



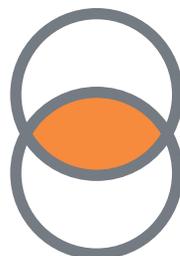
# MONTANA LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed Families  
living in Montana

December 2017



montana  
HUMAN RIGHTS NETWORK



FAMILY  
EQUALITY  
COUNCIL

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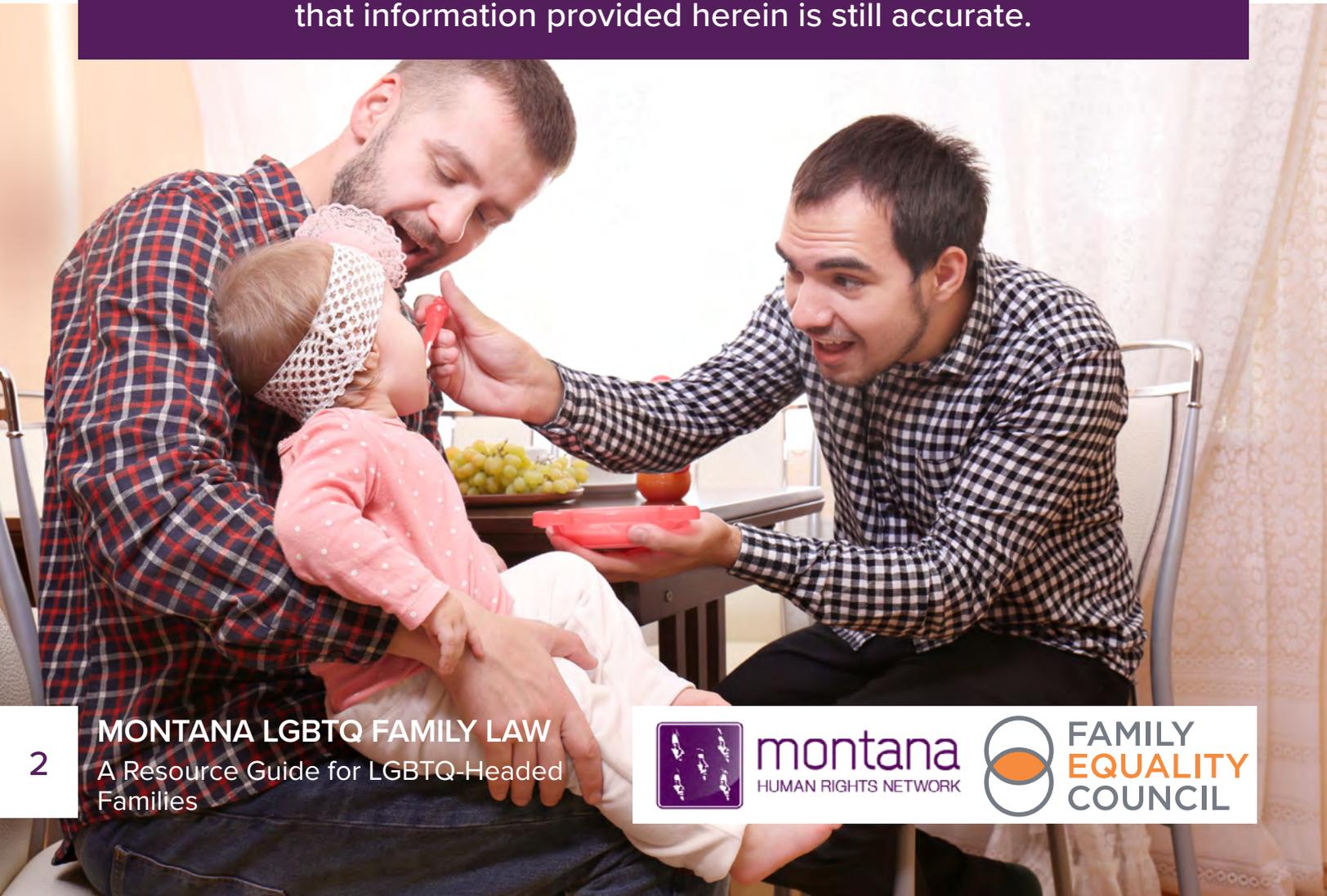
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# INTRODUCTION

This guide was drafted by Family Equality Council, on behalf of the Montana Human Rights Network. It addresses many of the legal rights and issues that affect LGBTQ families currently living in Montana. 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 Montana remains somewhat hostile towards the LGBTQ community, despite recently gaining access to marriage equality. LGBTQ families experience discrimination and, in many cases, are not included in protections given to different sex couples in the realms of employment, housing, healthcare, adoption, and public accommodations. In this type of an environment, it is important for LGBTQ individuals to understand what the law in each area is and how to protect their family.

## DISCLAIMER

This handbook is not intended to be legal advice but an overview of the current state of LGBTQ-family law in Montana. 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 1997, the Supreme Court of Montana found that the state law of “deviate sexual conduct” that criminalized private, consensual sex between adults of the same sex violated the privacy rights guaranteed under the Montana Constitution.<sup>1</sup> In 2013, sixteen years after it had been ruled unconstitutional, the Montana legislature officially repealed that law.<sup>2</sup>

In 2004, the State of Montana amended its constitution to restrict marriage and the recognition thereof to different-sex couples.<sup>3</sup> This so-called “Marriage Amendment” stated that “only a marriage between one man and one woman shall be valid” within the state of Montana.<sup>4</sup> Montana’s statutory law also prohibited “marriage between persons of the same-sex”<sup>5</sup> and defined marriage as being between a man and a woman.<sup>6</sup> In November 2014, in *Rolando v. Fox*, a Montana federal district court overturned Montana’s constitutional and statutory prohibition of marriage between same-sex couples, finding that the laws violated same-sex couple’s constitutional right to equal protection of the law.<sup>7</sup> Montana became the thirty-fourth state to allow same-sex couples to marry.<sup>8</sup>

Nationwide recognition of marriages of same-sex couples came less than a year later, in June 2015, with the United State Supreme Court’s ruling in *Obergefell v. Hodges*.<sup>9</sup> Following *Obergefell*, Montana and all other states must grant marriage licenses to same-sex couples and also must recognize marriages of same-sex couples that were validly performed in other states.

Montana is one of the few states that recognizes common law marriages, which are marriages formed without a license or solemnization.<sup>10</sup> The existence of a common law marriage is proved by competency to enter into a marriage, assumption of a marital relationship by mutual consent and agreement, and confirmation of the marriage by cohabitation and public repute.<sup>11</sup> Common law marriage is an equitable doctrine used to ensure people are treated fairly when a relationship ends.<sup>12</sup> In light of *Obergefell*, common law marriages of same-sex couples are entitled to the same rights and protection as common law marriages of different-sex couples.<sup>13</sup> It is possible for a common law marriage to be recognized retroactive to the date the marriage

1 *Gryczan v. State*, 283 Mont. 433, 942 P.2d 112 (1997).

2 MT LEGIS 225 (2013), 2013 Montana Laws Ch. 225 (S.B. 107).

3 Mont. Const. Art. 13, § 7.

4 Mont. Const. Art. 13, § 7.

5 Mont. Code Ann. § 40-1-401(1)(d).

6 Mont. Code Ann. § 40-1-103.

7 *Rolando v. Fox*, 23 F. Supp. 3d 1227 (D. Mont. 2014).

8 *Rolando v. Fox*, 23 F. Supp. 3d at 1235. The court

noted that Montana was the last state in the Ninth Circuit to recognize marriage equality.

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

10 Mont. Code Ann. § 40-1-403.

11 *In re Estate of Ober*, 314 Mont. 20 (Mont. 2003).

12 *Snetsinger v. Mont. Univ. System*, 2004 MT 390 ¶ 24, 325 Mont. 148, 104 P.3d 445.

13 See *In re Estate of Carter*, 159 A.3d 970 (Pa. Super. 2017).

Find more information at:

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

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began, even if same-sex marriage was not legal when the marriage began.<sup>14</sup>

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

In 2013, the United States Supreme Court, in *United States v. Windsor*, found Section 3 of the federal “Defense of Marriage Act” (DOMA) unconstitutional, overturning the law that denied federal marriage benefits to married same-sex couples.<sup>15</sup> This case laid the foundation for marriage equality nationwide, which was won two years later.

As stated above, 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 nationwide.<sup>16</sup> Following *Obergefell*, all federal marriage benefits have been extended to married same-sex couples throughout the U.S. 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.

<sup>14</sup> See *Harper v. Virginia Department of Taxation*, 509, U.S. 86, 97 (1993); see *Ranolls v. Dewling*, 223 F. Supp. 3d 613 (E.D. Tex. 2016) for discussion of retroactivity of judicial decisions.

<sup>15</sup> *United States v. Windsor*, 133 S.Ct. 2675 (2013).

<sup>16</sup> *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).



For more information on how to access federal marriage benefits please see the post-*Obergefell* fact sheets at:

<https://marriageequalityfacts.org>





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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 (ART) to build their families together. The current state of Montana law has not explicitly accounted for these changes in what families look like, which leaves many families vulnerable to uncertainty or discrimination.

## DOCUMENTATION

All same-sex couples raising children together in Montana should keep copies of the following documents easily accessible:

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



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 public child welfare system or through private adoption, it is critical that you hire a Montana adoption attorney who has experience working with LGBTQ people and couples. It is not enough to simply hire an experienced adoption or family law attorney. There are issues unique to LGBTQ families 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 adoption 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. Once an adoption decree is validly issued in one state, it must be recognized and enforced in every state.

Montana law provides that the following individuals or couples may adopt:

1. a husband and wife jointly or either the husband or wife if the other spouse is a parent of the child;
2. an unmarried individual who is at least 18 years of age; or
3. a married individual at least 18 years of age who is legally separated from the other spouse or whose spouse has judicially been declared incompetent.<sup>17</sup>

There are no provisions in Montana law or regulations that explicitly prohibit LGBTQ individuals or couples from adopting, but there also is no explicit statutory protection against discrimination. For this and other reasons, it is strongly advised to contact an adoption attorney experienced in LGBTQ family law in Montana and to engage with foster and adoption agencies who are welcoming and affirming to LGBTQ people and couples.

<sup>17</sup> Mont. Code Ann. § 42-1-106.

## Joint Adoption

As long as LGBTQ married couples meet the requirements for petitioning for adoption, they should be eligible to adopt jointly. Montana law does not permit unmarried couples to petition to adopt jointly, whether same-sex or different-sex. Since marriage equality is recognized nationwide, all married same-sex couples must be permitted to adopt under the same terms and conditions as married different-sex couples.

The Montana adoption law has not been updated since marriage equality was recognized, and, as noted above, the law still uses the gendered terms “husband” and “wife.” Thus, although there is nothing in state law that prohibits LGBTQ couples from adopting jointly and such a law would be deemed unconstitutional post-*Obergefell*,<sup>18</sup> without explicit protection preventing discrimination, agencies may implement discriminatory policies and practices. As previously stated, it is essential to hire an adoption attorney who is experienced in LGBTQ family law in Montana and to seek out adoption agencies who are welcoming and affirming to LGBTQ people and same-sex couples.

## 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,

<sup>18</sup> See *Campaign v. Miss. Dep’t of Human Servs.*, 175 F. Supp. 3d 691 (Miss. 2016).

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

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and the child is entitled to the benefits of two legally recognized parents.

Although Montana law does not allow unmarried couples (whether same-sex or different sex) to adopt jointly, it does permit second parent adoption if the custodial parent consents and good cause is established.<sup>19</sup> A petition for a second parent adoption is treated as if the petitioner were a stepparent, which is discussed in more detail below.

Many states do not allow second-parent adoptions. However, a validly-granted second-parent adoption issued in Montana must be recognized nationwide, regardless of whether another state would have granted the adoption.<sup>20</sup>

There is a potential federal tax benefit available for second-parent adoptions that is not available to married couples. The Federal Adoption Tax Credit (\$13,570 per child in 2017) can be applied to adoption expenses, but it cannot be used if “a taxpayer pays to adopt the child of the taxpayer’s spouse.”<sup>21</sup> As this is often the case in a second-parent adoptions, some couples may choose not to marry until after their second-parent adoption, but it is important to seek out the advice of an experienced attorney to determine if this credit would be applicable and to what extent it would offer a financial benefit before making such a decision.

19 Mont. Code Ann. § 42-4-302(2).

20 *V.L. v E.L.*, 136 S.Ct. 1017 (2016).

21 IRS Tax Topic No. 607: Adoption Credit and Adoption Assistance Programs, <https://www.irs.gov/taxtopics/tc607.html>

## Stepparent Adoption

Another option for married same-sex couples to ensure that both parents are legally recognized is to obtain 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.

In Montana, a stepparent has standing to petition to adopt a minor child of his or her spouse if: (a) the spouse has legal and physical custody of the child and the child has been in the physical custody of the spouse and the stepparent during the 60 days preceding the filing of a petition for adoption; (b) the spouse is deceased or mentally incompetent but, before dying or being judicially declared mentally incompetent, had legal and physical custody of the child, and the child has resided primarily with the stepparent during the 12 months preceding the filing of the petition; or (c) the department or an agency placed the child with the stepparent.<sup>22</sup>

Additionally, the custodial parent must consent to the adoption<sup>23</sup> and must obtain an order of termination of parental rights of the child’s noncustodial parent.<sup>24</sup>

## Parental Presumption

Parental presumption is the idea that, when a married woman gives birth, her spouse is the other legal parent. State laws pertaining to parental presumption

22 Mont. Code Ann. § 42-4-302(1).

23 Mont. Code Ann. § 42-4-303.

24 Mont. Code Ann. § 42-4-310.



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

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 Montana, a person is presumed to be the “natural father” of a child based on any of the following: marriage to the mother, attempted marriage to the mother, receiving the child into his home and openly representing the child to be his natural child, acknowledging paternity, evidence of genetic paternity, or according to the laws of the state or Indian territory where the child was born.<sup>25</sup> These presumptions may also be relied upon to establish a mother and child relationship “insofar as practicable” in addition to giving birth.<sup>26</sup> Since the recognition of marriage equality, the statute has not been updated and there have been no court decisions in Montana regarding the parental presumption. While Montana’s parental presumption should now apply equally to all married couples, same-sex couples should consult an LGBTQ family law attorney. Further, it is strongly advised that the non-biological parent petition for a court order of parentage or obtain an adoption decree to ensure that both spouses are legally recognized as parents.

25 Mont. Code Ann. § 40-6-105

26 Mont. Code Ann. §§ 40-6-121 and 40-6-104.

## 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 gestational carrier through surrogacy. 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 embryo created from another woman’s egg is transferred to the surrogate’s uterus.

ART arrangements in Montana are often with agencies located out of state, although there are individuals in Montana who have served as gestational surrogates or egg or sperm donors. There is very little law in Montana governing ART, with the exception of one statute governing artificial insemination. Under that law, if a wife is artificially inseminated with donated sperm under the supervision of a licensed physician and with the consent of the

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woman's husband, the husband is treated in law as the natural father of the child and the sperm donor is not considered the natural father.<sup>27</sup> Although the law uses gendered terms, with the nationwide recognition of marriage equality, the artificial insemination provision should apply equally to married lesbian couples.<sup>28</sup>

It is essential to enter into a written surrogacy and/or donor contract to document the expectations, intentions, and responsibilities of all parties involved in a surrogacy and donor arrangement. Given the lack of specific laws or cases regarding ART in Montana, it is imperative that any individual or couple who is considering the use of ART consult with a Montana attorney who has significant expertise in ART law, has worked with LGBTQ individuals and same-sex couples, and has experience drafting enforceable contracts between intended parents, donors, surrogates, and surrogacy agencies to ensure that the parental rights of the intended parent(s) are recognized. Further, as a parentage decree or an adoption decree is irrefutable proof of parentage and is valid throughout the country, it is strongly recommended that same-sex couples consult with an attorney about also petitioning for a pre-birth or post-birth parentage decree or an adoption decree for a child conceived through ART even if a surrogacy or donor agreement is in place and the name(s) of the intended parent(s) appear on the birth certificate.

27 Mont. Code Ann. § 42-6-106.

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

## BIRTH CERTIFICATES

Montana law governing the issuance of birth certificates has not been updated since the recognition of marriage equality and still uses gendered language. In Montana, if the mother is married at the time of the birth of a child, the husband's name must be added to the birth certificate as the father unless other paternity is determined by a court or affidavits from the mother and husband attest that the husband is not the father.<sup>29</sup> If the mother is not married, the name of the father may not be entered on the certificate without an affidavit of paternity signed by the mother and the person to be named as the father.<sup>30</sup> The woman who gives birth to a child is considered to be the mother for purposes of birth registration "unless otherwise provided by state law or determined by a court of competent jurisdiction prior to the filing of the birth certificate."<sup>31</sup>

The U.S. Supreme Court recently applied *Obergefell* to reiterate that equal access to birth certificates is one of the many "rights, benefits, and responsibilities" associated with civil marriage. Accordingly, despite the use of gendered language in the Montana's birth certificate law, Montana cannot discriminate against same-sex spouses with regard to the naming of each spouse on a child's birth certificate, and same-sex parents are entitled to the same parental presumption enjoyed by different-sex parents.<sup>32</sup>

29 Mont. Code Ann. § 50-15-221.

30 Mont. Code Ann. § 50-15-221.

31 Mont. Code Ann. § 50-15-221(6).

32 *Pavan v. Smith*, No. 16-992 (June 2017).



As a birth certificate is not a Court Order and is only evidence of what the parties intended, it is still recommended that same-sex couples petition for a parentage decree or an adoption decree as soon as possible, regardless of whether their names appear on the birth certificate.

New birth certificates must be issued following adoption or a post-birth parentage decree, so a same-sex parent who did not appear on the original birth certificate should be listed on the birth certificate after completing an adoption of a child.<sup>33</sup>

To update a child's birth certificate, contact the Office of Vital Records in the Montana Department of Health and Human Services. More information and contact information is available through their website at <http://dphhs.mt.gov/vitalrecords>.



## 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 on behalf of the child, 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 at a local SSA office, which can be found through this link <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 parentage or 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), contact the SSA at 1-800-722-1213 or 1-800-325-0778, or visit the SSA website [www.socialsecurity.gov](http://www.socialsecurity.gov).

If difficulties arise, please contact Family Equality Council.

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

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## 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 provided 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: <https://travel.state.gov/content/travel/en/passports/apply-renew-passport/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 parentage or adoption decree, are permitted to be included on the application. However, if the legal parent of the child is unavailable, the Department of State permits a non-legal 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 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 <http://travel.state.gov>

Family Equality Council also maintains FAQs on applying for a child's U.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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[www.mhrn.org](http://www.mhrn.org)

## 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 their families remain vulnerable.

Montana has very limited state-level protections for LGBTQ people in these areas. Nevertheless, some local governments in Montana, such as Missoula, Helena, Butte, Bozeman, and Whitefish, have passed local ordinances to institute broadened protections for LGBTQ people.<sup>34</sup> Accordingly, LGBTQ individuals in these localities who are discriminated against may be able to file a complaint with the locality.

<sup>34</sup> Missoula City Ordinance Chapter 9.64; Helena City Code Chapter 8; Butte-Silver Bow Municipal Code Chapter 5.68; Bozeman Code of Ordinances Chapter 10; Whitefish City Code Chapter 10. Billings, the largest city in Montana, has not passed an ordinance expanding its non-discrimination protections to LGBTQ individuals.

## EMPLOYMENT

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.

### State Law

Unfortunately, Montana offers no state law prohibiting employers from discriminating against an employee on the basis of sexual orientation or gender identity. In the absence of any statutory or case law protections, Montana Governor Steve Bullock signed Executive Order 04-2016 into effect on January 18, 2016. This executive order provides protections against discrimination on the basis of sexual orientation and gender identity or expression for “all persons employed or served by state government” and requires provisions in state contracts or subcontracts prohibiting discrimination based on sexual orientation or gender identity or expression.<sup>35</sup> Thus, state employees and contractors may seek remedial action for instances of discrimination in the workplace based on sexual orientation or gender identity from their agency’s equal employment office.

### Federal Law

While there is no explicit federal law that bars discrimination against LGBTQ people

<sup>35</sup> State of Montana, Office of the Governor, Executive Order No. 04-2016: Executive Order Prohibiting Discrimination in State Employment and Contracts (Jan 18, 2016); Admin. R. Mont. 2.21.4002(1)(d), 2.21.4005(2), and 2.21.4008(3)(e).

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>36</sup> In *Veretto v. US Postal Service*<sup>37</sup> and *Castello v. US Postal Service*,<sup>38</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 strengthened the protections for those who may face discrimination on the basis of sexual orientation by ruling in *Complainant v. Foxx* that claims of discrimination based on sexual orientation inherently amount to claims of sex discrimination and are therefore actionable under Title VII.<sup>39</sup> These EEOC decisions, while not binding on courts, reflect the EEOC’s view that LGBTQ individuals are protected under Title VII and may file a claim of

<sup>36</sup> No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012).

<sup>37</sup> No. 0120110873 (E.E.O.C. Jul. 1, 2011).

<sup>38</sup> No. 0120111795 (E.E.O.C. Dec. 20, 2011).

<sup>39</sup> No. 0120133080, 2015 WL 4397641 (E.E.O.C July 16, 2015).



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>40</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 office serving Montana is located in Seattle, WA, and can be reached at 1-800-669-4000.

Generally, the Charge of Discrimination must be filed within 180 days of each 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 on the basis of "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 at this website <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)

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

Montanans 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 (Executive Order 13672) that prohibits 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 under this Order. However, President Trump recently rescinded the related Executive Order 13673, which strengthened Executive Order 13672 by requiring these subcontractors to provide proof of compliance with Executive Order 13672. LGBTQ individuals who have been the victim of discrimination by an employer that contracts with the federal government can file a complaint with the U.S. Department of Labor Office of Federal Contract Compliance Programs. Information about the complaint process is available 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

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

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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 in the workplace on the basis of sexual orientation or gender identity should contact an attorney familiar with LGBTQ employment law.



## HOUSING

### State Law

There are currently no express provisions in Montana law that prohibit discrimination against LGBTQ people related to housing. Montana’s Human Rights provisions do prohibit discrimination on the basis of sex and familial status,<sup>41</sup> but there is no Montana case law explicitly applying these provisions to the LGBTQ community. As mentioned previously, several of the larger localities in Montana have passed ordinances that prohibit discrimination in housing on the basis of sexual orientation and/or gender identity, so LGBTQ individuals discriminated against in those

<sup>41</sup> Mont. Code Ann. § 49-2-305.

localities may seek recourse through their local governments.

### 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>42</sup> It also prohibits lenders from 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

<sup>42</sup> Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, Final Rule (2012); 24 CFR § 5.106.



an applicant, as well as 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 (1-800-669-9777), online [http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_discrimination](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination), or via mail. The HUD Office of Fair Housing and Equal Opportunity Montana Regional Office is located at 1670 Broadway, Denver, Colorado 80202-4801. HUD also has a local office in Helena at the Paul G. Hatfield US Courthouse at 901 Front Street, Suite 1300, Helena, MT 59626. 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)

## PUBLIC ACCOMMODATIONS

Public accommodations are generally defined as entities, both public and private, which are open to or offer services for the general 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 the definition.

### State Law

Montana state law currently has no provisions protecting LGBTQ people from discrimination in places of public

accommodation, but, as previously mentioned, certain localities do offer such protections.

### 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 law contains express protections on the basis of sexual orientation or gender identity. However, in 1998, the U.S. 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>43</sup> Businesses that hold themselves open to the public (such as restaurants, stores, hotels) are therefore prohibited from refusing service or business to individuals because they are HIV-positive.



43 *Bragdon v. Abbott*, 524 U.S. 624 (1998).

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

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# SCHOOL POLICIES AND ANTI-BULLYING

## STATE LAW

As with employment, housing, and public accommodations, Montana offers no state-level protections against discrimination on the basis of sexual orientation and gender identity for LGBTQ students and employees in the public education system. Without explicit statutory language or authoritative decisions from the state or appellate courts in Montana, LGBTQ public school students and employees remain vulnerable to discriminatory actions. In the absence of state-level protection, a few local school boards have passed non-discrimination policies that protect LGBTQ students and/or employees from discrimination in education based on sexual orientation and/or gender identity.<sup>44</sup>

Montana state law prohibits bullying of a student by any other student or employee, but there are no specific provisions regarding bullying of LGBTQ students and families.<sup>45</sup> State law defines bullying as “any harassment, intimidation, hazing, or threatening, insulting, or demeaning gesture or physical contact, including any intentional written, verbal, or electronic communication or threat directed against a student that is persistent, severe, or repeated.”<sup>46</sup> Thus, although the bullying policy does not explicitly define bullying

protections to include sexual orientation or gender identity, its broad definition of bullying should provide LGBTQ students with some protections.

## FEDERAL LAW

While Montana state law fails to explicitly 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 for not subscribing to the stereotypical notions of femininity or masculinity.<sup>47</sup> In past policy statements, the Department of Education has specifically stated that LGBTQ students are protected by Title IX.<sup>48</sup> In a May 2016 statement, the

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

48 United States Dept. of Education Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence, (April 2014); <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>. This

44 Missoula County Public Schools Policy 3210 & 5013; Bozeman Public Schools Policy 3210; Great Falls School District Policy 3210.

45 Mont. Code Ann. § 20-5-209.

46 Mont. Code Ann. § 20-5-208.



DOE and Department of Justice (DOJ) issued guidance stating 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>49</sup> In February 2017, under the Trump Administration, the DOE and DOJ rescinded the May 2016 guidance.<sup>50</sup> Despite the DOE and DOJ's withdrawal of the guidance, the underlining law that the guidance interpreted remains. Since 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>51</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 a 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

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guidance was withdrawn by the Trump Administration on September 22, 2017.

49 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>

50 United States Dept. of Education Office for Civil Rights, Dear Colleague Letter on Title IX (Feb 2017): <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.docx>.

51 *Whitaker v. Kenosha Unified School District*, No. 16-3522 (7th Cir. 2017).

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 list "sex" as the basis (or one of the bases) of your claim.

More details on drafting a complaint, as well as an electronic complaint form, are available on the OCR website, located here <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>. The OCR regional office serving Montana is located in Seattle at 915 Second Ave., Room 3310, and is available by phone at 206-607-1600.

Ultimately, because school district policies are determined at the local level, there can be wide variations on the degree to which a school district is proactive and protective of LGBTQ students, families, and employees. It is important to be familiar with your school district's policies protecting LGBTQ individuals and to reach out to your school board with questions or concerns. GLSEN has several resources available to support such a discussion: <https://www.glsen.org/article/bullying-prevention-resources>

Find more information at:

[www.familyequality.org](http://www.familyequality.org)  
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## 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 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 this site ([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 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>52</sup> The final agency rule implementing Section 1557 prohibits discrimination based upon gender identity, requiring that any healthcare provider receiving federal

52 42 U.S.C. § 18116.



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>53</sup> The final rule also prohibits discrimination based on sex stereotyping, providing potential protections to lesbian, gay, and bisexual people.<sup>54</sup>

Anyone who has experienced discrimination on the basis of their sexual orientation or gender identity in a healthcare 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, the following 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.](#)

**Where to Start, What to Ask:**  
**A Guide for LGBTQ People Choosing Healthcare Plans**

Developed by Strong Families and our partners at:

- Basic Rights Oregon
- Brown Boi Project
- Center for American Progress
- Equality New Mexico
- Family Equality Council
- Forward Together
- Montana Women Vote
- National Center for Lesbian Rights
- National Gay and Lesbian Task Force
- Out2Enroll
- Raising Women's Voices
- SPARK Reproductive Justice Now
- Southwest Women's Law Center
- Transgender Law Center
- Transgender Resource Center of New Mexico
- Western States Center
- Young Women United

53 45 CFR 92 (2016); 81 FR 31375 (2016). In *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.

54 45 CFR 92 (2016); 81 FR 31375 (2016).

Find more information at:

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

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# FAMILY AND/OR PARENTING LEAVE

Montana does not require employers to provide paid family leave. However, Montana 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. The Act also 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 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 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.



# CHANGES OF NAME AND GENDER

A transgender individual in Montana may submit a petition to the district court of the county where the individual lives to obtain a legal name change.<sup>55</sup> The court will appoint a time for hearing the petition, and, generally, the petitioner must publish notice of the time and place of hearing the petition for four successive weeks in a newspaper published in the county.<sup>56</sup>

Upon receiving the court order issuing the name change, a transgender individual may update his or her name on a driver's license by applying in person at a state driver's license exam station. The applicant must provide a certified copy of the court order granting the name change.<sup>57</sup> To change a gender marker on a driver's license, the applicant need not undergo a surgical procedure, but it is advisable to submit a letter of support from a therapist and/or medical doctor certifying the applicant's gender identity.<sup>58</sup>

A transgender individual may apply to amend the name appearing on a birth certificate by submitting a certified copy

of the court order issuing the name change to the Montana Vital Records Office.<sup>59</sup> To amend the gender identifier on a birth certificate to reflect an individual's true sex, the state must receive a certified copy of a court order indicating that the sex of the individual has been changed by surgical procedure.<sup>60</sup> The law does not specify the required nature or extent of such a surgery, nor is the surgeon providing the statement required to disclose the specific nature of any such surgery.<sup>61</sup> While the Montana Department of Public Health and Human Services proposed a rule in October 2017 to remove the surgical requirement to amend a birth certificate gender marker, in November 2017 the Montana State Senate took action to block the proposed rule.<sup>62</sup>

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59 National Center for Transgender Equality, ID Documents Center - Montana, last updated June 5, 2017, <http://www.transequality.org/documents/state/montana>; Montana Office of Vital Records Contacts: <http://dphhs.mt.gov/vitalrecords/contacts>.

60 Mont. Admin. R. 37.8.311.

61 Gender Expansion Project, "Becoming Me: Montana State Name Change Process for Transgender Individuals" (2013), available at <http://www.genderexpansionproject.org/resources&publications/Becoming%20Me%20-%20MT%20Name%20Change.pdf>.

62 Montana Dep't of Public Health and Human Svcs: In the matter of the amendment of ARM 37.8.102 and 37.8.311 pertaining to the amendment of birth certificate gender designations and issuance of a replacement certificate (Sept 2017), available at <https://dphhs.mt.gov/Portals/85/rules/37-807pro-arm.pdf>; SB 10 (2017).

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55 Mont. Code Ann. § 27-31-101.

56 Mont. Code Ann. § 27-31-201.

57 Montana Department of Justice, Changing Your Name on Your Driver License or ID Card, <https://dojmt.gov/driving/driver-licensing/#DLID21>.

58 Gender Expansion Project, "Becoming Me: Montana State Name Change Process for Transgender Individuals" (2013), available at <http://www.genderexpansionproject.org/resources&publications/Becoming%20Me%20-%20MT%20Name%20Change.pdf>.

Find more information at:

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

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# HATE CRIMES PROTECTIONS

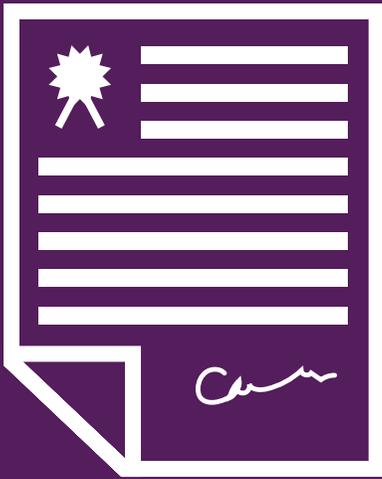
Montana law does not currently include protections for LGBTQ people who are targeted by hate crimes. Under Montana's hate crimes statute, a person commits "malicious intimidation or harassment" upon purposefully or knowingly causing bodily injury, or reasonable apprehension thereof, or destroying or defacing property with the intent to "terrify, intimidate, threaten, harass, annoy, or offend" another person because of their "race, creed, religion, color, national origin, or involvement in civil rights or human rights activities."<sup>63</sup>

The federal government offers some protection, however. In 2009, Congress enacted the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which expands federal hate crimes protections 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. Victims of a hate crime should report the crime to both the local authorities and the FBI. The FBI maintains field offices in Kalispell and Billings, Montana, and contact information is available through the following webpage: <https://www.fbi.gov/contact-us/field-offices>

Phone: (504) 816-3000  
Website: [neworleans.fbi.gov](https://www.fbi.gov/contact-us/field-offices)

<sup>63</sup> Mont. Code Ann. § 45-5-221.





## 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.

Find more information at:

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

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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 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 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.

Without a Will, Montana intestacy laws will apply and the deceased's property may not go to the desired beneficiaries. A Will also allows the Personal Representative to serve without bond, which will make the probate process less expensive. A Will does not affect beneficiaries that have been designated on bank accounts, 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.

It is highly recommended to consult a Montana attorney in drafting this document. More information is available from the State Bar of Montana, at:

<http://www.montanabar.org/?page=WP>



## DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES (LIVING WILL/ADVANCE DIRECTIVE)

A Living Will or Advance Directive allows Montanans 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 and guidance on drafting a Living Will or Advance Directive for Healthcare specifically for the State of Montana is available at:

<https://www.nolo.com/legal-encyclopedia/living-will-power-of-attorney-29595.html>

The basic form for this simple document can be found at <http://msuextension.org/publications/FamilyFinancialManagement/MT200602HR.pdf> or <http://dphhs.mt.gov>

## MEDICAL POWER OF ATTORNEY

Legal spouses can make medical decisions for each other if one of them is incapacitated. With a Medical Power of Attorney, anyone can designate who will make these decisions and visit them in the intensive care unit. It is a good idea for same-sex, married spouses to also have this document, just in case their marriage is questioned at a time when medical decision making is critical.

The basic form for this simple document can be found in Part 3 of the guidelines found at: [http://www.aarp.org/content/dam/aarp/relationships/caregiving/2011\\_01/ad/Montana.pdf](http://www.aarp.org/content/dam/aarp/relationships/caregiving/2011_01/ad/Montana.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 incapacitation. We recommend consulting a Montana attorney in drafting this document.

Find more information at:

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

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## DESIGNATION OF GUARDIAN BEFORE NEED

If a court-ordered guardian is necessary because of incapacity, the court usually appoints the closest legal next-of-kin (relatives by blood or marriage). A Designation of Guardian Before Need allows an individual to direct the court's decision, which is especially useful for someone who does not want their next-of-kin to take control. The basic form for this simple document can be found at:

[http://www.aarp.org/content/dam/aarp/relationships/caregiving/2011\\_01/ad/Montana.pdf](http://www.aarp.org/content/dam/aarp/relationships/caregiving/2011_01/ad/Montana.pdf)

## DIRECTIONS FOR DISPOSITION OF REMAINS

After a person is dead, their body is released to their legal next-of-kin, unless they have signed a document stating that they want another individual to handle their funeral and burial or cremation. These ceremonies can be a healing part of the grief process for the surviving spouse. The basic form for this simple document can be found in Part 4 at:

[http://www.aarp.org/content/dam/aarp/relationships/caregiving/2011\\_01/ad/Montana.pdf](http://www.aarp.org/content/dam/aarp/relationships/caregiving/2011_01/ad/Montana.pdf)



## 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. This document is especially important for unmarried couples. We recommend consulting a Montana attorney in drafting this document.

## CO-PARENTING AGREEMENT

A Co-Parenting agreement is a document that 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 Montana (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, dissolution of the relationship, or other event causing separation. We recommend consulting a Montana attorney in drafting this document.

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

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This Resource Guide was prepared and distributed by:

**Kim Abbott**

Co-Director

Montana Human Rights Network

[kim@mhrn.org](mailto:kim@mhrn.org)

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

(406) 442-5506

**Denise Brogan-Kator**

Chief Policy Officer

Family Equality Council

[DeniseBK@FamilyEquality.org](mailto:DeniseBK@FamilyEquality.org)

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

(646) 880-3047



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COUNCIL

The authors would like to gratefully acknowledge the review and editing of this Guide provided by:

Susan G. Ridgeway, Axilon Law Group, PLLC.