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# The Rise of Transgender-Inclusive Laws

## How Well Are Municipalities Implementing Supportive Nondiscrimination Public Employment Policies?

Roddrick A. Colvin  
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Whereas efforts that prohibit employment discrimination based on factors such as race or sexual orientation require certain organizational changes, creating a transgender-inclusive workplace requires organizational changes that include personnel, policy, legal, and medical issues unique to transgender people. At present, it is not clear whether communities are actually implementing these organizational changes, even after adopting transgender-inclusive nondiscrimination laws. This research project surveyed 74 municipalities with transgender-inclusive nondiscrimination employment laws, in order to assess and better understand the state of transgender-inclusive public workplaces. The initial results of the survey suggest that although innovation continues to increase, implementation and enforcement remain low, affecting managers' and employees' abilities to operate in a transgender-inclusive environment. Recommendations are made to improve implementation and enforcement of transgender-inclusive nondiscrimination laws.

**Keywords:** *nondiscrimination policies; transgender rights; policy implementation; employment law*

### Introduction

Since 1975, when Minneapolis became the first city in the country to prohibit discrimination based on gender identity or expression, the number of states and local jurisdictions protecting transgender individuals has steadily increased (see Appendix A). Currently, 98 jurisdictions—all the way up to the state level—have policies that ban, at a minimum, public employment discrimination against transgender people. As a result of court rulings, executive orders, statutes, and ordinances, 27% of the U.S.

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**Table 1**  
**Source of Legal Protections for Transgender People**

Method of Adoption	States	Counties	Municipalities
Legislative	7	4	64
Executive	2	3	10
Judicial	8	0	1

population is now covered by transgender-inclusive nondiscrimination employment policies (The Task Force, 2006). Table 1 identifies the source of legal protection for all transgender-inclusive jurisdictions in the United States.

Whereas efforts that prohibit employment discrimination based on factors such as race or sexual orientation require organizational changes, creating a transgender-inclusive workplace requires organizational changes that include personnel, policy, legal, and medical issues unique to transgender people. At present, it is not clear whether communities are actually implementing these organizational changes, after adopting transgender-inclusive nondiscrimination laws. As the number of jurisdictions providing nondiscrimination coverage continues to increase, it is important to assess how well these policies actually create transgender-inclusive work environments. This research is an attempt to understand how and why local municipalities adopt and implement transgender nondiscrimination laws.

To that end, three research questions were asked:

1. Does the type of municipal government influence the level of implementation of the transgender-inclusive law?
2. Have transgender-inclusive nondiscrimination policies been fully implemented and integrated into municipalities' operations?
3. How effective have public sector nondiscrimination laws been at protecting transgender employees in hiring, firing, and promotion?

## Literature Review

### Definitions and Concepts

The term *transgender* refers to people whose gender identity and expression differ from their biological sex (Letellier, 2003). This includes intersexed people, transsexuals, cross-dressers, and others who do not conform to societal expectations of gender (Lombardi, Wilchins, Priesing, & Malouf, 2001).<sup>1</sup> People who are in the process of aligning their gender with their sex are called "in transition." Transitioning can include changing one's name, taking hormones, having surgery to alter the body, and changing legal documents to reflect one's new sex.

Gender identity and expression are often thought of in the context of sexual orientation. However, these concepts should be distinguished and their differences highlighted. Gender identity is a person's internal sense of maleness, femaleness, or something

other than these two specific genders. Sexual orientation refers to the gender or sex of the person to whom one is physically or emotionally attracted (Letellier, 2003). Homosexual, bisexual, and heterosexual are all sexual orientations. Because sexual orientation has to do with attraction (and not one's own gender), transgender people—like the rest of the population—can be homosexual, bisexual, or heterosexual. Of course, historically and politically, the gay rights movement and the transgender rights movement have been linked. Under the rubric of sexual minorities, both communities have fought to pass more inclusive nondiscrimination civil rights laws (D'Emilio, 1983).

### **Sexual Orientation, Discrimination, and Laws**

Research on employment discrimination suggests that actual or perceived discrimination based on sexual orientation may be a factor negatively affecting hiring, firing, and promotion. The most commonly cited research suggests that between 16% and 46% of surveyed gay men, lesbians, and bisexuals report having experienced employment discrimination (Cohen, O'Byrne, & Maxwell, 1999).

There are several different areas of public employment that gay-related nondiscrimination laws attempt to address (Colvin, 2000). Prohibition against discrimination in hiring, firing, and promotion based on sexual orientation are the most commonly addressed factors. However, more recently, inequities in wages and benefits have also been associated with employment discrimination. A few studies have comprehensively examined these issues. For example, Riccucci and Gossett (1996) focus attention on hiring, firing, and wage and benefits inequities, whereas Levine (1989) looks at hiring, firing, and promotion. Simon and Daly (1992) consider the legal implications of inequities in employee benefits. Badgett (1995) studies wage disparities between homosexuals and heterosexuals, and Klawitter and Flatt (1998) study the effects of nondiscrimination policies on the overall earnings of gay men and lesbians. Taylor and Raeburn (1995) focus on hiring and promotion among gay men and lesbians in the academic field of sociology. Button, Rienzo, and Wald (1997) consider the scope and enforcement of nondiscrimination policies, and Croteau and Lark (1995) consider the effects of being open about one's sexual orientation and discrimination in hiring and promotion. The U.S. General Accounting Office (GAO) (1997) study considers the potential impact of a federal employment nondiscrimination law.

Of this research, only Riccucci and Gossett (1996), Button et al. (1997), and Klawitter and Flatt (1998) suggested that there might be a disparity between the enactment of nondiscrimination policies and their effectiveness, due to enforcement.

Riccucci and Gossett (1996) addressed the treatment of gay men and lesbians in the public sector workforce and the various attempts by government bodies to remedy discrimination and provide equitable benefits. The authors surveyed those state and local government agencies responsible for enforcement. In their survey, the authors requested information about employment complaints filed regarding discrimination based on sexual orientation and the outcomes of the complaints. Although the

response rates for both state and local governments were high, the data collected were minimal. Few complaints were filed, and detailed information about the filed complaints was either withheld or incomplete. This information would have provided rich data regarding the types of discrimination experienced by public employees and could have been useful in identifying trends. Riccucci and Gossett were able to draw several conclusions about discrimination and enforcement from their survey:

- Enforcement of nondiscrimination policies was questionable, based on the responses from enforcement agencies and offices.
- Several states and localities had no formal procedure or central agency to ensure enforcement.

Although discrimination against gay men and lesbians has been documented with some consistency, research on discrimination against transgender people has been less systematic; anecdotal data and self-reporting continue to be the main sources of information. This does not devalue the reports and surveys that do exist; rather, it highlights the difficulties that exist in gathering accurate and valid data regarding transgender discrimination. To date, little data exist that provide an accurate picture of transgender discrimination.<sup>2</sup>

Although gender identity may not be clearly visible to others, gender expression and people in transition are usually visible to family, friends, and coworkers, and may be visible to strangers as well. The process of transitioning can be a challenge for all involved directly and indirectly. The desire to transition from one sex to another is sometimes diagnosed as gender identity disorder (GID).<sup>3</sup> GID is a psychological diagnosis, recognized by the American Psychiatric Association, of severe distress and discomfort caused by the conflict between one's gender identity and one's sex at birth (Sheehy, 2004).

Given rigid societal and scientific ideas about the meanings of male and female and masculine and feminine, it is not hard to imagine the challenges and societal resistance that nonconformists such as transgender people face. Transgender people regularly face harassment, violence, and discrimination due to prejudice and lack of understanding.

## Harassment, Violence, and Discrimination

Discrimination occurs when governments, institutions, or individuals treat people differently based on their personal characteristics, such as (but not limited to) sex, sexual orientation, gender identity, race, ethnicity, age, or health status (Supateera & Kleiner, 1999). Such discrimination can take a number of forms, including direct discrimination, indirect discrimination, and harassment. Direct discrimination is an explicit policy or law that fosters unequal treatment. The ban on transgender people serving in the U.S. military is an example of direct discrimination. Indirect discrimination can be an implicit side effect of another

policy or decision. An example of indirect discrimination based on gender identity or expression might be found in an employer's dress code. A rule that women must wear skirts potentially discriminates against transgender employees; such a rule might adversely affect biologically female transgender people, for whom trousers may be an important expression of gender identity. Harassment is generally defined as behavior that has the purpose or effect of creating an intimidating, hostile, offensive, or disturbing environment (Shaffer, Joplin, Bell, Lau, & Oguz, 2000). Derogatory remarks or jokes could constitute actions contributing to an offensive environment. Most nondiscrimination policies address direct discrimination. In some cases, harassment is also addressed.

The limited available research suggests that transgender people face enormous pressure to conform to their birth gender. Lack of conformity to these social pressures translates into discrimination, harassment, and violence. Lombardi et al. (2001) offer the most comprehensive study of violence and discrimination against transgender people. In their research, the authors surveyed transgender people through community events and via the Internet. With a final sample of 402 valid surveys, the authors concluded that 59.5% of the sample had experienced violence or harassment in their lifetimes, and 37.1% had experienced economic discrimination. The authors also found a strong link between economic discrimination and violence, leading them to conclude that the workplace can be one of the most dangerous places for transgender people. Their conclusions are similar to several smaller studies, including that of Minter and Daley (2003), who found that nearly 50% of their 155-person sample experienced employment discrimination based on gender identity. Oswald, Gebbie, and Culton (2000) surveyed rural lesbian, gay, bisexual, and transgender (LGBT) people. Only 1% of their sample of 527 LGBT rural people in Illinois was transgender. Limitations aside, the authors found that coworkers were the most likely perpetrators of sexual orientation or gender-based harassment.

In addition to general workplace violence, harassment, and discrimination, a few studies have explored schools as unique workplace environments. Irwin (2002) explored the workplace experiences of 120 gay men, lesbians, and transgender people employed as teachers, academics, and educators. He found that harassment was widespread in the educational environment. Irwin's conclusions match the results of Sausa (2002), who interviewed transgender students, staff, and faculty about harassment and discrimination and found that schools were often ill-equipped to meet the needs of transgender people on campus—if not ignorant of their needs altogether. As a result, transgender people are often isolated or ignored.

Although very little data exist about transgender people and their experiences of harassment, violence, and discrimination, these initial studies point to an alarming trend. The data suggest that actions are needed to ensure workplace safety of transgender people. Even without systemic data, a *prima facie* consideration of transgender people suggests that harassment, violence, and discrimination are real and that corrective policies would benefit them in the workplace.

## Legal Context for Transgender Protections

Although a plethora of legal cases exist as a result of gay men and lesbians' accessing the courts to seek redress in all areas of civil rights, from employee benefits to public accommodation to domestic partner recognition, a paucity of transgender-related cases have been settled favorably for plaintiffs.

Through the 1970s, federal courts held that Title VII of the 1964 Civil Rights Act did not protect transgender people from discrimination. This began to change in 1989 with *Price Waterhouse v. Hopkins*. This decision determined that "gender stereotyping" cannot be a component of promotion, and such actions violated Title VII of the Civil Rights Act of 1964. The case opened the doors for claims to be made by transgender people who believe they were discriminated against for gender non-conformity. In March 2005, the Sixth Circuit Court in *Barnes v. City of Cincinnati*—citing *Price Waterhouse v. Hopkins*—ruled in favor of the transgender plaintiff. In this case, an Ohio police officer had been demoted due to transitioning from one sex to another. The Sixth Circuit found that Title IIV applied to transgender individuals and that the police department had violated the law.

During this same period, courts and administrative agencies in Connecticut, Massachusetts, New Jersey, and New York all found that transgender people who had been discriminated against because of their gender identity had a right of action under existing state and/or local sex-related nondiscrimination laws.

In addition to successful claims made in the area of sex discrimination, transgender people have also sought recourse under disability nondiscrimination laws. Courts in Massachusetts and New Jersey have upheld cases affirming that transgender people are protected under their states' disability law. From an administrative route, agencies in two states, Florida and Illinois, have also interpreted protection under state disability laws (Minter & Daly, 2003).

Although federal courts have recognized limited protections for transgender people under sex and disability provisions, and despite the American Psychiatric Association's diagnosis of gender identity disorder/gender dysphoria, transgender people are specifically excluded from protection under the Americans with Disabilities Act.<sup>4</sup>

## Implementing Transgender-Inclusive Work Policies

Given the violence, harassment, and discrimination that transgender people face and the challenges they come up against while transitioning to another gender, efforts to create a supportive workplace require organizational changes on the part of employers. For transgender people and people in transition, there are many personnel, policy, legal, and medical needs that could ameliorate the workplace.

Coming to terms with one's gender identity can be a tremendous inner struggle for self-acceptance. Additionally, transgender people have to manage their identity with family, friends, coworkers, and the broader society. In the process, transgender people may face shame, fear, internalized phobias, fear of disclosing

status, and other self-imposed limitations on self-expression (Currah & Minter, 2001, 2006).

In the workplace, employers can implement a number of changes that will lessen the personal struggles of their employees (Sheehy, 2004). Namely, employers can specifically add “gender identity and expression” to the organization’s workplace-wide nondiscrimination policies, establish guidelines and a contact person for addressing transgender issues, include transgender information in diversity training programs, ensure that an employee’s gender status always remains confidential and private, and establish protocols for changing an employee’s personnel and administrative records to reflect the new gender after that employee’s transition.

From a policy perspective, transgender people face an array of challenges in everyday life. From finding housing to accessing social services to denial of employment, many policies systematically discriminate based on gender status. In the workplace, too, there are policies that present challenges for transgender people (Sheehy, 2004). Employers can address some of these workplace policies by developing protocols that grant restroom and locker room access according to an employee’s full-time gender presentation and allowing for gender-neutral modes of dress that avoid stereotyping.

Legal and medical issues are not only the most pervasive challenges transgender people face, they are also the most difficult, in terms of costs and administrative complexity, to address. People in transition have to change their legal statuses as men or women, which includes applying for new birth certificates and drivers’ licenses. The status of their marriages, adoption rights, child custody rights, and inheritances are often called into question and can depend on court interpretations of transgender status in their state of residence. Medical services—both routine and transgender-specific—are often denied to people in transition. At whatever stage a person may be in the process of transition—from beginning to receive hormones to gender reassignment surgery—his or her health care and medical needs are especially important. There are several workplace-related legal and medical policies that employers can adopt, including removing exclusions for medically necessary treatments and procedures from agency-provided health care, permitting the use of health- or disability-related leave associated with medically necessary treatments and procedures, and allowing equal access to spousal benefits regardless of the sex of the spouse.

Employers who are interested in creating transgender-inclusive workplaces will have to change or implement policies that do not discriminate against these arenas. Often, this means changing internal processes as well as personnel policies and employee benefits. Given the nature and scope of the changes needed, human resource agencies have a primary and central role in implementing and enforcing transgender-inclusive nondiscrimination employment policies.

## **Transgender Benefits and Public Costs**

One important concern raised by public organizations is the potential costs of covering medical procedures and treatments for people in transition. The surgery



costs of transition from one sex to another can exceed \$75,000 (Gordon, 2001). This cost does not account for continual hormone treatments or mental health or other therapeutic services. Given the costs, lack of successful models, and negative social construction of transgender people, it is easy to understand why organizations are reticent about extending such benefits. Even in San Francisco, the local Human Rights Commission expressed concerns that the program might create perverse incentives, including encouraging large numbers of employees, retirees, and their dependents to have “sex changes” and people moving to San Francisco and taking municipal jobs only to access benefits (Harmon, 2006).<sup>5</sup>

Little data exist to systematically address the concerns of public institutions. However, San Francisco is a model and does provide initial information about the costs of providing transgender-related health care benefits. In 2001, the city of San Francisco removed the transgender exclusion from its employee health plans as a one-year pilot program. The benefits provided surgical coverage through the city’s self-insured plan, with hormones and mental health provided via private health plans (Harmon, 2006). All municipal employees were assessed an additional monthly charge of \$1.70, with a maximum benefit of \$50,000 for reassignment surgery. According to the San Francisco Human Rights Commission, after five years of providing benefits, many of the cost-related concerns have been unfounded. From July 2001 to July 2005, \$183,000 was paid out in benefits, while over \$5 million in fees was collected (Harmon, 2006). Even after increasing the benefit cap to \$75,000, lowering the monthly fee to \$1.16 per month, and removing the one-year waiting period, the city found no significant increase in costs.

## Research Question 1

Does the type of municipal government influence the level of implementation of the transgender-inclusive law?

### Hypothesis 1

As of 2005, 48.8% of cities over 2,500 used the council-manager form of government, and 43.4% used the mayor-council form (International City/County Management Association [ICMA], 1998a). In the council-manager form of government, the council is the governing body of the city elected by the public, and the manager is hired by the council to carry out the policies it establishes (ICMA, 1998b). With the mayor-council form of government, the council and the mayor are elected separately by the public (ICMA, 1998b). The duties of the mayor vary from jurisdiction to jurisdiction, ranging from a purely ceremonial role to policy development and implementation. Both types of government have particular strengths and weakness. One notable difference is the role special interests usually play in each type of government: The literature suggests that the council-manager form renders special interests more diffuse and less powerful. Under a council-manager government, there is generally more

involvement by the entire elected body, ensuring that more interests are represented and heard. A mayor-council form of government may be more easily influenced by money and political power to influence a single elected official (ICMA, 1998a).

Because adoption and implementation require different sets of resources, communities with different types of governments should have different levels of implementation. Furthermore, because transgender-related policies often become associated with issues of morality, the council-manager communities, with an inherently less politicized form of government and the diffused power of special interests, should have higher levels of implementation.

In order to determine the level of implementation between the different types of governments, council-managers cities with transgender laws were compared with mayor-council cities with transgender laws. Survey data were used to gather information on level of implementation for each type of community.

## Research Question 2

Have transgender-inclusive nondiscrimination policies been fully implemented and integrated into municipalities' operations?

### Hypothesis 2

Although political organizing and activism around transgender-inclusive public policies has been on the rise, public bodies may not have integrated critical components that managers and employees need in order to maintain a transgender-inclusive work environment. If cities fail to develop policies, rules, or procedures that direct how managers and employees should address transgender issues, then the laws have little actual value. The universe of changes required range from minor issues, such as ensuring that the organization changes the wording of its employment nondiscrimination statement, to the more complex and costly issues, such as development of health benefit options that are inclusive of the needs of transgender people.

The level of implementation of each policy will be drawn from survey responses of participating communities. Communities will have a range of options to rate their level of implementation from *not considering this option* to *fully implementing this option*. Minor components that do not have economic implications or are not administratively complex should have higher rates of implementation than other components do.

## Research Question 3

How effective have public sector nondiscrimination laws been at protecting transgender employees in hiring, firing, and promotion?

### Hypothesis 3

Laws and policies differ vastly in terms of their coverage and effectiveness. Localities with provisions for confidentiality and antiretaliation should have higher rates for utilizing the law. Filing complaints of discrimination should be contingent upon whether claimant confidentiality and antiretaliation provisions exist in the law itself.

Participating surveyed cities were asked about the number of transgender-related employment discrimination claims filed. The laws were also examined in terms of confidentiality and antiretaliation provisions in law.

### Methodology

In order to assess the current state of transgender-inclusive public employment nondiscrimination laws, 74 surveys were distributed to public personnel agencies in municipalities with employment laws that included provisions for transgender employment. These cities were originally identified using information from both the National Gay and Lesbian Taskforce and the Human Rights Campaign. The 74 communities represent all known cities to have transgender-inclusive laws and encompass all laws that originated in the legislative or executive branches. The survey data were collected between June 2005 and September 2005.

Each public personnel administrator was first contacted by telephone to confirm that the jurisdiction had, at a minimum, a transgender-inclusive public employment law, as well as who the most knowledgeable person in the agency to answer questions about the law was. After confirmation, the appropriate public personnel administrators were mailed survey packets explaining the project, and including an instruction sheet, a questionnaire, a consent form, and a self-addressed stamped envelope.

The survey questions were divided into three major categories: background information, implementation questions, and effectiveness questions.

### Background

To provide suitable background information, administrators were asked to explain the process for filing a discrimination claim and the number of claims filed to date. Additionally, information about the nature of these claims was ascertained, including the area of discrimination (hiring, firing, promotion, etc.), the outcome of the claims, and the remedies sought by claimants.

### Implementation

Administrators were asked a number of questions related to the implementation of their transgender-inclusive laws. The implementation questions corresponded to the unique organizational changes needed to make the workplace more inclusive, including changing the employment nondiscrimination statement; establishing a contact person who could be contacted about transgender issues; training; procedures for making changes in administrative records; policies regarding

sex-segregated facilities; and transgender-inclusive sick leave, disability, and medical policies.

Respondents had several options for rating the level of implementation. The categories included

- No, we have not considered this change (“no”)
- We have considered, but have no plan to implement the change (“consider”)
- We have a plan to implement this change (“plan”)
- We are implementing this change (“implementing”)
- Yes, this change is fully integrated into our operations (“yes”)

Respondents could answer “no” or “consider” when they had not yet implemented components. They could respond “plan,” “implementing,” or “yes” to indicate that implementation was occurring or had occurred for their law. Respondents were also given the opportunity to distinguish between whether they had never considered the organizational change, or, having considered the organizational change, decided not to implement it. This distinguished between organizations that might implement after being influenced by the study and organizations that had already made a decision about implementation prior to their involvement in the study.

## Effectiveness

Administrators were asked to gauge the effectiveness of the confidentiality and anti-retaliation provisions in the laws, because the existence of these provisions, as well as their efficacy, could influence the application of the laws themselves. Claimants might be less likely to file discrimination claims if they fear that their confidentiality might be breached or that filing a claim might result in retaliation from other employees.

In addition to the survey data, information was gathered from a number of archival sources, including the National Gay and Lesbian Task Force, the Human Rights Commission, International City/Country Management Association, Congressional Quarterly, and the US census. To view all data sources and the survey questions, please see Appendix B.

## Results

### About the Survey and the Respondents

Of the 74 surveys distributed, 45 communities responded, for a response rate of 61%.<sup>6</sup> The respondents were nearly equally divided in terms of the type of government in each community; 40% were mayor-council, and 46% were council-manager. This suggests that the type of government does not necessarily affect the likelihood that a transgender-inclusive law will be adopted. However, this is not to suggest that the type of government has no influence. In fact, the initial results indicate the type of government may have a direct influence on the level of implementation of specific transgender provisions.

## About the Transgender Laws

The survey also yielded a number of interesting points about the various transgender laws across the country. For example, protections for transgender people are enumerated in laws in diverse ways. These variations might have an effect on the implementation of transgender policies. Four broad categories were used to specify transgender protections: gender (11%), gender identity (36%), gender identity and expression (20%), and sexual orientation (16%).

In the responding communities, actual claims of transgender discrimination—of any type—were very low. Seventy percent reported no claims of transgender discrimination. Ninety-five percent of communities reported five or fewer claims of discrimination.

Sixty-two percent of the laws had confidentiality provisions. Of those communities with provisions, 38% reported that the confidentiality provision provided “good” or “very good” coverage. Ninety-four percent of the laws had antiretaliation provisions. Of those with provisions, 68% of the public managers thought that the antiretaliation provisions provided “good” or “very good” coverage for employees.

## Community Implementation of Transgender Policies

The specific components of the laws that make them transgender-inclusive were analyzed. Figure 1 shows that 65% of communities have changed the wording of their nondiscrimination laws to explicitly prohibit transgender discrimination.

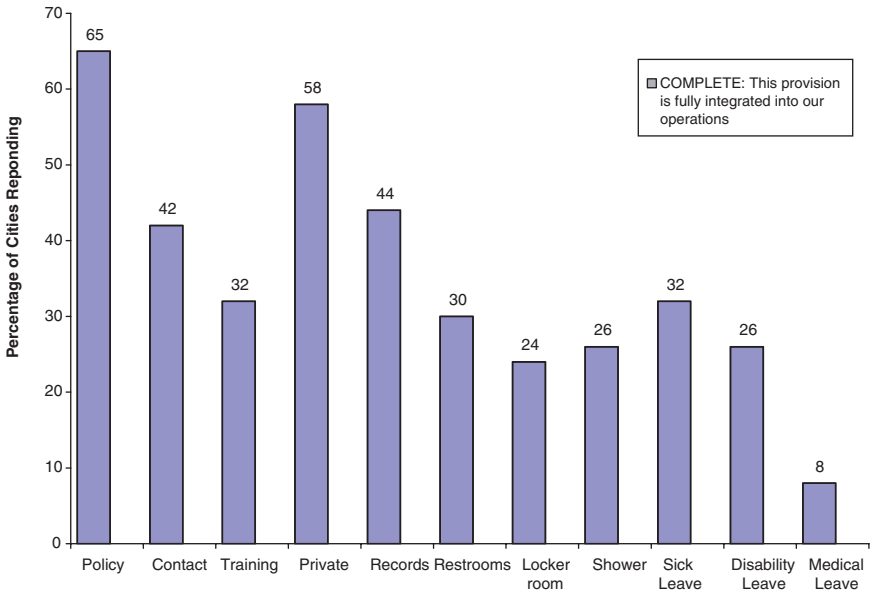
Additionally, 42% have designated a contact person to answer employee transgender-related questions, and 44% of communities will change employee records and materials at the employee’s request. In terms of sex-segregated facilities, implementation is less comprehensive: About one third of communities have written policies about restroom and locker use. Only 8% have written medical policies in place.<sup>7</sup>

## Levels of Implementation and Type of Government

Although mayor-council and council-manager jurisdictions adopt transgender-inclusive policies at about the same rate, their levels of implementation vary by government type. Figure 2 highlights the level of implementation for each of the organizational changes. In every area except the sex-segregated facilities and changing the nondiscrimination statement, the mayor-council form of government had higher levels of implementation than the council-manager form of government did.

Communities with transgender-inclusive laws had smaller populations, higher percentages of African Americans, higher per capita incomes, more nonfamily households, a lower percentage of voters who had voted for George Bush in 2004, a higher percentage of two-year college students, and finally, higher percentages of registered two- and four-year college students.<sup>8</sup> Table 2 articulates these data.<sup>9</sup>

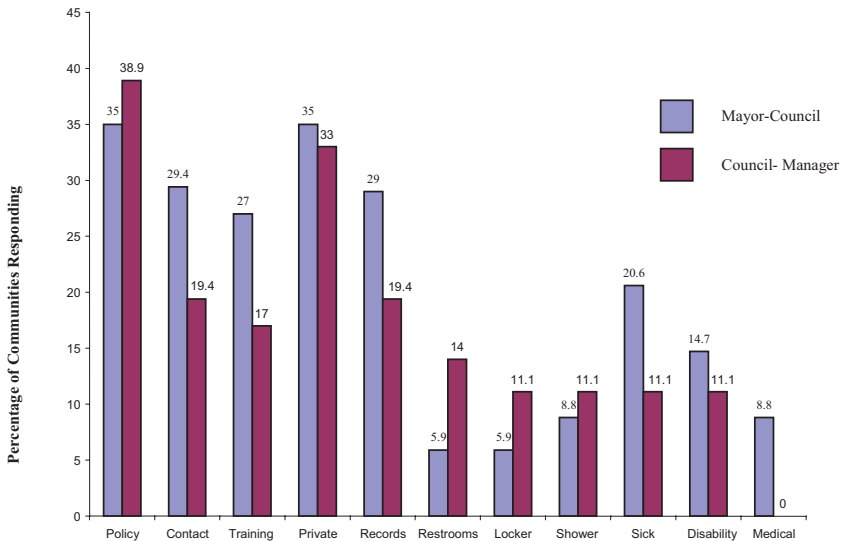
**Figure 1**  
**Full Integration of Trans-Inclusive Provisions**



## Discussion

Although adoptions were equally divided among mayor-council and council-manager municipal governments, mayor-council governments did indeed implement specific policy provisions at a higher rate, confirming the null of the first research hypothesis. There are a number of explanations for this. Mayor-council governments are inherently more political. The controversial nature of these policies often requires a working majority of the council, as well as the support of the mayor. The political capital needed to pass such legislation requires high levels of commitment from both branches of government. The manager in the council-manager government may not have the political will that an elected official needs to implement a controversial transgender law. In this case, a strong mayor could better direct the implementation of such a law. The political power used to pass this type of legislation is probably also required for implementation. In terms of the research question—does the type of municipal government influence the level of implementation of the transgender-inclusive law?—the research indicates that it does. Because some variation in the data can be attributed to the type of government, different governments may need to specialize the implementation and enforcement of the law to meet their government structure.

**Figure 2**  
**Full Implementation of Trans-Inclusive Provisions by Type of Government**



The research hypothesized that the implementation of nondiscrimination laws would be high among the inexpensive and simple components. The results confirmed the hypothesis: Inexpensive and easy-to-administer components were included at higher levels than others when implementing transgender-inclusive nondiscrimination laws. For example, significantly more cities reported changing their written nondiscrimination policy than reported changing their health benefits plan. There were, however, surprisingly low rates of implementation for all of the components. Even including communities with plans to implement provisions, none of the policy areas reaches 100% implementation. Even the easiest provision to implement, changing the written nondiscrimination policy, occurred in 65% of communities. And keeping administrative records confidential, the next most frequently implemented provision, was true in only 58% of communities. Twenty percent of adopting communities may never adapt their nondiscrimination policies; 38% will not necessarily keep an employee's transgender status as private. The low levels of implementation suggest that cities have not fully realized the organizational changes needed to create a transgender-inclusive workplace.

Finally, the dearth of data regarding the number of claims filed makes it difficult to ascertain the laws' ability to protect against discrimination in hiring, firing, and promotion. Although the rate of cities with provisions for confidentiality and

**Table 2**  
**Comparison of Communities with Laws and without**  
**Transgender-Inclusive Laws**

	100 Communities without Trans- Inclusive Laws	74 Communities with Trans- Inclusive Laws
Population (mean)***	45,816	19,911
Black (%) **	9.35	17.85
Hispanic (%)	6.9	12
Income (mean)	19,812.09	22,473.24
College (%) **	22.9	35.5
Age (mean)	35.53	32.82
Nonfamily households (%) **	33.9	46.4
Same-sex households (%) **	.0048	.0067
2-Year colleges (mean)**	0.14	2.45
2-Year college students (mean)**	785.35	12,918.01
4-Year colleges (mean)**	839.66	21,505.08
Election 2004**	54.4	39.6
Church adherents 2000 (%)	51.2	47.7
Conservative church adherents 2000 (%)	35.6	31.9

Note: Entries are means or percentage where appropriate. See Appendix for variable definition and source.

\*\*Difference in ANOVA at  $p < .01$ ; \*\*\*difference in ANOVA at  $p < .001$ .

anti-retaliation was high, the number of actual claims was very low. The low number of claims may be the result of cases being resolved prior to filing a formal claim, and recordable claims only are filed. Self-reporting of this type of information is difficult to verify accurately. Given the low number of claims, the hypothesis that localities with provisions for confidentiality and antiretaliation would have higher rates of utilization of the law is untestable.

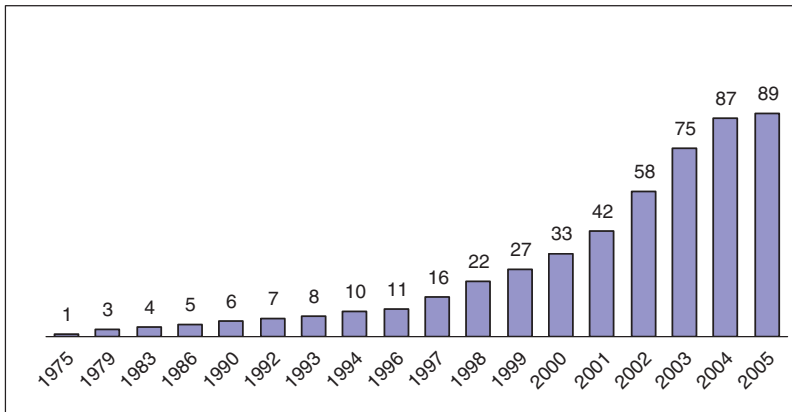
## Conclusion

Although the adoption of transgender-inclusive laws continues to rise rapidly, implementation and enforcement has been weak: Even noneconomic, administratively simple provisions have not been implemented comprehensively, despite passage of the laws. More attention should be focused on implementation and enforcement during enactment. This might take several forms, including oversight committees to monitor the enforcement agencies, community pressure to implement and enforce the laws, legal efforts to challenge faulty interpretations of the laws, and technical assistance and training for implementing communities. These efforts have proven successful in other policy realms and have the potential to improve the workplace for employees (Alm, 1992; Steelman & Ascher, 1997).



Many aspects of research in this area call for additional scholarly attention. Aside from evaluations of public sector entities, looking into private sector implementation of these laws would be very instructive. Public policy research should be focused on determining what other unique challenges inhibit the adoption and implementation of these laws. Finally, although anecdotally it is known that discrimination, harassment, and violence against transgender people is real, there is little empirical data to prove it. General scholarship on the state of the transgender population would provide researchers with essential data about the work and personal lives of transgender people.

## Appendix A



## Appendix B

Variable	Measure	Source	Note
<b>General Municipal Info</b>			
Year	The year that the jurisdiction adopted trans-inclusive law	National Gay and Lesbian	Task Force (2005)
Category	Language used to protect transgender people	National Gay and Lesbian	Task Force (2005)
Level of government	Level of government	U.S. Census Bureau, Governments Division	Bureau Governments Integrated Directory (GID)—1997 Independent Government Listings
Type of government	Type of government	International City/County Management Association (ICMA)	The Municipal Year Book—2004
Region	Region of the country	International City/County Management Association (ICMA)	The Municipal Year Book—2000
<b>Demographic Diversity/Urbanism</b>			
Population	Population in 2000	U.S. Census Bureau, Summary File 1 (SF 1) and Summary File 3 (SF 3)	2000
Percentage Black	Blacks as a percentage of the population	U.S. Census Bureau, Summary File 1 (SF 1) and Summary File 3 (SF 3)	2000
Percentage Hispanic	Hispanic (non-White/non-Black) as a percentage of the population	U.S. Census Bureau, Summary File 1 (SF 1) and Summary File 3 (SF 3)	2000
Income	Per capita income	U.S. Census Bureau, Summary File 1 (SF 1) and Summary File 3 (SF 3)	2000

High school	Percentage of the population with 12 or fewer years of formal education	U.S. Census Bureau, Summary File 1 (SF 1) and Summary File 3 (SF 3)	2000
College	Percentage of the population with 16 or more years of formal education	U.S. Census Bureau, Summary File 1 (SF 1) and Summary File 3 (SF 3)	2000
Age	Median age	U.S. Census Bureau, Summary File 1 (SF 1) and Summary File 3 (SF 3)	2000
Non-family households	Household of unrelated persons as percentage of total households	U.S. Census Bureau, Summary File 1 (SF 1) and Summary File 3 (SF 3)	2000
Same-sex couple households	Number of unmarried partners households as a percentage of total population	U.S. Census Bureau, Summary File 1 (SF 1)	2000
<b>Political and Social Opportunity</b>			
College	Number of 2- and 4-year colleges in the jurisdiction	Peterson's Guide to 2 Year Colleges, 40th Edition, 2005 and Peterson's Guide to 4 Year Colleges, 40th Edition, 2005.	2005 and 2005
College enrollment	Number enrolled in all 2- and 4-year colleges in the jurisdiction	Peterson's Guide to 2 Year Colleges, 40th Edition, 2005 and Peterson's Guide to 4 Year Colleges, 40th Edition, 2005.	2005 and 2005
Election 2000	Presidential election results 2000, County level	Congressional Quarterly, Voting and Elections Collection	2005.
Election 2004	Presidential election results 2004, County level	Congressional Quarterly, Voting and Elections Collection	2005.
<b>Community Resistance</b>			
Church adherents	Church adherents as a percentage of the county population in 1990 and 2000	Churches and Church Membership in the United States 1990 and 2000	American Religion Data Archive (ARDA)

(continued)

## Appendix B (continued)

Variable	Measure	Source	Note
"Conservative" church adherents	"Conservative" church adherents as a percentage of the county population in 1990 and 2000	Churches and Church Membership in the United States 1990 and 2000	Conservative adherents are: American Baptist, Church of God, Southern Baptist, Assemblies of God, Latter Day Saints, and Presbyterian Church of America
Survey Data Claims	Total number of transgender discrimination claims in the jurisdiction	Survey (2005)	
	How many public employment discrimination claims based on gender identity fall into each category?	Survey (2005)	
	What is the outcome of the majority of these claims?	Survey (2005)	
	For claims that are not abandoned, withdrawn, or dismissed, where are these claims most often resolved?	Survey (2005)	
	What types of remedies do claimants of discrimination usually seek?	Survey (2005)	
	Is there a provision for confidentiality for people who file claims of public employment discrimination based on gender identity?	Survey (2005) Survey (2005)	
Confidentiality			

If there is a provision of confidentiality, how well does it protect claimants of employment discrimination?

Survey (2005)

Is confidentiality a concern for people who have claimed public employment discrimination based on gender identity?

Survey (2005)

Has confidentiality been a determining factor in deciding whether or not to file a claim of public employment discrimination?

Survey (2005)

### Retaliation

Is there a provision for retaliation for people who file claims of public employment discrimination based on gender identity?

Survey (2005)

Survey (2005)

If there is a provision of retaliation, how well does it protect claimants of employment discrimination?

Survey (2005)

Is retaliation a concern for people who have claimed public employment discrimination based on gender identity?

Survey (2005)

### Implementation

Has your jurisdiction added "gender identity or expression" or a similar phrase that prohibits discrimination against transgender people to the list of protected categories in your workplace nondiscrimination policy?

Survey (2005)

Survey (2005)

(continued)

## Appendix B (continued)

Variable	Measure	Source	Note
<b>(Policy)</b>	Has your jurisdiction established guidelines that make it clear to public employees whom to contact if issues as a result of an employee transitioning from one gender to another? ( <b>Contact</b> )	Survey (2005)	
	Does your jurisdiction have a gender-neutral dress code?	Survey (2005)	
	Does your jurisdiction provide education—about gender identity issues in the workplace—in your training programs? ( <b>Training</b> )	Survey (2005)	
	Does your jurisdiction treat your employees' transition or former gender status as private and confidential? ( <b>Private</b> )	Survey (2005)	
	Does your jurisdiction change personnel and administrative records? For example, upon an employee's request, changing the employee's name and sex on all personnel and administrative records? ( <b>Records</b> )	Survey (2005)	
	Is there a provision that grants restroom access according to an employee's gender identity or presentation? ( <b>Restroom</b> )	Survey (2005)	

<p>Is there a provision for locker room access that takes into account employees' gender identity or presentation? (<b>Locker room</b>)</p> <p>Is there a provision for shower access that takes into account employees' gender identity or presentation? (<b>Shower</b>)</p> <p>Has your jurisdiction modified its sick leave policies to allow employees to take leave associated with transition-related medical treatments and procedures? (<b>Sick Leave</b>)</p> <p>Has your jurisdiction modified its disability policies to allow employees to take leave associated with transition-related medical treatments and procedures? (<b>Disability Leave</b>)</p> <p>Does your medical plan provide for transition-related medical treatments and procedures? (<b>Medical Leave</b>)</p>	<p>Survey (2005)</p> <p>Survey (2005)</p> <p>Survey (2005)</p> <p>Survey (2005)</p> <p>Survey (2005)</p>
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## Appendix C Responding vs. Nonresponding Communities

Communities responding to the survey were compared to communities that did not respond. The similarities in the socioeconomic and demographic information suggest that results for the survey can be extrapolated. With the exception of “population,” the communities are comparable.

	Responding Communities	Nonresponding Communities
Population (mean)	271,045	748,535
Black (%)	16.39	20.1
Hispanic (%)	10.76	13.97
Income (per capita)	\$22,473.24	\$22,674.55
Education (university)	36.9	33.42
Age (mean)	32.82	34.14
Non-family households (%)	48.08	43.72
Same-sex couples (%)	0.0058	0.0045
2004 Election (%)	39.51	39.77

### Notes

1. According to the *Congressional Quarterly Researcher* (Jost, 2006), an intersex person is “someone born with ambiguous genitalia, an abnormally small penis or abnormally large clitoris or other atypical sexual anatomy” (p. 389). A transsexual is a “someone who changes his or her original sex through medical procedures” (Jost, 2006, p. 389). A cross-dresser is “someone who likes to wear clothes associated with the opposite gender, but does not want to change his or her physical sex” (Jost, 2006, p. 389).

2. There have been a number of research studies that have attempted to gather data on the transgender community while doing gay- and lesbian-related research. These studies rarely disaggregate or analyze the data about transgender people exclusively.

3. Also known as *gender dysphoria*.

4. Not all transgender people experience gender dysphoria or are diagnosed with gender identity disorder. Furthermore, not all people with gender identity disorder are transgender (Sheehy, 2004).

5. These concerns were also raised in the 1980s and early 1990s regarding domestic partner benefits and HIV/AIDS medical coverage.

6. See Appendix C for a comparison of responding and nonresponding communities.

7. See Appendix A and its discussion of policy implementation for an explanation of each provision.

8. Responding communities were compared to a random sample of 100 communities with populations over 2,500 without transgender-inclusive laws in place. The data were drawn from the 1997 U.S. Census of Governments.

9. Although not fully explored in this paper, the comparison represents an appropriate starting point for future research.



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