

Note: "The Gender (Identity) Divide" (first published in the December/January Issue of The Advocate), features Lamp Community Member Toni Beasley. In 2007, Ms. Beasley founded the Lamp Community Transgender Support Group as a resource for the transgender community in Skid Row.

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The Gender (Identity) Divide

The exclusion of gender identity from the Employment Non-Discrimination Act helped guarantee the bill's failure in 2007. Now that ENDA is once again moving on the Hill, will it finally protect those who need it most?

By Andrew Harmon

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Toni Beasley wanted this job — badly. She was once a certified nursing assistant, and ostensibly she had the qualifications for the post she was seeking: a peer health educator for an outreach program in downtown Los Angeles, where she would be counseling people on HIV/AIDS and other sexually transmitted diseases. Known by the transgender men and women in her Skid Row support group simply as Ms. Beasley, she'd lived in the neighborhood since 1998, in shelters or motels, sleeping in tents, a van, or county jail. She had struggled with drug abuse in the past, but Beasley was sober now, grateful for what she had, and sympathetic to transgender women in the area who survive on the streets, often through sex work.

Getting dressed for the interview, however, Beasley had to make a choice — show up in her usual dress and a short-haired wig or wear a red button-down shirt with blue jeans, going sans wig, eye shadow, and lip gloss. "I went in as a boy," she says. "I didn't want to jeopardize it. I didn't want them to look at me and think, *I don't believe you're the best person for this position. You've got to get through that door first.*" Beasley got the position, and then, on her first day on the job, arrived dressed as a woman. Her supervisor may have been shocked at first, but by then Beasley was already through the door and had the job, and she did it well.



Toni Beasley

Not all transgender Americans find themselves in such predicaments. But even in California, 12 other states, and the District of Columbia, which have laws banning workplace discrimination based on both gender identity and sexual orientation, recent studies confirm what many experts long suspected to be true: Transgender individuals — and trans people of color in particular — face disproportionate rates of unemployment and poverty, both in comparison to the general population and in comparison to gay men, lesbians, and bisexuals.

Perhaps most striking, preliminary findings of a national survey of 6,450 transgender people, released in September by the National Center for Transgender Equality and the National Gay and Lesbian Task Force, found that 97% of respondents experienced on-the-job harassment, ranging from colleagues repeatedly using the incorrect pronoun as a means of mocking to outright physical and sexual assaults. And the abuse takes place on all rungs of the ladder — from the minimum-wage doughnut shop employee whose boss insists her appearance

makes her unsuitable to work at the front counter to the legislative aide fired for transitioning. “Gender nonconformity has always been the major reason why [LGBT] people are being harassed,” says Lisa Mottet, the Task Force’s transgender civil rights project director.

Lawsuits filed by trans men and women under existing federal laws prohibiting sex discrimination have faced mixed outcomes in court. As a result, Mottet and other legal experts assert that any law forbidding discrimination based on sexual orientation must also include gender identity provisions and that anything less is simply nonnegotiable.

Political history highlights a reality in sharp contrast to Mottet’s hopes, however. Most states that originally passed workplace antidiscrimination statutes that covered only sexual orientation have taken years to add gender identity to those laws — if there’s enough political will to add it at all. Wisconsin, which in 1982 passed the nation’s first law protecting gay employees in the public and private sectors from discrimination, has foundered in expanding the law to include transgender workers. Attempts to broaden New York’s 2002 antidiscrimination law to include gender identity protections in employment, housing, and public accommodations have stalled in a state senate still grappling over a marriage equality bill that was shelved earlier this year (lawmakers expect a vote by year’s end). Some observers have already deemed the comparatively low-profile state-level transgender legislation to be “dead in the water.”

On the federal level, the T of LGBT has long been an inessential element in the Employment Non-Discrimination Act, which would prohibit antigay discrimination nationwide, bolstering the current patchwork of laws in liberal-leaning states. ENDA was first introduced in Congress in 1994, though a precursor to the bill was originally written 20 years earlier.

Since 1994, ENDA has been reintroduced in every congressional term except one. None of the versions included gender identity until 2007, with Democrats in control of both houses of Congress. But when a preliminary vote in the House of Representatives reportedly failed to muster adequate support, Massachusetts representative Barney Frank split ENDA into two separate bills, one with gender identity protections, one without. The former died in committee; the latter passed the House, only to die in the Senate. While any version of ENDA was subject to a near-certain veto by then-President George W. Bush, many national gay organizations denounced Frank’s move as unacceptable. The nation’s largest gay rights lobbying group, the Human Rights Campaign, which supported passage of the non-transgender-inclusive bill, became the subject of controversy, with transgender activists and their allies protesting HRC fund-raising dinners nationwide.

Some ideological fences may remain unmelded, but two years later the rhetoric appears to have cooled. Indeed, many ENDA proponents, while not forgetting the divide that marked previous attempts at passage, are confident that the bill will not only pass — President Barack Obama has said he will sign it — but will pass with transgender inclusion. HRC legislative director Allison Herwitz says the organization now “only wants to see a fully inclusive bill move,” and her organization has recently attempted to galvanize members and grassroots activists through its “No Excuses” campaign in support of a fully inclusive bill.

In September the House Education and Labor committee heard testimony from Vandy Beth Glenn, a former Navy lieutenant who was fired from her staff position in the Georgia state legislature when she told her boss that she was in the process of gender transition. If passed out of committee — as is expected to happen, though it is unclear what amendments may be made to the legislation — ENDA would go to the floor for a full House vote.

U.S. senator Jeff Merkley, an Oregon Democrat who became lead sponsor of the Senate version of the bill at the request of the late senator Edward Kennedy, tells *The Advocate* he was still “very confident” that the bill will remain a cohesive whole. “That’s based on the fact that I’m going to fight to make sure it stays that way,” he says. “You have to bring the facts to bear. Folks will try to say the sky is falling, that there will be a tremendous number of lawsuits, but the states that have implemented ENDA protection have gone smoothly. The sky hasn’t fallen.” States with antidiscrimination laws haven’t seen a torrent of lawsuits clog their courts, he says, and the federal ENDA carves out the same religious exemptions as Title VII of the Civil Rights Act, which prohibits workplace discrimination on the basis of race, religion, sex, and other personal traits.

Yet this month’s Senate committee hearing on the bill did not include testimony from transgender individuals, which elicited measured concern from National Center for Transgender Equality executive director Mara Kiesling

and dismay from Diego Sanchez, senior legislative adviser to Frank. “This was a wake-up call for me that we’re not done educating people,” Sanchez told *The Advocate* last week. “If the biggest piece of discussion about this bill is gender identity, then it’s only logical that you would want to cast the light on the one part that people understand the least.”

Whether ENDA stalls, or whether other LGBT-related legislation leapfrogs over it as Congress nears mid-term election season, is an open question. “In the end, we’ll get there. But to be too confident would be foolhardy,” says Jillian T. Weiss, an associate law professor at Ramapo College of New Jersey and author of *Transgender Workplace Diversity: Policy Tools, Training Issues, and Communication Strategies for HR and Legal Professionals*. “Politicians’ jobs are to say the right thing. But when crunch time came in 2007, they folded like a cheap suit, and that could absolutely happen again.”

The legislation also doesn’t address many entrenched problems for transgender individuals, such as housing discrimination, which may require further congressional action. When he was speaker of the Oregon state house, Merkley helped pass the 2007 Oregon Equality Act, which prohibited gender identity discrimination in housing, public accommodations, and other areas in addition to employment. “One question I raised at the federal level is whether it makes sense to broaden the legislation to include [housing], but I felt this was the right piece of the battle to undertake right now,” he says.

The battle, as Merkley sees it, is fueled by data illustrating ENDA’s *raison d’être*. A first-of-its-kind report on state employees issued this year by the University of California, Los Angeles, School of Law’s Williams Institute found evidence of long-standing, widespread workplace discrimination that went beyond anecdotes — a firefighter whose colleagues put urine in her mouthwash, for example, or a transgender college librarian in Oklahoma who was subjected to a flier that said God wanted her to die. “The severity of workplace harassment is much greater” for transgender individuals, says Williams Institute executive director Brad Sears. “Twelve months ago my underlying assumption was that government employment has been good for other minorities and weeds out discrimination more than private employment. But the opposite appears to be true — primarily in education and law enforcement.”

Julie Marin, a veteran police officer in California’s Silicon Valley area, transitioned during her tenure, in 2001. Her department’s deputy chief, a lesbian, was initially overwhelmed by Marin’s decision, yet took the time to educate herself and other officers on gender identity. Some colleagues have since called Marin “a disgrace to the uniform” or voiced their displeasure about sharing locker-room facilities. “But I’ve been lucky,” says Marin, 51, who has been on the job 28 years. “I’ve been treated well for the most part.”

Many of her peers haven’t been so fortunate. In 2002, Marin started a small Internet discussion group that evolved into the Transgender Community of Police and Sheriffs (T-COPS), with a membership that now spans five countries. Her extensive outreach confirms Sears’s observations. “In our line of work, having someone back you up is vital,” she says. “If you don’t have assistance, you can get hurt or killed. There are incidences where officers have called for help on the radio — not called for help, screamed for help — no one answers.”

The atmosphere in law enforcement has improved in recent years with the addition of younger, more tolerant officers, Marin says. But as was the case with Beasley in Los Angeles, getting hired in the first place is an obstacle — one that has never been fully remedied for minorities by the 1964 Civil Rights Act and one that certainly won’t go away for LGBT men and women under ENDA. Marin, a seasoned criminal investigator, will retire in a few years from the force on which she’s served since the early 1980s, but she wants to work with a state or county agency after she leaves. “But I can’t find a job to save my soul,” she says. “Had I remained male and carried out my career for the past 10 years, I believe I would have been accepted into one of these positions rather easily. I wouldn’t have to be sending out 300 résumés.”

Unless transgender men and women become more visible — and valued — members of the gay community, Beasley says she isn’t hopeful the picture is going to change anytime soon, even if she believes a federal law banning discrimination is a step in the right direction. “Most of society and the community looks down on transgenders,” Beasley says. “Why is it that when you look around this neighborhood and you see so many trans people, none of them are working in jobs anywhere? Most employers just don’t want transgenders working for them. If you can’t get a legal, legitimate job, of course you’re going to have to make money in some other way.”