.*, 136 S.Ct. 1017 (2016).

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## Stepparent Adoption

Married same-sex couples can ensure that both parents are legally recognized by obtaining an adoption decree through the stepparent adoption procedure. Stepparent adoption is the legal adoption of a child by the spouse of the child's legal parent. Louisiana law allows stepparent adoption, which the law refers to as "intrafamily adoption," without any change to the legal status of the relationship between the initial legal parent and the child.<sup>19</sup> In Louisiana, petitions for "intrafamily adoptions" may be made by a "stepparent, stepgrandparent, great-grandparent, grandparent, or collaterals within the twelfth degree."<sup>20</sup> Further, the law sets out 3 requirements that must be met by a person petitioning for an intrafamily adoption:

1. The petitioner is related to the child by blood, adoption, or affinity through the mother of the child or through a father who is filiated to the child in accordance with the Civil Code.
2. The petitioner is a single person over the age of eighteen OR a married person whose spouse is a joint petitioner.
3. The petitioner has had legal or physical custody of the child for at least six months prior to filing the petition for adoption.<sup>21</sup>

There is nothing in Louisiana's intrafamily adoption statute that would prohibit a same-sex spouse from completing a stepparent

<sup>19</sup> LSA-Ch.C. Art. 1243.

<sup>20</sup> LSA-Ch.C. Art. 1243(A).

<sup>21</sup> LSA-Ch.C. Art. 1243(A)(1)-(3).

adoption of their spouse's child. In fact, when the state court struck down the Louisiana ban on marriage equality and held that an out of state marriage license issued to a same-sex couple was valid in Louisiana, the state court held that the spouse satisfied the "stepparent" requirement of the intrafamily adoption statute.<sup>22</sup> Thus, same-sex married couples are entitled to the same access to stepparent adoptions as different-sex couples. However, as stated above, as there are no explicit statutory protections in Louisiana preventing discrimination, consultation with a Louisiana attorney experienced in working with LGBTQ families is highly encouraged when proceeding with a stepparent adoption.

## Parental Presumption

Parental presumption (also known as marital presumption) is the idea that, when a married woman gives birth, her spouse is the other legal parent. State laws pertaining to parental presumption vary throughout the U.S., but historically they applied exclusively to different-sex spouses and many were written with gendered language. However, with nationwide marriage equality, parental presumption laws should be applied equally to married same-sex couples.

In Louisiana, the legal relationship between a parent and child is known as "filiation."<sup>23</sup> Louisiana presumes paternity for the "husband of the mother" during the time of marriage and 365 days after termination of the marriage.<sup>24</sup> Further, Louisiana

<sup>22</sup> *Costanza v. Caldwell*, No. 2013-0052 D2 (La 15th Jud. Dist 2013).

<sup>23</sup> LSA-Ch.C. Bk. I, T. VII.

<sup>24</sup> LSA-C.C. Art. 185.

An adoption decree is the single best irrefutable and undeniable proof of parentage. We strongly recommend that same-sex couples with children ALWAYS get an adoption decree that recognizes both parents as legal parents, even if you are married and appear on the birth certificate.

also allows for a man to “by authentic act, acknowledge a child not filiated to another man.”<sup>25</sup> Since the recognition of marriage equality nationwide, the statute has not been updated and there are no court decisions in Louisiana specifically interpreting that provision. While Louisiana’s parental presumption should apply equally to all married couples, the best way for a same-sex couple to ensure that both parents’ rights will be legally recognized and respected throughout the U.S. is to obtain an adoption decree.

## SURROGACY, ASSISTED REPRODUCTION, & ARTIFICIAL INSEMINATION

Assisted reproductive technology (ART) is the use of medical technology to assist with pregnancy or childbirth and includes methods such as in vitro fertilization or use of an egg donor, sperm donor, embryo donor, and/or a surrogate carrier. Surrogacy is the carrying and delivering of a child by a woman for another person or couple, with the intention of transferring all parental rights to the intended parent(s). In “traditional surrogacy,” the surrogate contributes her own egg, while in “gestational surrogacy,” the surrogate has no genetic relationship with the fetus; an

<sup>25</sup> LSA-C.C. Art. 196.

embryo created from another woman’s egg is transferred to the surrogate’s uterus.

Louisiana law only recognizes gestational surrogacy contracts;<sup>26</sup> a contract with a surrogate who has a genetic relationship to the child is “absolutely null.”<sup>27</sup> In addition, a gestational surrogacy contract is enforceable under Louisiana law only where the intended parents are a married couple who uses their own gametes (egg and sperm) to create the embryo that is used for the pregnancy.<sup>28</sup> A surrogacy contract that does not meet these requirements will not be recognized under Louisiana law and issues of custody and parentage “will be determined in accordance with general provisions of Louisiana law.”<sup>29</sup> Therefore, by definition, LGBTQ couples will be neither legally protected nor recognized in a contract and process for gestational surrogacy.

There is no statute or published case law that expressly addresses the rights and responsibilities of egg donors, sperm donors, or embryo donors over their donated gametes or the resulting child.

<sup>26</sup> La. Rev. Stat. §9:2718; La. Rev. Stat. §9:2719.

<sup>27</sup> La. Rev. Stat. §9:2719.

<sup>28</sup> La. Rev. Stat. §9:2718; La. Rev. Stat. §9:2718.1(6).

<sup>29</sup> La. Rev. Stat. §9:2719 at Louisiana Official Revision Comments at 2017 comment(b). For additional requirements for a gestational surrogacy contract to be enforceable, see La. Rev. Stat. §§9:2720-9:2720.15.

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## BIRTH CERTIFICATES

Louisiana's birth certificate provisions reflect the idea of parental presumption discussed above. For the purposes of birth certificates, the full name of a mother's husband is automatically listed as the father of a child.<sup>30</sup> This applies even if a couple is no longer together but it can be shown that they were married within 365 days prior to the date of birth.<sup>31</sup> If a mother is not married at the time of a child's birth, then a father is not listed on the birth certificate.<sup>32</sup> However, the unmarried father may acknowledge his child by "authentic act" and be included on the birth certificate if the mother agrees.<sup>33</sup> Finally, if a child is born via surrogate, then the "full name of the biological father shall be listed as the father."<sup>34</sup>

While Louisiana's birth certificate provisions still use gendered terms when referring to parents, the *Obergefell* decision provides equal access to all marriage-related rights for same-sex spouses. This was reaffirmed by the United States Supreme Court in *Pavan v. Smith* in June 2017.<sup>35</sup> The Supreme Court established that preventing both married same-sex parents from being listed on their child's birth certificate was unconstitutional.<sup>36</sup> Therefore, same-sex spouses should both be listed on a child's birth certificate under the same terms and conditions as different-sex spouses.

30 La. Rev. Stat. §40:34.5(A).

31 La. Rev. Stat. §40:34.5(A).

32 La. Rev. Stat. §40:34.5(D).

33 La. Rev. Stat. §40:34.5(B).

34 La. Rev. Stat. §40:34.5(C).

35 *Pavan v. Smith*, 137 S.Ct. 2075 (2017).

36 *Pavan v. Smith*, 137 S.Ct. 2075 (2017).

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

To apply for a Social Security Number and Card for a child, the Social Security Administration (SSA) requires a number of different documents, personal information about the parent applying for the Social Security Card or Number, the child, and any other legal parent to the child, and a completed SS-5 application form.

These documents may be submitted to the SSA via letter or in person by visiting at a 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), visit the SSA website [www.ssa.gov](http://www.ssa.gov), or call the SSA at 1-800-722-1213 or 1-800-325-0778.

If difficulties arise, please contact Family Equality Council.

## APPLYING FOR A PASSPORT FOR A CHILD

To apply for a passport for a child, the State Department requires documentary evidence, a completed DS-11 form, a photograph of the child, and personal information about the parent applying for the passport, the child, and the child's other legal parent, if any. These documents must be submitted to the State Department in person at the nearest accepted facility or regional passport agency, listed here <https://iafdb.travel.state.gov>. The required materials are listed here: <http://travel.state.gov/content/passports/english/passports/under-16.html>

Two same-sex parents may be listed on the application for a child's passport. 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.

Questions about the application process and acceptable materials can be directed to the National Passport Information Center at 1-877-487-2778. The State Department website also provides helpful information at: <http://travel.state.gov>

Family Equality Council maintains an FAQ on applying for child's passport, 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), or contact Family Equality Council for assistance if problems arise in obtaining the passport.



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# NON-DISCRIMINATION 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.

Louisiana only provides LGBTQ discrimination protections, issued by Executive Order, in the realm of employment, and then only with respect to state employees; leaving all LGBTQ Louisiana residents open to discrimination and harassment in housing, public accommodations, and even schools.<sup>37</sup>

## EMPLOYMENT

### State Law

Even with the arrival of nationwide marriage equality, LGBTQ people are at risk of being outed at work by simply filing an amended W-4, leading to discrimination in the workplace or even the loss of a job.

<sup>37</sup> Some localities in Louisiana, such as New Orleans and Shreveport, have enacted local ordinances to bar discrimination on the basis of sexual orientation and/or gender identity, but these local ordinances are relatively limited in scope.

Despite proposals in 2016<sup>38</sup> and 2017,<sup>39</sup> the Louisiana legislature has never enacted legislation that prohibits employment discrimination on the basis of sexual orientation or gender expression or identity. This means that there is no law explicitly prohibiting employers from engaging in discriminatory practices against LGBTQ employees such as in hiring and firing or by creating or allowing hostile work environments and harassment by other employees in the work place.

In 2016, Governor John Bel Edwards issued Executive Order JBE 2016-11: Equal Opportunity and Non-Discrimination.<sup>40</sup> This Order prohibits state agencies from discriminating against employees on the basis of sexual orientation and gender identity. The Order also provides some protection for LGBTQ employees working for companies that contract with the state by requiring contracts to include a provision declaring that the contractor will not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, political affiliation, disability, or age. However, it should be noted that this Executive Order is meant to apply alongside the state's Preservation of Religious Freedom Act, which is not rescinded or preempted by this order. Further, an Executive Order

<sup>38</sup> Senate Bill 436 (2016).

<sup>39</sup> Senate Bill 155 (2017).

<sup>40</sup> *Executive Order JBE 2016-11: Equal Opportunity and Non-Discrimination*, April 16, 2016: <http://gov.louisiana.gov/assets/ExecutiveOrders/JBE16-11.PDF>.

only remains in force only during the term of the Governor who issued it, unless the following governor renews its issuance. Thus, this Order offers limited protection, but there is still no state law that protects LGBTQ employees from employment discrimination in all areas of the private sector.

## 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 by some courts to provide employment protections for LGBTQ people. 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, the EEOC ruled in *Macy v. Holder* that discrimination against a transgender woman was discrimination under Title VII’s prohibition of discrimination based on sex.<sup>41</sup> In *Veretto v. US Postal Service*<sup>42</sup> and *Castello v. US Postal Service*,<sup>43</sup> the EEOC held that employment discrimination on the basis of sexual orientation violated prohibitions of sex-based discrimination because it constituted discrimination based on sex-stereotypes. In 2015, the EEOC

41 No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012).

42 No. 0120110873 (E.E.O.C. Jul. 1, 2011).

43 No. 0120111795 (E.E.O.C. Dec. 20, 2011).

strengthened the protections for those who may face discrimination on the basis of sexual orientation by ruling in *Complainant v. Foxx*<sup>44</sup> that claims of discrimination based on sexual orientation inherently amount to claims of sex discrimination and are therefore actionable under Title VII.<sup>45</sup> These EEOC decisions, while not binding to courts, reflect the EEOC’s view 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. In 2017, in *Hively v. Ivy Tech Comm. College*, a federal appellate court issued a binding decision citing with approval the EEOC’s conclusions in *Complainant v. Foxx*, thus providing strong legal precedent for reading Title VII as including LGBTQ employees as a protected class.<sup>46</sup>

Victims of discrimination on any protected basis, including sexual orientation and gender identity, must file a Charge of Discrimination with a local EEOC office prior to filing a lawsuit in court alleging discrimination. The EEOC offices serving Louisiana can be found at:

**Hale Boggs Federal Building**  
500 Poydras Street, Suite 809  
New Orleans, LA 70130  
Phone: 1-800-669-4000

Generally, the Charge of Discrimination must be filed within 180 days of each

44 *Complainant v. Foxx*, No. 0120133080, 2015 WL 4397641 (E.E.O.C. July 15, 2015).

45 No. 0120133080, 2015 WL 4397641 (E.E.O.C. July 16, 2015).

46 *Hively v. Ivy Tech Comm. College*, 853 F.3d 339 (7th Cir. 2017).

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instance of discriminatory treatment. To file a complaint based on sexual orientation or gender identity, the complainant must list the basis for the claim as discrimination based on “sex,” as this is the existing basis that the EEOC and some courts have linked to sexual orientation and gender identity. More about the EEOC process and a claimant’s rights and responsibilities after filing a claim with the EEOC is available here: <http://www.eeoc.gov/employees/charge.cfm>. Federal employees and job applicants are subject to a different timeline for making a claim (typically 45 days) and procedures for filing, which are available here: [http://www.eeoc.gov/federal/fed\\_employees/complaint\\_overview.cfm](http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm)

Louisianans 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 that prohibits federal contractors from discriminating against current or prospective employees on the basis of sexual orientation or gender identity.<sup>47</sup> Contractors who do business with the federal government employ 20% of American workers, all of whom are now covered by non-discrimination protections under this Order. LGBTQ individuals who have been the victim of discrimination by an employer that contracts with the federal

<sup>47</sup> Executive Order 13672 (July 21, 2014). On January 31, 2017, President Trump issued a statement that this Executive Order will remain intact during his presidency. <https://www.whitehouse.gov/the-press-office/2017/01/31/president-donald-j-trump-will-continue-enforce-executive-order>.

government can file a complaint through the U.S. Department of Labor Office of Federal Contract Compliance Programs. Information 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 non-discrimination 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 company’s non-discrimination policy should be available in the company’s employee handbook or through the human resources department, and it is always important to be familiar with it and understand the rights and protections it affords.

Any person who has been or may have been the victim of discrimination on the basis of your sexual orientation- or gender identity-based discrimination in the workplace should contact an attorney familiar with LGBTQ employment law.



# HOUSING

## State Law

The Louisiana Equal Housing Opportunity Act does not provide any protections for LGBTQ individuals when it comes to searching for available housing.<sup>48</sup> This means that LGBTQ individuals are vulnerable to discriminatory practices in real estate transactions, brokerage services, loan obtainment, and even outright denial of available housing based solely upon their sexual orientation or gender identity or expression.

## Federal Law

The federal Fair Housing Act, which was enacted as Title VIII of the Civil Rights Act of 1968 and is enforced by the Department of Housing and Urban Development (HUD), 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.<sup>49</sup> It also prohibits lenders from

<sup>48</sup> La. Rev. Stat. §51:2602.

<sup>49</sup> Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, Final Rule (2012); 24 CFR § 5.106.

determining a borrower’s eligibility for Fair Housing Authority (FHA) insurance on the basis of sexual orientation or gender identity. For example, any landlord receiving funding through 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 barred from using such criteria in assessing an application. 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) 955-2232), by mail, or online [http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_discrimination](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination). The HUD Office of Fair Housing and Equal Opportunity New Orleans Regional Office is located at:

**Hale Boggs Federal Building**  
500 Poydras Street, 9th Floor  
New Orleans, LA 70130  
Phone: (504) 671-3000

To learn more about filing a complaint, as well as the process for filing a lawsuit, 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)

Find more information at:

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

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## PUBLIC ACCOMMODATIONS

Public Accommodations are generally defined as entities, both public and private, that are used by the public. Examples include retail stores, hotels, restaurants, educational institutions, hospitals, public parks, libraries, and recreational facilities, but private clubs and religious institutions are generally exempt from this definition.

### State Law

Louisiana's public accommodations statute does not provide protections for LGBTQ individuals and does not recognize discrimination on the basis of sexual orientation or gender identity or expression.<sup>50</sup> Executive Order JBE 2016-11, signed by Governor Edwards in 2016, prohibits discrimination on the basis of sexual orientation and gender identity in services provided by state agencies, offices, and entities.<sup>51</sup> Thus, there is some recourse if discrimination occurs in services provided by the state, but there are no state laws prohibiting businesses open to the public from taking discriminatory actions.

### 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

<sup>50</sup> La. Rev. Stat. § 51: 2231; La. Rev. Stat. § 49:145.

<sup>51</sup> Executive Order JBE 2016-11: *Equal Opportunity and Non-Discrimination*, April 16, 2016: <http://gov.louisiana.gov/assets/ExecutiveOrders/JBE16-11.PDF>.

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>52</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.



<sup>52</sup> *Bragdon v. Abbott*, 524 U.S. 624 (U.S. 1998).

# SCHOOL POLICIES AND ANTI-BULLYING

## STATE LAW

Louisiana law provides blanket prohibitions on school bullying.<sup>53</sup> These provisions require all elementary and secondary schools to adopt and enforce “a policy prohibiting the bullying of a student by another student.”<sup>54</sup> However, these laws do not provide any enumerated protections for LGBTQ students, meaning LGBTQ students may still be vulnerable to discrimination, bullying, and stigmatization by school administrators, teachers, and fellow classmates. Further, Louisiana is also one of eight states that has enacted “Don’t Say Gay” school regulations. This regulation, passed in 1993, forbids teachers from discussing LGBTQ issues, including sexual health and HIV/AIDS awareness, in the classroom.<sup>55</sup>

## FEDERAL LAW

Federal law, specifically Title IX of the United States Education Amendments of 1972, also provides 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 basis 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,<sup>56</sup> meaning the student faces discrimination for not subscribing to the stereotypical notions of femininity or masculinity. In past policy statements, the Department of Education (DOE) included transgender students in those classes protected by Title IX, and lesbian, gay, and bisexual students have successfully filed claims of discrimination under Title IX. In a May 2016 statement, the DOE and Department of Justice (DOJ) explained that compliance with Title IX requires schools to treat transgender students consistent with their gender identity and does not allow schools to impose a medical diagnosis or treatment requirement.<sup>57</sup>

However, in February 2017, under the Trump Administration, the DOE and DOJ rescinded this guidance.<sup>58</sup> Despite the DOE and DOJ’s withdrawal of the guidance, the underlying law that the guidance interpreted remains. Since

56 *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151 (C.D. Cal. 2015).

57 United States Dept. of Education Office for Civil Rights, *Dear Colleague Letter on Transgender Students*, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

58 United States Dept. of Education Office for Civil Rights, *Dear Colleague Letter 2017*, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.docx>.

53 La. Rev. Stat. §17:416.13.

54 La. Rev. Stat. §17:416.13(B).

55 La. Rev. Stat. § 17:281(A).

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then, the U.S. Court of Appeals for the Seventh Circuit unanimously held that transgender students are protected from discrimination under Title IX and the Equal Protection Clause of the U.S. Constitution.<sup>59</sup>

The DOE's Office for Civil Rights (OCR) investigates claims of discrimination on the basis of race, sex, national origin, and disability in programs or activities that receive funding from the DOE (such as public elementary or secondary schools, vocational schools, colleges and universities, museums, libraries, and public after-school programming). To open an OCR investigation, an individual must file a complaint on behalf of himself or herself, a group, or another person facing discrimination within 180 days of the last instance of discrimination. Since Title IX does not explicitly list sexual orientation or gender identity as separate bases for a claim, the complaint must indicate "sex" as the basis (or one of the bases) of the claim.

More details on drafting a complaint, as well as an electronic complaint form, are available on the OCR website, located here: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

<sup>59</sup> *Whitaker v. Kenosha Unified School District*, No. 16-3522 (7th Cir. 2017).

## HEALTHCARE

### FEDERAL LAW

Each year, the federal government opens enrollment for individual and family healthcare coverage under the Affordable Care Act (ACA). Historically, enrollment for the following year opened in November and closed mid-February of the following year; however, in 2017 the open enrollment period is much shorter - from November 1 to December 15 - although individuals who experience a major life change, such as moving, getting married, or having a baby, may qualify to enroll in one of the ACA's Special Enrollment Periods during another part of the year. For detailed information about plans, Special Enrollment Periods, or to find out where and how to enroll, go to [www.healthcare.gov](http://www.healthcare.gov) and select a state of residence.

Under the ACA, insurers and marketplace navigators - the people whose job it is to help individuals select an insurance plan that best matches their needs- 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 addition, the ACA prohibits denial of coverage for an individual or family member because of a pre-existing condition. This includes a current illness or a 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. However, insurers are prohibited from categorically denying coverage for transition-related care, nor can they refuse to cover transition related care if they cover that same treatment for other people. While insurers are not required to cover these treatments, they may offer plans that do so. Any person seeking coverage of transition-related care should speak with a navigator and investigate plans thoroughly to find the best option. 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.

Section 1557 of the ACA prohibits discrimination based on sex in all health programs and activities receiving Federal financial assistance.<sup>60</sup> The final agency rule implementing Section 1557 prohibits discrimination based upon gender identity, requiring that any healthcare provider receiving federal funding (i.e., Medicaid or Medicare, any health program administered by the federal government, and any health insurance marketplace) must treat individuals consistent with their gender identity.<sup>61</sup> The final rule also prohibits

60 42 U.S.C. § 18116.

61 45 CFR 92 (2016); 81 FR 31375 (2016). *In*

discrimination based on sex stereotyping, providing potential protections to lesbian, gay, and bisexual people.<sup>62</sup>

Anyone who has experienced discrimination on the basis of their sexual orientation or gender identity in a health care setting should immediately file a complaint with the United States Department of Health and Human Services Office for Civil Rights. More details on drafting a complaint, as well as an electronic complaint form, are available at the HHS website, located here: <http://www.hhs.gov/civil-rights/filing-a-complaint/index.html>.

For more information on how the Affordable Care Act and the insurance marketplaces benefit LGBTQ-headed families, this is a helpful resource developed by multiple LGBTQ advocacy organizations: [Where to Start, What to Ask: A Guide for LGBTQ People Choosing Health Care Plans](#).



*Franciscan Alliance v. Burwell*, Case No. 7:16-cv-00108-O (N.D. Texas 2016), a district court judge issued an injunction against enforcing this rule, but an appeal is pending.

62 45 CFR 92 (2016); 81 FR 31375 (2016).

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## FAMILY AND/OR PARENTING LEAVE

Louisiana does not have a state family or medical leave law. Louisiana employees are entitled to the rights of the federal Family and Medical Leave Act (FMLA). The 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 workweeks 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;
- 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."

FMLA applies to all public agencies (state, local, and federal) and all local education agencies (schools). The FMLA also applies to private sector employees who employ 50 or more employees for more than 20 workweeks in the current or preceding calendar year. And, it entitles eligible employees to 26 workweeks 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 a child for whom a person provides a certain amount of day-to-day care or financial support, 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. The text of the Department of Labor's clarification is available at: [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 DOMA, 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.

## CHANGES OF NAME AND GENDER

To obtain a legal name change in Louisiana, an applicant must submit a petition to their parish of residence or parish of birth.<sup>63</sup> Further, publication or announcement of name change is required. Individuals who have a felony conviction may change their name once the sentence has been satisfied, with the exception that individuals who have a felony conviction for a violent crime are not permitted to change their name.<sup>64</sup>

To update the gender listed on a birth certificate, Louisiana law is littered with restrictions. Any request made to change the gender listed on a birth certificate is considered to be a lawsuit brought against the state registrar, and the petitioner's spouse, if any, must be a party to the suit filed.<sup>65</sup> The court requires the petitioner to provide "such proof as it deems necessary to be convinced that the petitioner was properly diagnosed as

a transsexual or pseudo-hermaphrodite, that sex reassignment or corrective surgery has been properly performed... and that as a result of such surgery and subsequent medical treatment the anatomical structure of the sex of the petitioner has been changed to a sex other than that which is stated on the original birth certificate of the petitioner."<sup>66</sup> Only once the court is satisfied that it has been presented enough proof will a judgment be made ordering the issuance of an updated birth certificate.

With regard to updating names and gender markers on driver's licenses, Louisiana law requires the court order certifying the name change and "a medical statement signed by a physician stating that the applicant has undergone a successful gender change/reassignment."<sup>67</sup>

66 La. Rev. Stat. Ann. § 40:62(D).

67 Louisiana Department of Public Safety: Office of Motor Vehicles, Section 22.01: <http://web01.dps.louisiana.gov/omv1.nsf/58c968bd569b099986256cdc000806eb/bf53b205455ad9d0862564ae0058feab>

63 La. Rev. Stat. Ann. § 13:4751.

64 La. Rev. Stat. Ann. § 13:4751(D)(2).

65 La. Rev. Stat. Ann. § 40:62(B)

Find more information at:

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



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# HATE CRIMES PROTECTIONS

Louisiana hate crime laws provide for an increase in penalties for those defendants where there is a separate finding of fact that the crime committed was motivated by hate based upon the victim’s “actual or perceived race, age, gender, religion, color, creed, disability, sexual orientation, national origin, or ancestry.”<sup>68</sup> However, the law does not explicitly include additional penalties if the victim was targeted based on their gender identity or expression.

Further protection is offered by the federal government. In 2009, Congress enacted the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which expands federal hate crimes to LGBTQ people.<sup>69</sup> 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. Victims of a hate crime should report the crime both to the local authorities and the FBI. The FBI maintains its Louisiana offices at:

## **FBI New Orleans**

2901 Leon C. Simon Blvd.

New Orleans, LA 70126

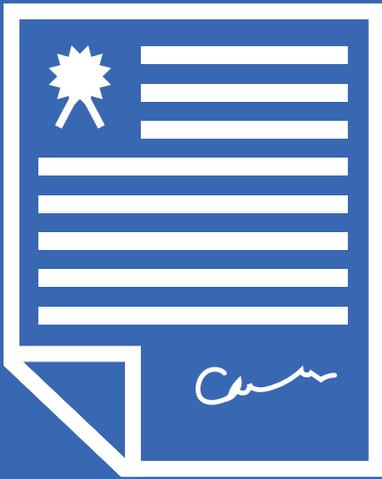
Phone: (504) 816-3000

Website: [neworleans.fbi.gov](http://neworleans.fbi.gov)

<sup>68</sup> La. Rev. Stat. Ann. §14:107.2.

<sup>69</sup> 18 U.S.C. § 249.





## 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.
- ✓ Keep several signed original copies of the forms.
- ✓ 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 an extra copy of your forms somewhere easy for a close friend or family member to find.
- ✓ Keep copies online on a secure server.

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# 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 for the partner to 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 both parents are not legally recognized as such, and the legal parent dies, a judge will decide who the guardian will be. A legally recognized parent naming the other parent in a Will expresses their wishes and increases the likelihood that a judge will respect those wishes about who should raise the children after the death of the legally recognized parent.

A Will does not affect beneficiaries that have been designated on insurance policies or retirement accounts. The company that holds those funds will disburse them to the designated beneficiary. It is important to keep such designations up-to-date. More information is available from the State at:

<https://www.sos.la.gov/OurOffice/EndOfLifeRegistries/Pages/default.aspx>

## ADVANCE DIRECTIVE FOR HEALTHCARE

An Advance Directive for Healthcare allows Louisiana citizens 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. More information on Advance Directives in the State of Louisiana is available at:

[http://dhh.louisiana.gov/assets/docs/Proposals2014/LHC/T.1\\_AE\\_Krames\\_Advanced\\_Directives\\_Health\\_Education\\_Sheet.pdf](http://dhh.louisiana.gov/assets/docs/Proposals2014/LHC/T.1_AE_Krames_Advanced_Directives_Health_Education_Sheet.pdf)

## 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 his/her own finances due to sickness or other incapacitation. We recommend consulting a Louisiana 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 division of those things in the event the couple separates. This document is especially important for unmarried couples.

## CO-PARENTING AGREEMENT

A Co-Parenting agreement is a document that expresses a couple’s understanding of the manner in which 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 Co-parenting and Partnership agreements are not “standard” and will require the advice of an LGBTQ-aware attorney licensed in Louisiana (and could still prove to be not legally binding), they are often useful to have. These documents can establish a 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 in the case of death, dissolution of the relationship, or other event causing separation.

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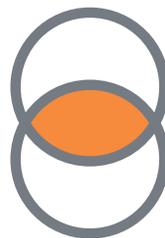
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**FAMILY  
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