

# NEVADA LGBTQ FAMILY LAW

## A Resource Guide for LGBTQ & Sex/Gender Diverse Families

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# INTRODUCTION

This guide was drafted by Family Equality Council, in collaboration with Gender Justice Nevada. It addresses many of the legal rights and issues that affect LGBTQ and sex/gender diverse families currently living in Nevada. In this guide, we use the terms LGBTQ and sex/gender diverse people to refer to Nevadans who identify as lesbian, gay, bisexual, transgender or queer, who are part of nontraditional or polyamorous relationships or family structures, and who encounter persistent, historically rooted and culturally informed exclusion, misunderstanding and violation based on their sexual preferences, sexual orientation, or gender identity. We wish to support inclusive change that challenges historical exclusions even as we seek to emphasize our commonalities. We seek to press for change that acknowledges that all persons are diverse in their sex/gender identity and expression.

As LGBTQ and sex/gender diverse communities have achieved greater inclusivity across the nation, there are still significant gaps in the rights of such individuals and their families, especially at the state level. However, Nevada's body of law relating to the rights of LGBTQ and sex/gender diverse people has evolved to recognize a broader range of rights previously unavailable to these communities. Progressive strides have been made especially in the two years following nationwide recognition of marriage equality, with added anti-discrimination protections when it comes to family formation, employment, school-bullying, and access to identification documents. Nevada also has some of the most progressive policies in the nation when it comes to recognizing, protecting, and supporting the transgender and intersex communities. With this kind of rapidly evolving legal climate, it is important to understand what the law in each area is and to be familiar with the rights and support available to you and your family.

## DISCLAIMER

This handbook is not intended to be legal advice but an overview of the current state of LGBTQ-family law in Nevada. 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 2002, Nevada voters approved the incorporation of an amendment to the Nevada Constitution that recognized marriage as existing only between a man and a woman.<sup>1</sup> By 2009, the Nevada Legislature passed the Domestic Partnership Responsibilities Act (DPRA), which allowed both same-sex and different-sex couples to register with the state of Nevada as domestic partners.<sup>2</sup> DPRA provided many of the “same rights, protections, and benefits” to domestic partners as those given to different-sex spouses.<sup>3</sup> However, the DPRA did not require employers to extend healthcare

coverage or benefits to the domestic partners of their employees.<sup>4</sup> The DPRA also did not give domestic partners any federal relationship rights, such as social security spousal benefits or exemption from federal inheritance tax.<sup>5</sup>

In 2012, *Sevcik v. Sandoval* was filed with the U.S. District Court of Nevada on behalf of eight same-sex couples who were denied marriage licenses.<sup>6</sup> After the case was dismissed by the District Court of Nevada, the case was appealed with the Ninth Circuit Court of Appeals later that

1 Nevada Question 2 (2000): <https://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2000.pdf>

2 Domestic Partnership Responsibilities Act 2009: <https://www.leg.state.nv.us/NRS/NRS-122A.html>

3 Domestic Partnership Responsibilities Act 2009: <https://www.leg.state.nv.us/NRS/NRS-122A.html>

4 Domestic Partnership Responsibilities Act 2009: <https://www.leg.state.nv.us/NRS/NRS-122A.html>

5 Domestic Partnership Responsibilities Act 2009: <https://www.leg.state.nv.us/NRS/NRS-122A.html>

6 *Sevcik v. Sandoval* (reversed and remanded by *Latta v. Otter*, 771 F. 3d 496 (9th Cir. 2014)).



Find more information at:

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

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

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same year.<sup>7</sup> In October 2014, the Ninth Circuit finally reversed the District Court’s 2012 dismissal, finding that the restriction on same-sex marriage in Nevada’s 2002 amendment was unconstitutional and ordering that this ban be lifted.<sup>8</sup> By October 9, 2014, same-sex couples in Nevada began receiving marriage licenses. In 2017, Nevada amended its marriage law to codify nationwide marriage equality, authorizing the marriage of two persons regardless of gender.<sup>9</sup>

Federal recognition of same-sex marriage came in June 2015 with the United States Supreme Court ruling in *Obergefell v. Hodges*.<sup>10</sup> *Obergefell* not only requires all U.S. states to issue marriage licenses to same-sex couples, but also requires all states to recognize those marriage licenses issued in another state.<sup>11</sup>

Considering recent changes in the composition of the United States Supreme Court, there has been widespread unease about the upholding of the *Obergefell* decision. As a protective measure, Nevada approved Assembly Joint Resolution 2 (AJR2) in May 2017, which rescinds the gender-specific language previously passed in 2002.<sup>12</sup> AJR2 proposes that Article 1, Section 21 of Nevada’s Constitution will be amended to “require the recognition of

all marriages regardless of gender.”<sup>13</sup> The amendment to Nevada’s Constitution also requires the equal treatment of “all legally valid marriages.”<sup>14</sup>

Nevada does not have a state-enacted Religious Freedom Restoration Act (RFRA). In March 2015, just before the Supreme Court decision in *Obergefell*, efforts were made to pass a bill similar to the federal RFRA in the form of Nevada SB 272.<sup>15</sup> However, the bill was never pursued and has not been reintroduced. The federal RFRA was signed into law in 1993 with the premise of protecting the right of citizens to exercise their religious beliefs free from interference. Since then, multiple states have passed their own “religious freedom” bills. However, many of these states and the institutions which cite the RFRA use the bill as a tool for faith-based discrimination. For example, some of these proposed bills contain language that specifically applies to adoption and foster care services. While Nevada does not have its own “religious freedom” bill, AJR2 (discussed above) includes a provision that allows “religious organizations and members of the clergy” “the right to refuse to solemnize a marriage.”<sup>16</sup>

7 *Sevcik v. Sandoval* (reversed and remanded by *Latta v. Otter*, 771 F. 3d 496 (9th Cir. 2014).

8 *Sevcik v. Sandoval* (reversed and remanded by *Latta v. Otter*, 771 F. 3d 496 (9th Cir. 2014).

9 Nev. Rev. Stat. Ann. § 122.020

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

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

12 Nevada Assembly Joint Resolution 2 (2017): <https://legiscan.com/NV/text/AJR2/2017>

13 Nevada Assembly Joint Resolution 2 (2017): <https://legiscan.com/NV/text/AJR2/2017>

14 Nevada Assembly Joint Resolution 2 (2017): <https://legiscan.com/NV/text/AJR2/2017>

15 Nevada SB 272 (2015): <http://www.leg.state.nv.us/Session/78th2015/Bills/SB/SB272.pdf>

16 Nevada Assembly Joint Resolution 2 (2017): <https://legiscan.com/NV/text/AJR2/2017>





SUPREME COURT OF NEVADA

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

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## 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), the law that denied federal marriage benefits to married same-sex couples, unconstitutional. In 2015, the Supreme Court found in *Obergefell v. Hodges* that same-sex couples have a fundamental right to marry under the Constitution, creating same-sex marriage and recognition of same-sex marriages nationwide.<sup>17</sup>

Because of *Windsor*, married same-sex couples who live in Nevada became recognized by the federal government for federal benefits purposes. Such benefits include, but are not limited to Social Security and Veterans Administration benefits, all federal tax purposes, health insurance and retirement benefits for same-sex spouses of all federal employees, and spousal benefits for same-sex spouses of military service members. Following *Obergefell*, all federal marriage benefits have been extended to married same-sex couples nationwide.

### Relationship Recognition Resources

For more information on how to access federal marriage benefits please see the Post-DOMA Fact Sheets published by Family Equality Council:

[http://www.familyequality.org/get\\_informed/advocacy/after\\_doma/](http://www.familyequality.org/get_informed/advocacy/after_doma/)

<sup>17</sup> *Obergefell v. Hodges*, 135 S. Ct. 2584, (U.S. 2015).

## IMPORTANT

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



# CHILDREN AND PARENTAGE

People in the LGBTQ and sex/gender diverse communities form families in various ways. Some have children from prior different-sex or same-sex relationships. Some are single parents by choice. Some same-sex couples adopt or use assisted reproductive technologies to build their families together. The state of Nevada has various rules and statutes that recognize and reflect the evolving landscape of the modern family make-up.

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

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

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

Likewise, if you are an LGBTQ person or same-sex couple thinking about fostering and/or adopting children either from the public child welfare system (foster care) or through private adoption, it is critical that you hire an adoption attorney who is experienced in LGBTQ family law in Nevada. It is not enough to simply hire an experienced family law attorney. There are issues unique to LGBTQ family law in Nevada 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 assist you.

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# ADOPTION

Nevada law provides that “any adult person or any two persons married to each other may petition the district court of any county in [the] state for leave to adopt a child.”<sup>18</sup> For married couples, consent by the spouse of the prospective parent is required, though this consent “does not establish any parental rights or responsibilities on the part of the spouse” unless that spouse:

- files written consent specifically adopting the child;<sup>19</sup>
- files written consent accepting parental responsibilities; and<sup>20</sup>
- the spouse is named as an adoptive parent in the legal order of adoption.<sup>21</sup>

Further, any person who adopts a child must be at least 10 years older than the child, and if the child is over 14 years of age, the child must consent to the adoption.<sup>22</sup>

The Nevada Administrative Code also states that the application process for adoption of a child through a child welfare agency cannot be denied on the basis of sexual orientation.<sup>23</sup> However, in 2017, Nevada amended its marriage law to codify nationwide marriage equality, authorizing the marriage of two persons regardless of gender.<sup>24</sup> As amended, the statute

18 Nev. Rev. Stat. Ann. § 127.030.

19 Nev. Rev. Stat. Ann. § 127.030(3)(a)(1).

20 Nev. Rev. Stat. Ann. § 127.030(3)(a)(2).

21 Nev. Rev. Stat. Ann. § 127.030(3)(b).

22 Nev. Rev. Stat. Ann. § 127.020.

23 Nev. Admin. Code § 127.351.

24 Nev. Rev. Stat. Ann. § 122.020.

reflects that parental and adoption rights must be applied equally to different-sex and same-sex married couples. As such, each of the methods of adoption available to heterosexual couples must be made available to LGBTQ and sex/gender diverse *married* couples.

## Joint Adoption

As stated above, so long as LGBTQ couples meet the requirements for petitioning for adoption, they should be eligible for joint adoption. With the codification of marriage equality in Nevada, married same-sex couples should be treated equally to married different-sex couples regarding adoption and parenting rights and responsibilities. Therefore, under state law, married couples should petition for adoption using both spouses’ names.

With the 2009 passage of the Nevada Domestic Partnership Responsibilities Act, domestic partners living in Nevada “have the same rights, protections and benefits... responsibilities, obligations and duties under law” as spouses.<sup>25</sup> Therefore, domestic partners are also eligible to adopt jointly, which would eliminate the inconvenience of filing separate applications for legal adoption.

## 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

25 Nev. Rev. Stat. Ann. § 122A.200.



the first parent losing any parental rights. There is no Nevada law that explicitly prohibits second-parent adoption, and case law seemingly supports the practice.

Second-parent adoptions create a legally recognized relationship between a second parent and a child without changing the legal relationship, rights, and responsibilities of the legal parent. Since a second-parent adoption results in a court-issued adoption judgment, the new legal relationship created should be recognized not only by the issuing state, but also by other states.

In 2016, the United States Supreme Court determined that other jurisdictions should recognize a same-sex second-parent adoption validly granted in Georgia. In *V.L. v. E. L.*, the plaintiff and the defendant were a lesbian couple. The defendant had given birth to three children and the plaintiff adopted them through a second-parent adoption with a formal adoption decree from the state of Georgia. The couple relocated to Alabama and split up, at which point the defendant restricted plaintiff's access to the children. The Supreme Court of Alabama sided with the defendant, declaring the Georgia adoption decree void. However, the United States Supreme Court unanimously reversed that decision, determining that the adoption is valid and ordering Alabama to recognize the plaintiff's parental rights under the Georgia court order granting the second-parent adoption.<sup>26</sup>

In 2017, the Supreme Court of Nevada

26 *V.L. v E.L. et al*, 136 S. Ct. 1017, (U.S. 2016).

affirmed the granting of paternity to an adoptive father's ex-partner who had never completed the adoption process himself.<sup>27</sup> Though the couple was never married, they raised their child jointly and the ex-partner was present during the adoptive father's entire adoption process. Under a doctrine called "equitable adoption," the Court found that the plaintiff seeking paternity was entitled to full parentage rights. However, the most secure method of ensuring legal parentage is an adoption order. Therefore, we strongly recommend that unmarried same-sex couples with children complete a second-parent adoption.

## Stepparent Adoption

Stepparent adoption is the legal adoption of a child by the spouse of the child's legal parent. Nevada law allows stepparent adoption without any change to the legal status of the relationship between the legal parent and the child.<sup>28</sup> While Nevada law usually requires the consent of a child's mother before placement with an adoptive home, spouses of the legal parent seeking adoptive rights need not fulfill this requirement.<sup>29</sup>

There is nothing in Nevada's stepparent adoption statute that would prohibit a same-sex spouse from completing a stepparent adoption of their spouse's child. Since marriage equality is codified in Nevada state law, same-sex couples are entitled to the same access to stepparent adoptions as different-sex couples.

27 *Ken Nguyen v. Robert Boynes*, 133 Nev. Adv. Op. 32(2017).

28 Nev. Rev. Stat. Ann. § 127.160.

29 Nev. Rev. Stat. Ann. § 127.043.

Find more information at:

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

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

However, it is advisable to contact an attorney for the same reasons mentioned above.

## Parental Presumption

Nevada has recognized the presumption of paternity within the definition of “natural father,” which creates legal rights to a child for a man if he and the child’s mother were married when the child was born, or if the child was born within 285 days after termination of the marriage.<sup>30</sup> While this provision specifically refers to a male as a presumed parent, this “parental presumption” exists in most states and has usually been found to apply equally to married same-sex couples.<sup>31</sup> Moreover, in a June 2017 decision, the U.S. Supreme Court reinforced its findings in *Obergefell* by expressly reiterating that equal access to birth certificates is one of the many “rights, benefits, and responsibilities” associated with civil marriage.<sup>32</sup> Therefore, same-sex spouses in Nevada should now be entitled to the same parental presumption enjoyed by different-sex couples regarding the naming of each spouse on a child’s birth certificate.

30 Nev. Rev. Stat. Ann. §126.05.1

31 *Elisa B. v. Superior Court*, 117 P.3d 660 (Cal. 2005), *Frazier v. Goudschaal*, 296 Kan. 730 (2013), *In re Guardianship of Madelyn B.*, No. 2013-593, 2014 WL 2958752 (N.H. July 2, 2014).

32 *Pavan v. Smith*, 582 U.S. (2017).

## SURROGACY, ASSISTED REPRODUCTION, AND ARTIFICIAL INSEMINATION

Nevada law allows gestational surrogacy, a process in which the surrogate mother does not contribute her own egg to the pregnancy. Nevada also explicitly recognizes at least five different methods of assisted reproduction within its laws governing “gestational agreements.”<sup>33</sup> These include, and are not limited to:

- Intrauterine insemination<sup>34</sup>
- Donation of eggs<sup>35</sup>
- Donation of embryos<sup>36</sup>
- In vitro fertilization and transfer of embryos<sup>37</sup>
- Intracytoplasmic sperm injection<sup>38</sup>

Gender-neutral language is used throughout these provisions establishing parental rights and determining the scope of relationship between “donors,”<sup>39</sup>

33 Nev. Rev. Stat. Ann. § 126.500 - 126.810.

34 Nev. Rev. Stat. Ann. § 126.510(1).

35 Nev. Rev. Stat. Ann. § 126.510(2).

36 Nev. Rev. Stat. Ann. § 126.510(3).

37 Nev. Rev. Stat. Ann. § 126.510(4).

38 Nev. Rev. Stat. Ann. § 126.510(5).

39 Nev. Rev. Stat. Ann. § 126.540.





“gestational carriers”<sup>40</sup> “parents,”<sup>41</sup> and “intended parents.”<sup>42</sup> Further, these provisions set out the proper procedures through which to obtain pre- and post-birth orders from the relevant courts.<sup>43</sup>

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

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

<sup>40</sup> Nev. Rev. Stat. Ann. § 126.580.

<sup>41</sup> Nev. Rev. Stat. Ann. § 126.610.

<sup>42</sup> Nev. Rev. Stat. Ann. § 126.590.

<sup>43</sup> Nev. Rev. Stat. Ann. § 126.650-126.900.

You can apply at this link from the SSA website:

<http://www.ssa.gov/pubs/EN-05-10023.pdf>

You can provide SSA with these documents via letter or in person by visiting your local SSA office <https://secure.ssa.gov/apps6z/FOLO/fo001.jsp> Two same-sex parents may be listed on the application for a Social Security Card or Number. However, only parents listed on the child’s birth certificate, or on a court-ordered adoption decree, are permitted to be included on the application.

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

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

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

## APPLYING FOR A PASSPORT FOR A CHILD

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

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

Two same-sex parents may be listed on the application for a child's passport. Only parents listed on the child's birth certificate, or on a court-ordered adoption decree, are permitted to be included on the application. However, if the adoptive (or legal) parent of the child is unavailable, the Department of State permits a non-adoptive parent who stands in loco parentis to the child to complete the DS-11 form and application. In loco parentis means an adult with day-to-day responsibilities to care for and financially support a child, but with whom the child does not have a biological or legal relationship.

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



This information and more frequently asked questions about applying for a U.S. passport for your child are located here: [http://www.familyequality.org/get\\_informed/advocacy/know\\_your\\_rights/passport\\_faqs](http://www.familyequality.org/get_informed/advocacy/know_your_rights/passport_faqs)

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



## NONDISCRIMINATION PROTECTIONS

There are currently no federal laws that explicitly prohibit discrimination against LGBTQ or sex/gender diverse 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 under the law.

Nevada may be one of a few states considered to have fairly strong protections against discrimination on the basis of both sexual orientation and gender identity in the major areas mentioned above. In some instances, Nevada state law actually provides more protections to Nevada LGBTQ citizens than federal law. For example, some of the statewide protections Nevada provides include prohibiting the firing of LGBTQ people, denial of housing to LGBTQ people, refusal of service in a restaurant, or bullying at school, simply because they are LGBTQ.

While Nevada's legal code has incorporated some language protecting the LGBTQ community from discrimination based on sexual orientation as early as 1999, only recently have these protections been expanded to also include gender identity or expression-based discrimination.

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However, in May 2017, the Nevada Governor signed SB 188 into law, which provides comprehensive discrimination protections for LGBTQ individuals. The Act provides working definitions for “sexual orientation” and “gender identity or expression” that are applicable to those anti-discrimination provisions already present throughout the Nevada Revised Statutes.<sup>44</sup> Further, these discrimination protections were extended to areas previously lacking explicit LGBTQ protections, including the Nevada System Higher Education, housing assistance programs, commercial advertising, certain nonprofit organizations, and more.<sup>45</sup>

## EMPLOYMENT

Even with the arrival of marriage equality, LGBTQ and sex/gender diverse people are at risk and the simple act of filing an amended W-4 with your employer could inadvertently out you, leading to discrimination in the workplace or even the loss of a job. However, Chapter 613 of Nevada’s legal code, which governs “Employment Practices,” has been amended twice to extend discrimination protections to LGBTQ individuals. In 1999, Nevada AB 311 added “sexual orientation” as a basis of prohibited discrimination.<sup>46</sup> In 2011, Nevada AB 211 added a ban on discrimination by employers and labor organizations based on “gender identity or expression.”<sup>47</sup> Discrimination by an employer or labor organization on either of these bases

44 <http://www.leg.state.nv.us/Session/79th2017/Bills/SB/SB188.pdf>

45 Nevada S.B. 188 (2017)

46 Nev. Rev. Stat. Ann. § 613.330.

47 Nev. Rev. Stat. Ann. § 613.330.

is considered an unlawful employment practice under Nevada’s Equal Employment Opportunities program.<sup>48</sup> The Nevada Equal Rights Commission is responsible for handling and investigating claims of employment discrimination. If you have been denied or fired from employment because of your sexual orientation or gender identity, it is best to file a claim with the Nevada Equal Rights Commission.

## Federal Law

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

In 2012, 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>49</sup> In *Veretto v. US Postal Service*<sup>50</sup> and *Castello v. US Postal Service*<sup>51</sup>, the EEOC held that employment discrimination on the basis of sexual orientation violated

48 Nev. Rev. Stat. Ann. § 613.

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

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

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



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*<sup>52</sup> that claims of discrimination based on sexual orientation inherently amount to claims of sex discrimination and are therefore actionable under Title VII.<sup>53</sup> These EEOC decisions, while not binding to courts, suggested 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. Finally, in 2017, a federal court issued a binding decision citing with approval the EEOC's conclusions in *Complainant v. Foxx*. Known as *Hively v. Ivy Tech Comm. College*<sup>54</sup>, this decision provides even more support for reading Title VII as including LGBTQ employees as a protected class.

If you believe that you have been the victim of discrimination in hiring or in the workplace based on your sexual orientation or gender identity, you must file a Charge of Discrimination with your local EEOC office before you can file a lawsuit in court alleging discrimination. The EEOC offices serving Nevada can be found at: <https://www.eeoc.gov/field/lasvegas/charge.cfm>

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

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

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

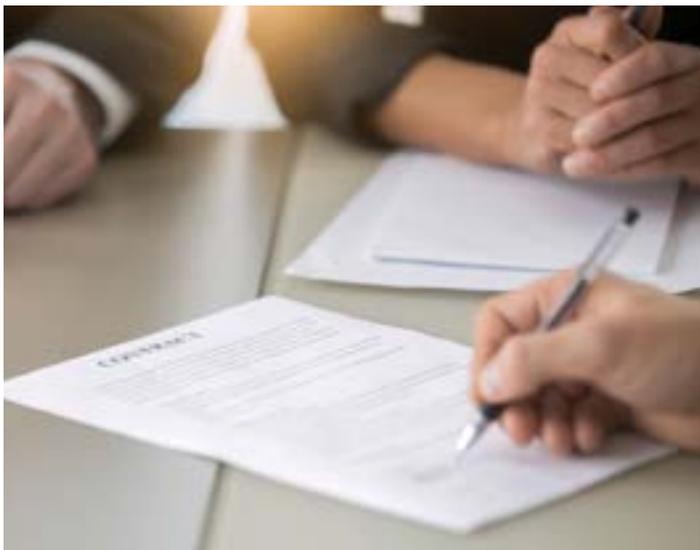
If filing a complaint with the EEOC, you must list the basis for your claim as discrimination on the basis of your "sex," as this is the existing basis that the EEOC has linked to sexual orientation and gender identity. Generally, you must file your Charge of Discrimination within 180 days of each instance of discriminatory treatment. You can read more about the EEOC process, and your rights and responsibilities after filing a claim with the EEOC, here: <http://www.eeoc.gov/employees/charge.cfm>. Do note that federal employees and job applicants are subject to a different timeline for making a claim (typically 45 days) and procedures for filing, which you can read about here: [http://www.eeoc.gov/federal/fed\\_employees/complaint\\_overview.cfm](http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm)

Nevadans 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 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. If you believe that you have been the victim of discrimination by an employer that contracts with the federal government, you can file a complaint and learn more about the complaint process here: <http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm>

Find more information at:

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

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## HOUSING

Title 10 of Nevada's legal code governs matters related to Property Rights and Transactions. Chapter 118 of the Nevada Revised Statutes, known as the Nevada Fair Housing Law (NFHL), was amended in 2011 with the enactment of SB 368.<sup>55</sup> SB 368 added prohibitions on “discrimination in housing and certain other transactions involving real property”<sup>56</sup> on the basis of sexual orientation and gender identity or expression.<sup>57</sup> The NFHL's opening “Declaration of Public Policy of State” also calls for the equal opportunity of all Nevada citizens to “inherit, purchase, lease, rent, sell, hold and convey real property” without gender identity or sexual orientation-based discrimination.<sup>58</sup> If you have experienced discrimination with regards to housing or related terms (such as residency privileges, interest rates, or insurance rates) because of your sexual orientation or gender identity, you should contact the Nevada Equal Rights Commission to file a complaint.<sup>59</sup>

### 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

55 Nev. Rev. Stat. Ann. § 118.010.

56 2011 Nevada Laws Ch. 191 (S.B. 368).

57 Nev. Rev. Stat. Ann. § 118.020.

58 Nev. Rev. Stat. Ann. § 118.020.

59 Nevada Department of Employment, Training, and Rehabilitation: Nevada Equal Rights Commission: [http://detr.state.nv.us/Nerc\\_pages/housing\\_discrimination.htm](http://detr.state.nv.us/Nerc_pages/housing_discrimination.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. You should therefore familiarize yourself with your employer's own human resources policies to see if they cover discrimination against LGBTQ persons.

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

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. 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 the Department of Housing and Urban Development (HUD) is prohibited from refusing to rent, offering unequal and inflated rental prices, or mistreating potential renters based on their sexual orientation, gender identity, or HIV/AIDS status. Further, any lender or operator of HUD-assisted housing is prohibited from inquiring as to the sexual orientation or gender identity of an applicant, as well as barred from using such criteria in assessing an application.<sup>60</sup> A violation of this rule may result in HUD pursuing a number of remedies, including sanctions against the violator.

HUD allows individuals to submit housing discrimination complaints by telephone 1-800-955-2232, online at [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 Las Vegas Regional Office is located at 302 East Carson Street, 4th Floor, Las Vegas NV 89101.

To learn more about filing a complaint, as well as details regarding taking your claim to court, please read this page: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/complaint-process](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/complaint-process)

**PUBLIC ACCOMMODATIONS**

Public Accommodations are generally defined as entities, both public and private, that are used by the public. Examples include retail stores, restaurants, educational institutions, recreational facilities, etc. It is important to note that private clubs and religious institutions are generally exempt from this definition.

Chapter 651 of the Nevada legal code governs matters related to Public Accommodations. Each of the sections governing the “Equal Enjoyment of Places of Public Accommodation”<sup>61</sup> as been amended twice in order to extend protections to LGBTQ individuals. In 2009, the Nevada Legislature passed SB 207, which added sexual orientation to the list of protected classes in places of public accommodation.<sup>62</sup> In 2011, “gender identity or expression” was added with

61 Nev. Rev. Stat. Ann. § 651.050 - 651.110.

62 *Id.*

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the enactment of SB 331.<sup>63</sup> As such, all Nevadans are “entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation.”<sup>64</sup> If you have experienced discrimination in a place of public accommodation based upon your sexual orientation or gender identity, you should file a claim with the Nevada Equal Rights Commission.

## Federal Law

Federal public accommodations protection provisions can be found in Title II of the Civil Rights Act of 1964 and Title III of the Americans with Disabilities Act of 1990. Unfortunately, neither contains protections on the basis of sexual orientation or gender identity. However, in 1998, the Supreme Court ruled that being HIV-positive is a physical disability covered by the Americans with Disabilities Act, even if the infection has not yet progressed to the symptomatic phase.<sup>65</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.



63 *Id.*

64 Nev. Rev. Stat. Ann. § 651.070.

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

# SCHOOL POLICIES AND ANTI-BULLYING STATE LAW

Chapter 388 of the Nevada legal code, which governs matters related to the System of Public Instruction, contains the “Provision of Safe and Respectful Learning Environment.”<sup>66</sup> In 2015, SB 504 was signed into law, which expands the meaning of bullying to include both physical and electronic targeted expressions, acts, or conduct based upon a student’s sexual orientation or gender identity or expression.<sup>67</sup> This Act also created The Bullying Prevention Account, to be headed by the Director for a Safe and Respectful Learning Environment, which is to fund, establish, and provide school programs, procedures, and services dedicated to the prevention and correction of bullying within schools.<sup>68</sup> Additionally, the Act imposes strict procedural requirements on school administrators and officials when it comes to reporting, investigating, and resolving reports of bullying.<sup>69</sup>

As of 2017, SB 201 has been enacted to protect LGBTQ minors from receiving “conversion therapy.”<sup>70</sup> Prohibitions have thus been placed on providing “any practices or treatments that seek to change the sexual orientation or gender

66 Nev. Rev. Stat. Ann. § 388.121

67 Nev. Rev. Stat. Ann. § 388.122

68 Nev. Rev. Stat. Ann. § 388.121

69 Nev. Rev. Stat. Ann. § 388.121

70 Nevada SB 201 (2017): [https://www.leg.state.nv.us/Session/79th2017/Bills/SB/SB201\\_EN.pdf](https://www.leg.state.nv.us/Session/79th2017/Bills/SB/SB201_EN.pdf)

identity of the children” by various kinds of practitioners, ranging from homeopathic professionals to mental health professionals to social workers.<sup>71</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 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<sup>72</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) has 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.<sup>73</sup> In a May 2016 statement, the Department of Education and Department of Justice (DOJ) also stated 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>74</sup>

However, in February 2017, the Department of Education and Department of Justice issued a new governing position withdrawing those statements issued less than a year earlier.<sup>75</sup> Citing conflicting federal court decisions regarding the meaning of “sex” for the purposes of Title IX protections, the DEO and DOJ rescinded those documents that issued Title IX protections for transgender students, but insisted they would still investigate complaints of discrimination, as they have always done.<sup>76</sup>

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

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73 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>.

74 *Id.*

75 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>.

76 *Id.*

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71 *Id.*

72 *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151 (C.D. Cal. 2015); *Baldwin v. Dep’t of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015).

Find more information at:

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

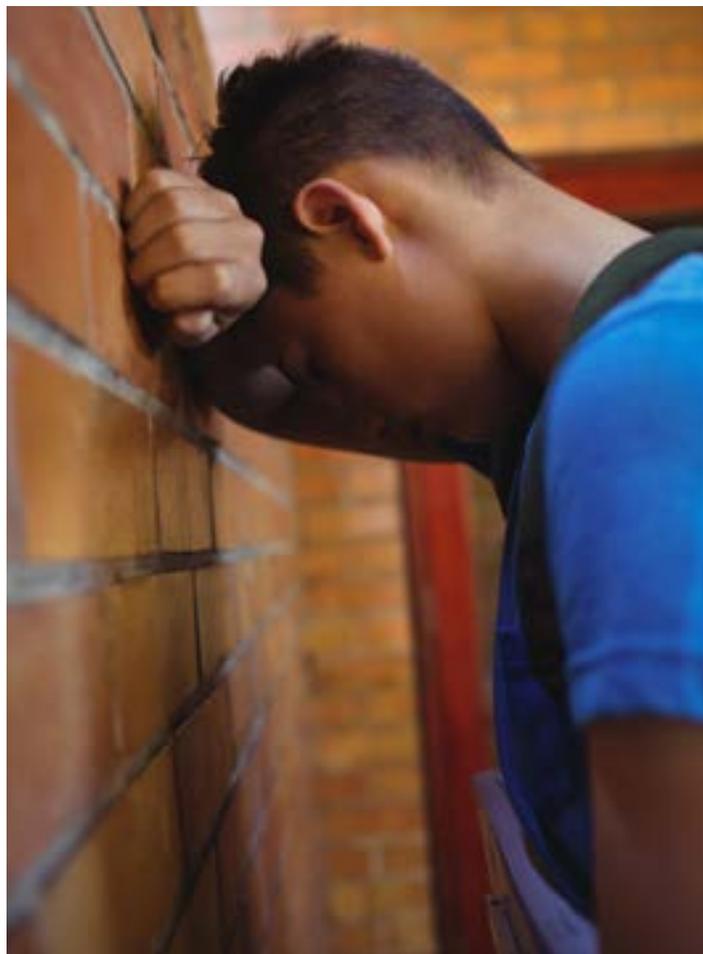
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(OCR) of the Department of Education.

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

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



## HEALTHCARE FEDERAL LAW

Each year, the federal government opens enrollment for individual and family healthcare coverage under the Affordable Care Act (ACA). Typically, enrollment for the following year opens in November and closes mid-February of the following year – although you may be able to enroll for a given year at another time if you experience a big life change, such as moving, getting married, or having a baby, which may qualify you to enroll in one of the ACA’s Special Enrollment Periods. 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 your state of residence.

Under the ACA, insurers and marketplace navigators – the people whose job it is to help you select an insurance plan that best matches the needs of you and your family – are prohibited from discriminating against consumers based on their sexual orientation or gender identity, or the sexual orientation or gender identity of a family member.

Under the ACA, no individual or family may be denied coverage 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; we encourage you to speak with a navigator and investigate plans thoroughly to find the option that works best for you and your family. Further, definitions of “family” may be too narrow to include various plan subscribers and dependents present in nontraditional LGBTQ or sex/gender diverse family structures.

The ACA prohibits discrimination based on sex in all health programs and activities receiving Federal financial assistance.<sup>77</sup> It 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>78</sup> It also clearly prohibits discrimination based on sex stereotyping, providing potential protections to lesbian, gay, and bisexual people.<sup>79</sup>

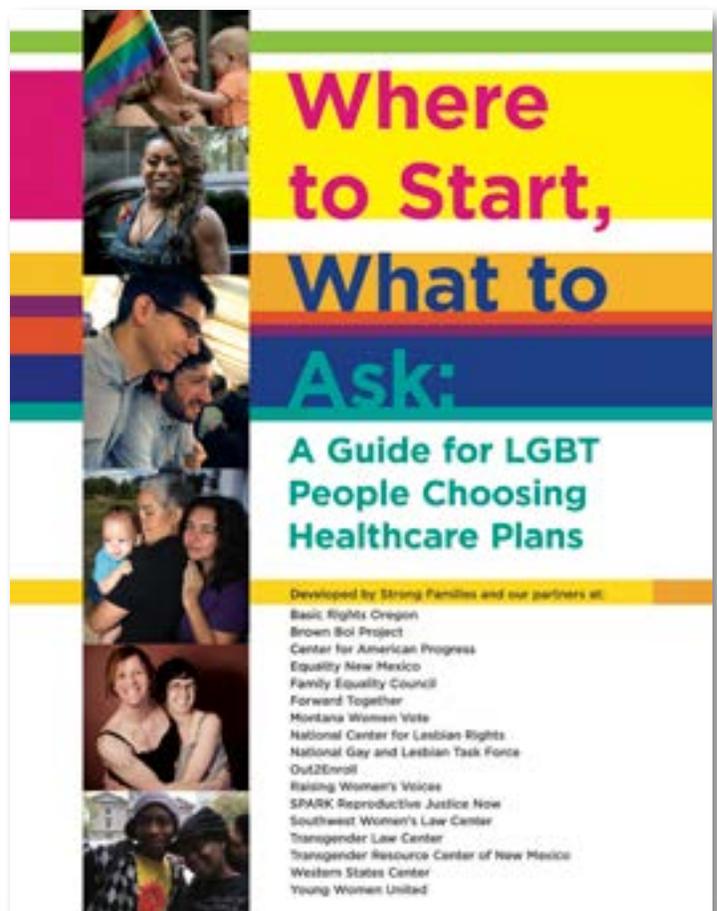
<sup>77</sup> <https://www.hhs.gov/civil-rights/for-individuals/section-1557/summary/index.html>

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

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. You can find more details on drafting a complaint, as well as an electronic complaint form, 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, check out [Where to Start, What to Ask: A Guide for LGBTQ People Choosing Health Care Plans](#)



<http://strongfamiliesmovement.org/lgbt-health-care-guide>

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

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## FAMILY AND/OR PARENTING LEAVE

Nevada does not require employers to provide paid family leave. However, the federal Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Eligible employees are entitled to up to 12 unpaid 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;
- to care for 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).



## CHANGES OF NAME AND GENDER

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. You can read the text of the Department of Labor’s clarification here: [http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010\\_3.htm](http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm)

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

The state of Nevada has one of the most progressive policies in the nation regarding changes in name and gender to birth certificates.<sup>80</sup> Transgender individuals born in Nevada may request an amended birth certificate to reflect their true sex and name by submitting an application to the State Registrar that provides the following two documents:

- Affidavit for Corrections of a Record: an applicant’s own notarized statement providing their correct gender and formally requesting a change to their birth certificate.<sup>81</sup>
- Supplemental Affidavit: a notarized statement affirming the requested correction by any individual with firsthand knowledge of the applicant’s gender, whether through a “personal, familial, medical, or professional relationship” with the applicant.<sup>82</sup>

Therefore, unlike most states, neither a court order nor proof from a medical professional is required in order to make a request to correct the gender and name listed on an individual’s birth certificate. Additionally, the Nevada Legislature removed a prerequisite in May 2017 that required an individual to publish one’s former and new names in a newspaper before being able to petition for a name change.<sup>83</sup>

80 Nev. Admin. Code § 440.030.

81 Nev. Admin. Code § 440.030 (1)(a).

82 Nev. Admin. Code § 440.030 (1)(b).

83 Nevada S.B. 110 (2017).

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Nevada law similarly does not require any specific medical proof of sex reassignment surgery in order to change the gender marker on a driver's license. However, a physician or psychologist is required to fill out a DLD-136 Medical and Authorization (Gender Change) form, which is available at: <http://www.dmvnv.com/pdf/forms/dld136.pdf>. Once complete, the form must be returned to your local DMV office.<sup>84</sup>

In order to change a full legal name on a Nevada driver's license, proof of a legal change must be provided to the DMV. While a court order has traditionally been the accepted method of proof, a corrected birth certificate may now suffice.

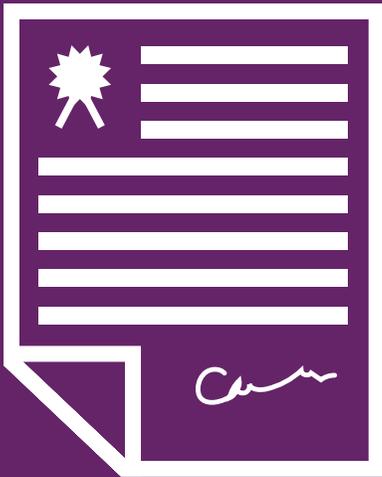


<sup>84</sup> Nev. Admin. Code § 483.070.

## HATE CRIMES PROTECTIONS

Nevada state law includes sexual orientation and gender identity or expression in its protections for victims of hate crimes. Nevada 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, religion, color, national origin, ancestry, age, disability, gender, sexual orientation, or gender identity or expression."

Additionally, in 2009, Congress enacted the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which expands federal hate crimes to LGBTQ people. The law allows Federal law enforcement agencies, such as the FBI, to investigate and prosecute hate crimes against LGBTQ individuals when local or state authorities fail to act. If you or your family has been the victim of a hate crime, you should report the crime both to the local authorities and the FBI. The FBI maintains its Nevada field office in Las Vegas at 1787 West Lake Mead Boulevard, Las Vegas, NV 89106-2135 and may be contacted at: 1-702-385-1281.



## 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, so that the partner will be able to inherit any of the deceased partner's property. Even if married, it is best to have a Will. In addition to deciding property distribution, a Will also provides the opportunity to designate who should become guardian to any minor children. If you are not both legal parents, and the legal parent dies, a judge will decide who the guardian will be. Naming your partner in your Will expresses your wishes and increases the likelihood that a judge will respect those wishes about who should raise your children after your death.

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

More information is available from the State at:

<https://www.nvbar.org/member-services-3895/sections/probate-and-trust-law-section>



## ADVANCE DIRECTIVE FOR HEALTHCARE

An Advance Directive for Healthcare allows Nevadans to direct whom they want to make medical decisions for them, as well as providing for end-of-life choices in the event they are unable to express that intent at the time that care is required. You can find more information and guidance on drafting an Advance Directive for Healthcare specifically for the State of Nevada at: <http://dhcfp.nv.gov/Resources/PI/AdvanceDirectives>

## 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, disability, etc.

We recommend consulting a Nevada attorney in drafting this document.

## DOMESTIC PARTNERSHIP AGREEMENT

A Domestic Partnership Agreement expresses a couple’s understanding of 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.

## CO-PARENTING AGREEMENT

An agreement 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 Nevada (and, could still prove to be not legally binding) they are often useful to have. These documents can establish clear understanding between the parties and can provide clarification about the intent and wishes of all involved. They may be useful, at some future time, should an issue ever come before a court/judge in the case of death or dissolution of the relationship, etc.

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**Gender Justice**

- NEVADA -



The authors would like to thank attorney Jeannette Barrick for her review of this Guide.

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