

MISSOURI LGBTQ FAMILY LAW GUIDE

A Resource Guide for LGBTQ-Headed Families Living in Missouri

October 2019



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INTRODUCTION

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

DISCLAIMER

This handbook is not intended to be legal advice but an overview of the current state of LGBTQ-family law in Missouri. 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

MARRIAGE

Nationwide recognition of marriages of same-sex couples came on June 26, 2015, when the United States Supreme Court issued its landmark ruling in *Obergefell v. Hodges*.¹ *Obergefell* not only requires all U.S. states to issue marriage licenses to same-sex couples, but also requires them to recognize marriage licenses for same-sex couples issued in another state.²

Prior to the *Obergefell* ruling, Missouri did not have a statewide practice of issuing marriage licenses to same-sex couples and had only recently recognized same-sex marriages from other jurisdictions.³ In 2004, Missouri voters passed a constitutional ban against marriages of same-sex couples.⁴ In November 2014, a federal district court struck down Missouri's ban but stayed the ruling pending appeal.⁵ Despite the stay, Jackson County began issuing marriage licenses to same-sex couples immediately following the ruling.⁶ That same month,



a state court judge in St. Louis held that Missouri's ban violated the Missouri and U.S. Constitutions and ordered the City of St. Louis to issue marriage licenses to same-sex couples.⁷ While both decisions were pending appeal, the U.S. Supreme Court issued *Obergefell*, bringing marriage equality to Missouri and nationwide. Following *Obergefell*, the Governor of Missouri issued an Executive Order instructing all departments and agencies of Missouri to immediately take all necessary measures to comply with the ruling.⁸

CIVIL UNIONS, DOMESTIC PARTNERSHIPS, AND COMMON LAW MARRIAGE

Missouri has never had a separate status of civil unions or domestic partnerships statewide and still does not have that status. Some municipalities in Missouri have Domestic Partnership registries, but, unlike civil unions, those partnerships are not marriage equivalents and do not provide the

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

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

3 Circuit Court Judge J. Dale Youngs in Jackson County, Missouri (Kansas City), ordered on October 3, 2014, in the case of *Barrier v Vasterling*, that the marriages of 10 couples married outside of the State of Missouri must be recognized by the State of Missouri.

4 Mo. Const. Art. I, § 33.

5 *Lawson v. Kelly*, 58 F. Supp 3d. 923 (W.D. Mo. 2014).

6 Morris, Mark "Same-sex marriages begin in Jackson County after U.S. judge finds state ban

unconstitutional," *Kansas City Star* (Nov 7, 2014).

7 *State of Missouri v. Florida*, No. 1422-CC090027 (Mo. Cir. Ct., 22d. Jud. Cir., City of St. Louis Nov. 5, 2014).

8 Executive Order 15-04 (July 7, 2015).

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same rights, benefits or legal protections of marriage.

Missouri does not recognize common law marriage and has not since 1921, but Missouri does recognize common law marriages from other states.⁹

IMPORTANT: Any couple who is not married and has a civil union, domestic partnership, or common law marriage issued from or recognized in another state and lives in Missouri should consult with an attorney as to their rights under Missouri and federal law.

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

In its 2013 decision in *United States v. Windsor*, the U.S. Supreme Court overturned the provision of the federal Defense of Marriage Act (DOMA) that denied federal marriage benefits to married same-sex couples. This case laid the foundation for

⁹ Mo. Rev. St. § 451.040.5.

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

marriage equality nationwide, which was won two years later.¹⁰

As discussed above, in 2015, the Supreme Court found in *Obergefell v. Hodges* that same-sex couples have a fundamental right to marry under the Constitution, mandating that same-sex couples be permitted to marry and have their marriages recognized throughout the country.¹¹ Following *Obergefell*, all federal marriage benefits have been extended to married same-sex couples nationwide. Such benefits include, but are not limited to, Social Security and Veterans Administration benefits, all federal tax benefits, health insurance and retirement benefits for same-sex spouses of all federal employees, and spousal benefits for same-sex spouses of military service members.

¹⁰ *United States v. Windsor*, 133 S.Ct. 2675 (2013).

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

For more information on how to access federal marriage benefits visit the post-*Obergefell* factsheets at: marriageequalityfacts.org



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CHILDREN AND PARENTAGE

LGBTQ people and same-sex couples have diverse family structures and form families in a variety of ways. Some have children from prior different-sex or same-sex relationships. Some LGBTQ people are single parents by choice. Some same-sex couples adopt or use assisted reproductive technologies to build their families together. There is much progress to be made in Missouri with regard to parental recognition for LGBTQ individuals and couples. Missouri adopted an older version of the Uniform Parentage Act in 1987 but has not updated it to reflect the evolving landscape of modern families and diverse family structures.

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

- Adoption decree
- Birth certificate
- Nomination of the Guardian and Conservator for the minor child(ren) and Nomination of the Guardian and Conservator for each spouse or partner



- Marriage Certificate
- Medical Powers of Attorney
- Financial Power of Attorney (aka “General Powers of Attorney”) for each spouse or partner
- Wills and/or trusts

Likewise, all LGBTQ individuals, whether or not they have a partner, spouse, or children,

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 marriage. Likewise, if you are an LGBTQ person or same-sex couple considering fostering and/or adopting children either from the public child welfare system or through private adoption, it is critical that you hire a Missouri adoption attorney who has experience working with LGBTQ people and couples. It is not enough to simply hire an experienced family law attorney.

There are issues unique to LGBTQ 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 of where to find an experienced LGBTQ adoption attorney, contact Family Equality (familyequality.org) and we will do our best to help you find one.

should have a Will, and if they wish, a Trust, Health Care Power of Attorney, Living Will (end-of-life wishes), Financial Power of Attorney, and Nomination of Guardian and Conservator.

ADOPTION

Only an adoption decree issued by a judge guarantees recognition of a non-birth parent's parental rights. An adoption decree is irrefutable and undeniable proof of parentage. An adoption decree lawfully issued by a judge in one state must be recognized and enforced in all states.¹²

Missouri's adoption statute provides that any individual is permitted to adopt.¹³ Missouri permits married couples to jointly adopt.¹⁴ There is no statute that prohibits adoption by unmarried LGBTQ individuals or couples, but there are no explicit statutory non-

discrimination protections for non-married LGBTQ individuals or couples seeking to adopt. Thus, whether an individual will be permitted to adopt the child of a partner to whom they are not married will depend on the judge hearing the Petition for Adoption, particularly in the non-urban regions of Missouri. However, many judges have granted co-parent adoptions to same-sex couples. Therefore, it is important to retain an adoption attorney experienced in LGBTQ adoptions in Missouri. If adopting a child through an adoption agency, it is advisable to use a foster and adoption agency that is welcoming and affirming to LGBTQ people and couples.

If a same-sex couple plans a pregnancy and conceives a child through the use of assisted reproductive technology (such as sperm, egg, or embryo donation), the biological parent may be considered the sole legal parent. If the couple is not married, the biological parent will be the only parent. Therefore, the spouse or partner of the biological parent must file for a co-parent adoption to obtain an adoption decree recognizing both spouses or partners as the legal parents.

In Missouri, individuals petitioning to adopt as a stepparent must obtain the consent of the legal parent(s) of the child. With the recognition of marriage equality, a same-sex spouse should be entitled to adopt as a stepparent just as a different-sex spouse should. However, in the absence of explicit statutory protections in Missouri preventing discrimination, consultation with a Missouri adoption attorney who has experience working with LGBTQ families is

NOTE: Simply listing your partner or spouse as a co-parent on the birth certificate of a child born to you does not guarantee that your partner/spouse will be recognized as a parent of the child. Only an adoption decree issued by a judge guarantees this recognition of the spouse's or partner's parental rights.

¹² U.S. Const. art IV, § 1 ("Full Faith and Credit Clause").

¹³ Mo. Rev. St. § 453.010 (2017).

¹⁴ Mo. Rev. St. § 453.010 (2017).

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strongly encouraged when proceeding with a stepparent adoption.

Once a Decree of Adoption is issued, the State of Missouri issues a new birth certificate, which can take months to receive.

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

PARENTAL PRESUMPTION

Parental presumption (sometimes referred to as “marital presumption”) is the idea that, when a married woman gives birth, her spouse is the other legal parent. Historically, this concept has been applied exclusively to different-sex spouses. However, with nationwide marriage equality, the parental presumption laws should be applicable to married same-sex couples the same as it would for different-sex couples.

Missouri refers to this concept as the “presumption of paternity.”¹⁵ Using gender-specific terminology, the statute provides

¹⁵ Mo. Rev. St. § 210.822 (2017).

that a “man shall be presumed to be the natural father of a child” if he and the “natural mother” were married in the ten months preceding the birth of the child.¹⁶

Since the national recognition of marriage equality, the Missouri legislature has not updated the statute and there are no court decisions in Missouri applying the presumption of paternity to a married same-sex couple. And, under Missouri law, the presumption of paternity is a biological presumption that can be rebutted through genetic testing.¹⁷

As such, same-sex couples conceiving a child through assisted reproduction where only one spouse or partner has a genetic connection to the child should consult an LGBTQ family law or adoption attorney. While the Missouri parental presumption may apply to same-sex married couples, the legal risk of relying solely on the presumption is great. Thus, it is critical for the non-birthing parent to secure parental rights through an adoption decree to ensure that both spouses or partners are legally recognized as parents.

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 artificial insemination, in

¹⁶ Id.

¹⁷ Id.

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.

Missouri law provides little guidance on surrogacy, as there is no statute that addresses surrogacy directly. Surrogacy is permitted in the state, and there are many surrogacy agencies and fertility clinics that match intended parents with surrogates. However, there is a statute that criminalizes the payment of money “for delivery or offer of delivery of a child...for purposes of

adoption” as a Class C Felony in Missouri.¹⁸ While there is no known case of the intended parent or the surrogate being convicted under this statute, it is essential to consult with an experienced LGBTQ family law attorney before entering into a surrogacy agreement to make sure the agreement does not inadvertently violate this statute.

It is imperative that any individual or couple who is considering using surrogacy and/or ART consult with a Missouri attorney who has significant expertise in surrogacy and 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.

Artificial insemination is addressed in the Missouri Uniform Parentage Act, which

18 Mo. Rev. St. § 568.175.



states that “[i]f, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived.”¹⁹ Courts have not yet ruled on the application of this provision to married same-sex couples; however, it should be applied equally to same-sex married couples.²⁰

It is essential to enter into a written surrogacy and/or donor contract with any sperm, egg, or embryo donor or surrogate to document the expectations, intentions, and responsibilities of all parties involved.

Further, because 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 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.

BIRTH CERTIFICATES

Missouri birth certificates can identify each parent as a “parent” instead of as a “mother” or as a “father.” Shortly after Missouri began recognizing lawful marriages of same-sex couples issued in other states, the Missouri Department of Health and Senior Services announced that “women in

same-sex marriages lawfully entered into in jurisdictions where same-sex marriage is lawful, who give birth in Missouri, may choose to have their spouse listed as the baby’s other parent on the birth certificate.”²¹ Moreover, in June 2017, the U.S. Supreme Court held that states cannot discriminate against same-sex couples when listing both spouses on a birth certificate.²² In that case, the U.S. Supreme Court expressly reiterated that equal access to birth certificates is one of the many “rights, benefits, and responsibilities” associated with civil marriage.²³

However, naming the spouse or partner of the birth parent on the birth certificate is not sufficient to establish parental rights for the partner or spouse. Only a court-ordered Decree of Adoption that recognizes both partners or spouses as parents of the child ensures that the partner or spouse of the birth parent is legally recognized



²¹ <http://health.mo.gov/data/vitalrecords/birthcertificateupdate.php>; see also Missouri Uniform Parentage Act, Mo. Rev. St. § 210.851, et seq.

²² *Pavan v. Smith*, 137 S.Ct. 2075 (2017).

²³ *Id.* at 2078.

¹⁹ Mo. Rev. St. §210.824 (2017).

²⁰ See *Pavan v. Smith*, 137 S.Ct. 2075 (2017).

as a parent of the child. Because a birth certificate is not a Court Order, but instead is simply an administrative record, same-sex couples should petition for an adoption decree as soon as possible to ensure that both parents are legally recognized. *Unlike an adoption decree, which is a court order, a birth certificate is not entitled to recognition in other states or courts.*

To obtain a birth certificate after an adoption is finalized for a child born in Missouri, the court will submit a certified copy of the order of adoption to the Vital Records office in Missouri, and Vital Records will send a certified copy of the new birth certificate for the child (normally to the office of the attorney who handled the adoption), listing both spouses or partners as parents of the child. Due to backlog at Missouri Vital Records, it can be several months before the new birth certificate is received.

CHILD CUSTODY

An LGBTQ individual who is not a legal parent (i.e., is not a biological parent and has not adopted a child) may be able to petition for custody rights if he or she is co-parenting the legal child of their partner.

Under Missouri law, the non-legally recognized parent may petition for custody, temporary custody, or visitation of the child.²⁴ To succeed on a petition for third-party custody or visitation, the court must find that the legally-recognized parent is “unfit, unsuitable, or unable to be a custodian [of the child], or the welfare of the

²⁴ Mo. Rev. St. § 452.375(5).

child requires, and it is in the best interests of the child.”²⁵ The non-legal parent who is seeking custody or partial custody of a child should consult with an LGBTQ family law attorney. It also is strongly recommended that, while the legal parent and non-legal parent are living together with the child, the non-legally recognized parent and the legal parent file for an adoption decree to secure the parental rights of the non-legally recognized parent. An adoption decree will provide the non-birth parent to legal rights, should the couple separate or divorce later.

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, including personal information about the parent applying for the Card or Number, the child, and any other legal parent to the child, and a completed SS-5 application form.

These documents may be submitted to the SSA via letter or in person at a local SSA office, which can be found here: <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

²⁵ *Id.*; *McGaw v. McGaw*, 468 S.W.3d 435 (Mo. Ct. App. W.D. 2015); *In the Matter of Adoption of C.T.P.*, 452 S.W.3d 705 (Mo. Ct. App. W.D. 2014).

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be included on the application.

For more information on the application process, visit the [SSA website at https://www.ssa.gov/ssnumber](https://www.ssa.gov/ssnumber), or call the SSA at 1-800-722-1213 or 1-800-325-0778.

APPLY FOR A PASSPORT FOR A CHILD

To apply for a passport for a child, the State Department requires documentary evidence, a completed DS-11 form, a photograph of the child, and personal information about the parent applying for the passport, the child, and the child's other legal parent, if any. These documents must be submitted to the State Department in person at the nearest accepted facility or regional passport agency, [listed here: https://iafdb.travel.state.gov/](https://iafdb.travel.state.gov/).

The required materials are [listed here: http://travel.state.gov/content/passports/english/passports/under-16/under-162.html](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.

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 at http://travel.state.gov/](http://travel.state.gov/) also provides helpful information.

NONDISCRIMINATION PROTECTIONS

There are currently no federal laws that explicitly prohibit discrimination against LGBTQ people in employment, housing, and public accommodations. However, existing federal civil rights laws have been interpreted to provide some 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.

Unfortunately, Missouri offers no general, statewide explicit protections against sexual orientation-based or gender identity-based discrimination in these areas. The Missouri Human Rights Act ("MHRA"), originally

passed in 1959, prohibits discrimination in housing, employment and places of public accommodation based on “race, color, religion national origin, ancestry, sex, disability, age (in employment only), and familial status.”²⁶ Sexual orientation and gender identity are not listed as protected in the MHRA.

For the last twenty-one consecutive years, the Missouri Nondiscrimination Act (“MONA”) has been filed in the Missouri House and Senate but has failed to become law. MONA would add sexual orientation and gender identity to the MHRA.²⁷

However, as discussed further below, recent decisions by the Missouri Supreme Court provide an avenue to apply the MHRA to LGBTQ individuals.²⁸

In addition, some discrimination protections exist for LGBTQ individuals at the local level. At least 17 cities and counties – including Clayton, Columbia, Creve Coeur, Ferguson, Jackson County, Kansas City, Kirksville, Kirkwood, Maplewood, Maryland Heights, Olivette, Richmond Heights, St. Joseph, St. Louis, St. Louis County, University City, and

26 Mo. Rev. St. § 213.010, *et seq.* (2017). The Missouri Department of Labor provides resources and information regarding the MHRA and the process for filing a complaint at <https://labor.mo.gov/discrimination>.

27 “Missouri Nondiscrimination Act Filed for the 21st Year” (Dec 19, 2018), available at <https://krcgtv.com/news/local/missouri-nondiscrimination-act-filed-for-the-21st-year> (last visited July 7, 2019).

28 *Lamplery v. Missouri Comm. on Human Rights*, No. SC96828 (Feb 26, 2019); *R.M.A v. Blue Springs R-IV School District*, Case No. SC 96683 (Feb 26, 2019).

Webster Groves – have nondiscrimination executive orders and/or ordinances that prohibit discrimination in employment, housing, and/or public accommodations on the basis of sexual orientation, gender identity, or both.²⁹ Accordingly, LGBTQ individuals in these municipalities who are discriminated against in employment, housing, and/or public accommodations may be able to file a complaint with their municipalities or counties.³⁰ However, local ordinances generally have limited enforcement remedies and do not provide nearly the same level of protection and damages as statewide laws.

EMPLOYMENT

State Law

Even with the arrival of nationwide marriage equality, LGBTQ people are at risk of being outed at work by simply filing an amended W-4, leading to discrimination in the workplace or even the loss of a job. Unfortunately, there is no state law in Missouri that prohibits employers from discriminating against a private sector employee on the basis of sexual orientation and/or gender identity.

As mentioned above, a recent decision by the Missouri Supreme Court may provide an avenue for application of the MHRA

29 Freedom for All Americans, LGBTQ Non-Discrimination in the States, Missouri - <https://www.freedomforallamericans.org/category/states/mo> – Retrieved July 6, 2019, last updated September 2018.

30 Because additional municipalities may add protections, it is important to check with an attorney for the most up to date information list.

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to LGBTQ individuals. In February 2019, the Missouri Supreme Court allowed a gay man to proceed with his claim of sex discrimination under the MHRA on a sex-stereotyping theory.³¹ The court held that Missouri Human Rights Commission rules “already characterize sexual stereotyping as an unlawful hiring practice... These rules are an application of the holdings of the United States Supreme Court and other federal courts. Accordingly, under these regulations and federal law, an employee who suffers an adverse employment decision based on sex-based stereotypical attitudes of how a member of the employee’s sex should act can support an inference of unlawful sex discrimination. Sexual orientation is incidental and irrelevant to sex stereotyping. Sex discrimination is discrimination, it is prohibited by the Act, and an employee may demonstrate this discrimination through evidence of sexual stereotyping.”

Thus, LGBTQ individuals who have experienced discrimination should consult with an experienced employment law attorney regarding whether he or she could bring a sex-stereotyping claim under the MHRA.

Federal Law

While there is no explicit federal law that bars discrimination against LGBTQ people in the workplace, the U.S. Supreme Court will decide in the 2019-2020 term whether Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment based on “sex,” encompasses

protections for LGBTQ people.³² The Eighth Circuit, which includes Missouri, has not yet allowed such a Title VII claim.³³ In fact, a federal district court in Missouri recently rejected the argument that Title VII prohibits discrimination on the basis of sexual orientation and refused to apply the sex-stereotyping theory, but the decision has been appealed and at least sixteen states and the District of Columbia filed a “friend of the court” brief asking the Eighth Circuit to reverse the trial court’s decision and allow such discrimination claims under Title VII.³⁴ The U.S. Supreme Court’s decision this term will have a determinative impact on the evaluation of these claims.

The Equal Employment Opportunity Commission (EEOC) investigates complaints of employment discrimination under Title VII 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. Foreshadowing the federal court decisions discussed above, the EEOC has, in recent years, taken the position that employees should be able to bring sexual orientation discrimination claims under Title VII.³⁵ These EEOC decisions, while not

32 *Altitude Express, Inc. v. Zarda*, Case No. 17-1623 (consolidated with *Bostock v. Clayton County, Georgia*).

33 *Williamson v. A.G. Edwards & Sons, Inc.*, 876 F.2d 69, 70 (8th Cir. 1989), *cert. denied*, 493 U.S. 1089 (1990) (“Title VII does not prohibit discrimination against homosexuals.”).

34 *Horton v. Midwest Geriatric Mgmt. LLC*, 2017 WL 6536576 (E.D. Mo. 2017); <https://www.hrdiver.com/news/states-urge-8th-cir-to-find-that-title-vii-prohibits-sexual-orientation-bi/519549/>.

35 *Macy v. Holder*, No. 0120120821, 2012 WL

31 *Lampley v. Missouri Comm. on Human Rights*, Case No. SC96828 (February 26, 2019).

binding on courts, reflect the EEOC's view that LGBTQ individuals are protected under Title VII and may file a claim of employment discrimination utilizing the law's inclusion of "sex" as a protected class.

Victims who suffer discrimination on any protected basis, including sexual orientation and gender identity, must file a Charge of Discrimination with a local EEOC office prior to filing a lawsuit in court alleging discrimination. The EEOC offices serving Missourians can be found [here at https://www.eeoc.gov/field](https://www.eeoc.gov/field).

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 only current basis that the EEOC and certain courts have linked to sexual orientation and gender identity. More information 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](http://www.eeoc.gov/employees/charge.cfm). Federal employees and job applicants are subject to a different timeline for making their claims (typically 45 days) and have different filing procedures. Information regarding filing those types of claims is available [here: http://www.eeoc.gov/federal/fed_employees/complaint](http://www.eeoc.gov/federal/fed_employees/complaint)

1435995 (E.E.O.C. Apr. 20, 2012); *Veretto v. US Postal Service*, No. 0120110873 (E.E.O.C. Jul. 1, 2011); *Castello v. US Postal Service*, No. 0120111795 (E.E.O.C. Dec. 20, 2011); *Complainant v. Foxx*, No. 0120133080, 2015 WL 4397641 (E.E.O.C. July 15, 2015).

[overview.cfm](#)).

Missourians working for companies that contract with the federal government have access to additional protections against discrimination in employment. These protections stem from a 2014 Executive Order that prohibits federal contractors from discriminating against current or prospective employees on the basis of sexual orientation or gender identity.³⁶ Contractors who do business with the federal government employ 20% of American workers, all of whom are now covered by non-discrimination protections under this Order. LGBTQ individuals who have been the victim of discrimination by an employer that contracts with the federal government can file a complaint through 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](http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm).

Company Policies

Many employers, especially those 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

³⁶ Executive Order 13672 (July 21, 2014). On January 31, 2017, President Trump issued a statement that this Executive Order will remain intact during his presidency. In March 2017, President Trump did, however, rescind the related Executive Order 13673, which required contractors to provide documentation that they are in compliance with federal nondiscrimination laws.

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an employee some recourse where there would otherwise be none. A company's non-discrimination policy should be available in the company's employee handbook or through the human resources department, and it is always important to be familiar with it and understand the rights and protections it affords.

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

HOUSING

State Law

Missouri state law offers no protection against discrimination on the basis of sexual orientation or gender identity in housing. As discussed above, Missouri's Human Rights Act prohibits discrimination on the basis of sex in all housing transactions.³⁷ The MHRA does not yet include sexual orientation or gender identity in its list of prohibited types of discrimination. However, as previously mentioned, in the *Lampley* case, the Missouri Supreme Court interpreted the MHRA in a manner that should expand the possibility of filing a housing discrimination claim on the basis that the person was discriminated against because s/he does not conform to gender stereotypes, as a form of sex discrimination. Any person who has been subjected to discrimination in housing based on sexual orientation or gender identity should consult with an attorney regarding

³⁷ Mo. Rev. St. § 213.010, *et seq.* (2017).

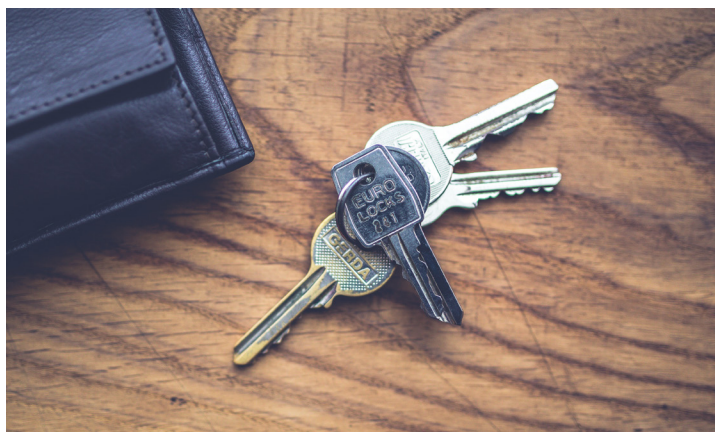
the possibility of pursuing a claim locally or under a sex-stereotyping theory under the MHRA.

Further, as previously mentioned, some localities have passed nondiscrimination ordinances that prohibit discrimination in housing on the basis of sexual orientation and/or gender identity, so LGBTQ individuals in those localities may be able seek recourse through their local government.

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.³⁸ 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 an applicant and barred from using such criteria in assessing an application. A violation of this rule may result in HUD pursuing a number of remedies, including sanctions against the violator.

In January 2019, the U.S. District Court for the Eastern District of Missouri held that discrimination suffered by a married lesbian couple when a retirement facility turned them away is not covered by the Fair Housing Act.³⁹ The retirement facility claims that it follows the “biblical definition of marriage” as being between one man and one woman. The case is now on appeal to the 8th Circuit Court of Appeals.⁴⁰ The 8th Circuit has stayed briefing

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

39 *Walsh et al. v. Friendship Village of South County, et al.*, Case No. 4:18-CV-01222-JCH (Jan. 16, 2019). Arlene Zarembka, one of the authors of this handbook, is part of the team of attorneys representing the married couple.

40 *Walsh et al. v. Friendship Village of South County, et al.*, Case No. 0:19-cv-01395.

in the appeal of the District Court's decision pending the U.S. Supreme Court's decisions in the employment cases mentioned above that will be heard in the 2019-2020 term.

HUD allows individuals to submit housing discrimination complaints by telephone at 1-800-955-2232, by mail, or [online at http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination).

HUD maintains a field office in St. Louis and a Regional Office in Kansas City, KS. The contact information for both offices is available at this [link: https://www.hud.gov/states/missouri/offices](https://www.hud.gov/states/missouri/offices). [This page](#) contains more information about filing a complaint and the process for filing a lawsuit.

PUBLIC ACCOMMODATIONS

State Law

Missouri law offers no explicit protection for LGBTQ people in public accommodations. Public accommodations are generally defined as entities, both public and private, that 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. Private clubs and religious institutions are generally not included in this definition.

The Missouri Human Rights Act's prohibition against sex discrimination applies to public accommodations as well, although it does not explicitly protect LGBTQ people.⁴¹

41 Mo. Rev. St. § 213.010.

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However, the *Lamplsey* decision of the Missouri Supreme Court interpreted the MHRA in a manner that should expand the possibility of filing a public accommodations discrimination claim on the basis that the person was discriminated against because s/he does not conform to gender stereotypes, as a form of sex discrimination.

Additionally, as noted above, many localities in Missouri have passed non-discrimination ordinances that prohibit discrimination on the basis of sexual orientation and/or gender identity in public accommodations, but without explicit protection at the state level or a clear state court decision, many LGBTQ individuals in Missouri remain without any legal protection from discrimination.

The U.S. Supreme Court recently reaffirmed the importance of state law nondiscrimination protections. In its recent decision in *Masterpiece Cakeshop*, which involved a baker who refused to bake a wedding cake for a same-sex couple's wedding celebration, the Supreme Court underscored that the Constitution protects LGBTQ individuals and families from discrimination.⁴² Further, the Court explained that "it is a general rule that [religious and philosophical] objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law."⁴³ In other words, businesses that are open to the public must be open to all.

⁴² *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct 1719, 1727 (2018).

⁴³ *Id.*

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 provides express protections based on sex, 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.⁴⁴ Businesses that hold themselves open to the public are therefore prohibited from refusing service or business to individuals because they are HIV-positive.

SCHOOL POLICIES AND ANTI-BULLYING

STATE LAW

As with employment, housing, and public accommodations, Missouri offers no explicit statutory protections against discrimination, harassment, or bullying on the basis of sexual orientation and gender identity for LGBTQ students and employees in the public education system. However, the Missouri Supreme Court held in February 2019 that a transgender high school student, whose sex was legally male, could proceed with his claim that his school district discriminated against him in public accommodations on the basis of sex, by refusing to allow him to use the boys'

⁴⁴ *Bragdon v. Abbott*, 524 U.S. 624 (1998).

restrooms and locker rooms.⁴⁵

State law also requires each school district to enact anti-bullying policies and defines bullying as repetitive (or substantially likely to be repeated) unwanted aggressive behavior, harassment, or intimidation that substantially interferes with any student's educational performance, opportunities or benefits or causes a reasonable student to fear for his or her physical safety.⁴⁶ While the statute does not explicitly protect LGBTQ students and employees, it does not specify any particular groups, so behavior that meets the definition of bullying should be prohibited against all students and employees, including those in the LGBTQ community. Further, some Missouri school districts have included express prohibitions on discrimination and/or harassment on the basis of sexual orientation and/or gender identity in their non-discrimination policy.⁴⁷

However, without explicit statutory language, LGBTQ students and public school employees remain vulnerable.

FEDERAL LAW

Federal law, specifically Title IX of the United States Education Amendments of 1972, also provides some protections and support to

45 *R.M.A. v. Blue Springs R-IV School District*, No. SC96683 (S.Ct. Mo Feb 2019).

46 Mo. Rev. St. § 160.775(2) (2017).

47 School District of Maplewood Richmond Heights, <http://www.mrhschools.net/policies/non-discrimination-policy>; Kansas City Public Schools, <https://www.kcpublicschools.org/Page/296>; Columbia Public Schools, <https://www.cpsk12.org/Page/6403>.



students facing bullying or discrimination based on their sexual orientation or gender identity. Title IX 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,⁴⁸ meaning the student faces discrimination for not subscribing to the stereotypical notions of femininity or masculinity. In past policy statements, the Department of Education (DOE) included transgender students in those classes protected by Title IX, and lesbian, gay, and bisexual students have successfully filed claims of discrimination under Title IX. In a May 2016 statement, the DOE and Department of Justice (DOJ) explained that compliance with Title IX requires schools to treat transgender students consistent with their gender identity and does not allow schools to impose a medical diagnosis or

48 *E.g., Harrington v. City of Attleboro*, Case No. 15-cv-12769-DJC (D.Ct. Mass 2018); *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151 (C.D. Cal. 2015).

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treatment requirement.⁴⁹

In February 2017, however, the Trump Administration's DOE and DOJ rescinded this guidance.⁵⁰ Despite the DOE and DOJ's withdrawal of the guidance, the underlining law that the guidance interpreted remains the same. Since the guidance was withdrawn, 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.⁵¹ Federal district courts in Maryland and Virginia have recently reached the same conclusion.⁵²

The DOE's Office for Civil Rights (OCR) investigates claims of discrimination on the basis of race, sex, national origin, sex, and disability in programs or activities that receive funding from the DOE (such as public elementary or secondary schools, vocational schools, colleges and universities, museums, libraries, and public after-school programming). To open an OCR investigation, an individual must file a complaint on behalf of himself or herself, a group, or another person facing discrimination within 180 days of the last instance of discrimination. Since Title IX

49 United States Dept. of Education Office for Civil Rights, *Dear Colleague Letter on Transgender Students* (May 2016).

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*, 858 F.3d 1034 (7th Cir. 2017).

52 *Grimm v. Gloucester County School Board*, 302 F. Supp. 3d 730 (E.D. Va. 2018); *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 704 (D. Md. 2018).

HEALTHCARE

does not list sexual orientation or gender identity as separate bases for a claim, the complaint must indicate "sex" as the basis for the claim.

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

STATE LAW

The State of Missouri offers no specific statutory protections against discrimination in healthcare and health insurance on the basis of sexual orientation or gender identity.⁵³

Unfortunately, the healthcare benefits for Missouri state employees do not currently include transition-related services,⁵⁴ and the state Medicaid policy explicitly excludes transgender health coverage and care.⁵⁵

53 Some state advocacy groups have resources available to assist LGBTQ individuals and families in obtaining healthcare services. PROMO, Missouri Healthcare for All, <https://promoonline.org/organization/missouri-health-care>; Out2Enroll, Transgender Resources: <https://out2enroll.org/out2enroll/wp-content/uploads/2017/11/Missouri-Trans-Insurance-Guide.pdf>, <https://out2enroll.org/out2enroll/wp-content/uploads/2017/11/Missouri-Plan-Documents.pdf>.

54 Movement Advancement Project, Health Laws and Policies, State Employee Coverage for Transition-Related Care, <https://www.lgbtmap.org/img/maps/citations-healthcare-state-employees.pdf>.

55 See State of Missouri Physician Manual (pgs. 226-27) (2019), <http://manuals.momed.com/>

FEDERAL LAW

Each year, the federal government opens enrollment for individual and family healthcare coverage under the Affordable Care Act (ACA). Historically, enrollment for the following year opened in November and closed mid-February of the following year. However, beginning in 2017 the open enrollment period was much shorter. Open enrollment for coverage in 2020 is from November 1 to December 15, 2019, for states that use HealthCare.gov to enroll. Individuals who experience a major life change, however, such as moving, getting married, or having a baby, may qualify to enroll in one of the ACA's Special Enrollment Periods during 2019. For detailed information about plans, Special Enrollment Periods, or to find out where and how to enroll, [visit http://www.healthcare.gov](http://www.healthcare.gov) and select a state of residence or enter your zip code.

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

[collections/collection_phy/print.pdf](#); See also Movement Advancement Project, Health Laws and Policies, Medicaid Coverage for Transition-Related Care, <https://www.lgbtmap.org/img/maps/citations-medicaid.pdf>.

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.

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. Insurers are prohibited, however, from categorically denying coverage for transition-related care, and they cannot 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 investigate plans thoroughly to find the best option. Further, definitions of "family" may be too narrow to include many dependents in an LGBTQ family structure, given the myriad LGBTQ family structures that exist.

Section 1557 of the ACA prohibits discrimination based on sex in all health programs and activities receiving federal

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financial assistance.⁵⁶ The final agency rule implementing Section 1557 prohibits discrimination based upon gender identity, requiring that any healthcare provider receiving federal funding (i.e. Medicaid or Medicare, any health program administered by the federal government, and any health insurance marketplace) treat individuals consistent with their gender identity.⁵⁷ The final rule also prohibits discrimination based on sex stereotyping, providing potential protections to lesbian, gay, and bisexual people.⁵⁸ Additionally, an insurance company that offers health coverage to different-sex spouses must do the same for same-sex spouses and must treat married same-sex couples the same as married different-sex couples when they apply for premium tax credits and lower out-of-pocket costs on private insurance plans.⁵⁹

However, in May 2019, the Trump Administration announced plans to roll back the final agency rule that explicitly prohibits discrimination against transgender people. While this regulation makes it easier for transgender people to enforce their rights, even if it is rolled back, the underling

⁵⁶ 42 U.S.C § 18116.

⁵⁷ 45 CFR 92.101 (current as of June 17, 2019) https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title45/45cfr92_main_02.tpl. 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 the regulation, but the case was delayed pending reconsideration by HHS of the final regulations. A ruling is expected in 2019.

⁵⁸ 45 CFR 92.101 (current as of June 17, 2019) https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title45/45cfr92_main_02.tpl.

⁵⁹ <https://www.healthcare.gov/married-same-sex-couples-and-the-marketplace/>.

protections in Section 1557 for transgender people will remain in place.⁶⁰

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

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

FAMILY AND/OR PARENTING LEAVE

Missouri does not have a state family or medical leave law requiring employers to provide paid family leave. Missouri employees are entitled to the rights of the federal Family Medical and Leave Act (FMLA). The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical

⁶⁰ All federal courts to consider the issue other than the U.S. District Court for the Northern District of Texas have agreed that Section 1557 protects transgender people from discrimination. See <https://transequality.org/federal-case-law-on-transgender-people-and-discrimination>

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 (public 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.

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

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 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 can be found [here at http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm](http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm).



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

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CHANGES OF NAME AND GENDER

A transgender individual in Missouri may submit a petition to a circuit court to obtain a legal name change.⁶¹ It is the duty of the judge to order the name change and put it into the records of the court, if the “judge is satisfied that the desired change would be proper and not detrimental to the interests of any other person.”⁶² The applicant must publish notice of the name change in a newspaper at least three times within 20 days of the court order, but this requirement may be waived for victims of domestic violence or child abuse.⁶³

Under Missouri law, transgender individuals may request that the Missouri Department of Health and Senior Services issue an amended birth certificate to reflect their true sex and name by submitting certified copies of the court-ordered name change and court-ordered gender change.⁶⁴ Some individuals in Missouri have been able to obtain a court order for their gender changes on a Missouri birth certificate without proof of surgery.⁶⁵

Missouri also will update names and gender

61 Mo. Rev. St. §§ 527.270, 527.280 (2017).

62 Mo. Rev. St. § 527.270 (2017)

63 Mo. Rev. St. § 527.290 (2017); Nat’l Center for Transgender Equality, ID Documents Center: Missouri, <https://transequality.org/documents/state/missouri>.

64 Mo. Rev. St. § 193.215-9 (2017); Missouri Dept. of Health and Senior Services, <http://health.mo.gov/data/vitalrecords/index.php>.

65 <https://transequality.org/documents/state/missouri>.

markers on driver’s licenses. Name changes require a presenting a court order, U.S. passport, or Social Security Card reflecting the name change.⁶⁶ To update the gender marker, an individual must complete the Gender Designation Change Request Form, which requires certification of a medical or social service provider of the applicant’s gender identity,⁶⁷ or provide a U.S. Passport, U.S. birth certificate, or court order reflecting the appropriate gender designation. Alternatively, the applicant can provide medical documentation showing completion of gender reassignment surgery.⁶⁸ If any of these are unavailable, the central office may allow alternate documents to be submitted for review.

HATE CRIMES PROTECTIONS

Missouri law currently includes protections for LGBTQ people who are targeted by hate crimes. Missouri defines hate crimes as crimes the state believes are “knowingly motivated because of race, color, religion, national origin, sex, sexual orientation or disability of the victim or victims.”⁶⁹ If the state establishes that a crime was motivated

66 Missouri Dept of Revenue, Documents for Driver: <https://dor.mo.gov/drivers/idrequirements.php#namechange>.

67 Missouri Dept of Rev., Gender Designation Change Request Form, <http://dor.mo.gov/forms/5532.pdf>.

68 Nat’l Center for Transgender Equality, ID Documents Center: Missouri, <https://transequality.org/documents/state/missouri>.

69 Nat’l Center for Transgender Equality, ID Documents Center: Missouri, <https://transequality.org/documents/state/missouri>.

on one of these bases, the criminal may be subject to increased penalties. At least three municipalities – Columbia, Kansas City, and St. Louis – have LGBTQ police liaisons or task forces that work with the LGBTQ community to report and investigate hate crimes.⁷⁰

The federal government also offers some protection. In 2009, Congress enacted the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which expands federal hate crimes to LGBTQ

70 Nat'l Center for Transgender Equality, ID Documents Center: Missouri, <https://transequality.org/documents/state/missouri>.

people.⁷¹ The law allows federal law enforcement agencies, such as the FBI, to investigate and prosecute hate crimes against LGBTQ individuals when local or state authorities fail to act. Victims of a hate crime should report the crime both to the local authorities and to the FBI. The FBI maintains field offices in Kansas City and St. Louis, and contact information is available through the following webpage: <https://www.fbi.gov/contact-us/field-offices>.

71 Nat'l Center for Transgender Equality, ID Documents Center: Missouri, <https://transequality.org/documents/state/missouri>.



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. All persons, including, same-sex couples (married or not married) should have Wills in which their partners are designated beneficiaries of all or a portion of their assets so that the partner will be able to inherit all or most 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 and conservator of any minor children. If both parents are not legally recognized as parents, 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. It is also important to name contingent the beneficiaries in your Will or Trust, in the event that your primary beneficiary predeceases you. If your spouse or partner has serious medical issues, establishing a Supplement Needs Trust for the spouse or partner may be advisable.

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. Note that many banks holding accounts with a POD (pay-on-death) designation, do not notify the beneficiary that s/he is entitled to the account after you die. Therefore, it is important to keep such designations up-to-date, and to keep a list of the beneficiaries you have named with your Will, so that your executor knows whom to contact to alert those beneficiaries of the need to contact the bank to claim the funds. More information is available from The Missouri Bar at <http://missourilawyershelp.org/legal-topics/>.

ADVANCE DIRECTIVE FOR HEALTHCARE

An Advance Directive for Healthcare allows Missourians to direct whom they want to make medical decisions for them, as well as providing for end-of-life choices in the event they are unable to express that intent at the time that care is required. More information on Advance Directives in Missouri is available at: (http://www.mobar.org/uploadedFiles/Home/Publications/Legal_Resources/Brochures_and_Booklets/Probate_Law_Resource_Guide/living-wills.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. It is advisable to consult a Missouri attorney in drafting this document.

DOMESTIC PARTNERSHIP AGREEMENT & PRE-MARITAL AGREEMENTS

A Domestic Partnership Agreement expresses an unmarried couple’s understanding as to how they will share income, expenses, assets, and liabilities. It also discusses a plan for division of those things in the event the couple separates. This document is especially important for couples who are not married.

If a couple contemplating marriage wishes to enter into an agreement as to division or future division of assets or support, they would need to enter into a Pre-Martial or Prenuptial Agreement. This would require separate legal counsel for each party and should be entered into carefully because this type of agreement may alter the statutory scheme related to the financial rights in divorce. A Pre-Martial Agreement may also be a useful tool for a couple who has been together for a long time before legally marrying to agree to treat assets acquired even before the marriage as martial property.

CO-PARENTING AGREEMENT

A Co-Parenting agreement is a document that expresses a couple’s understanding of the manner in which they will raise children and what each parent’s rights and obligations are with respect to each child while they are together and in the event that the parents separate. They may be useful in multi-parent families, where more than two people will be actively co-parenting together.

Although the Co-Parenting and Partnership agreements are not “standard” and will require the advice of an LGBTQ aware attorney licensed in Missouri (and might not be legally binding), they are often useful to have. These documents can establish a clear understanding between the parties and can provide clarification about the intent and wishes of all involved. They may be useful, at some future time, should an issue ever come before a court in the case of death, dissolution of the relationship, or other event causing separation. However, this type of document should never be seen as a substitute for an adoption decree, which is a clear legal establishment of parentage.

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www.familyequality.org

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Arlene and her spouse, Zuleyma Tang-Martinez, were among the 10 plaintiff couples who filed suit in 2014 in the case of *Barrier v Vasterling* to obtain recognition of their out-of-state marriages. They have been involved in LGBTQ rights efforts in Missouri since the 1980s. A large percentage of the clientele of Arlene Zarembka are LGBTQ persons and couples.