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Barriers to Employment for LGBTQI+ People Who Are Affected by the Criminal Legal System

It is crucial for states and the federal government to pass protections that support equitable access to employment for LGBTQI+ people with records.

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The New York State Capitol is seen, August 2021, in Albany, New York. (Getty/Michael M. Santiago)

It is well-documented that people with arrest or conviction records experience significant discrimination and difficulty when looking for employment. According to one 2017 study, people without records are 60 percent more likely to receive a callback interview than are people with records.

LGBTQI+ people also face discrimination when looking for work. In a [2022 Center for American Progress survey](#), half of LGBTQI+ respondents said that they had experienced discrimination or harassment at work in the past year.

LGBTQI+ people and people with an arrest or conviction record do not inhabit separate communities. Due to a complex system of factors, such as increased risk for [homelessness](#), LGBTQ+ people are [overrepresented](#) in the criminal legal system. LGBTQI+ people with records face increased barriers to employment not due to their identity or record alone but, instead, both of these factors combined. The intersectionality of those traits [increases](#) the risk for discrimination. People of color are also [significantly](#) overrepresented in the United States' prison population.

Fortunately, there are policies to help address some of these unequal barriers to employment opportunities. Ban-the-box policies help limit [unnecessary inquiries](#) into a job applicant's record, while LGBTQI+ nondiscrimination protections are [critical](#) for ensuring job applicants are not discriminated against for their real or perceived sexual orientation and gender identity.



Due to a complex system of factors, such as increased risk for homelessness, LGBTQ+ people are overrepresented in the criminal legal system.

What are 'ban-the-box' laws?

Ban-the-box laws are policies that aim to prevent discrimination based on a job applicant's involvement with the legal system. These laws prohibit employers from asking applicants about their arrest or conviction history on [application forms](#). Some ban-the-box policies go even further: For example, [Hawaii's law banning the box](#) doesn't allow employers to ask about arrest or conviction history until after a conditional job offer has been extended.

Ban-the-box policies mean that applicants [can meet with employers](#) before potential discussion of their records—an important protective factor against discrimination. Simply having personal contact with a prospective employer could lower the odds of discrimination against an applicant with a [record by 15 percent](#). However, ban-the-box policies [may not limit](#) discrimination against those with records at all points in the application process. Even laws that extend further into the job application process, such as Hawaii's, still allow employers to rescind conditional offers due to an applicant's record [in some cases](#).

Simply removing questions about a previous arrest or conviction is a basic step that states can take to increase access to employment for people with records. More than [half](#) of U.S. states, and Washington, D.C., have passed statewide laws or policies doing just that. Thirty-seven states, including [New York](#), have banned the box through a state law, an executive order, or an administrative policy.

Additionally, some [local jurisdictions](#) have passed this policy. These important and helpful steps protect people with records. In lieu of a federal law, however, state laws provide the most clarity and protections. Of the 37 states mentioned above, 26 have banned the box by [passing a statewide law](#).

What are LGBTQI+ nondiscrimination employment protections?

LGBTQI+ nondiscrimination protections prohibit employers from discriminating against an employee, or a potential employee, based on that person’s real or perceived LGBTQI+ identity. This means that an employer who is subject to LGBTQI+ nondiscrimination laws could not hire, fire, or deny promotion based on someone’s sexual orientation or gender identity.

In 2020, the U.S. Supreme Court affirmed that LGBTQ people across the country are protected from discrimination in the workplace in *Bostock v. Clayton County*. This ruling was a crucial step forward in protecting LGBTQI+ people from employment discrimination, confirming that federal law prohibits employers from discriminating based on sexual orientation or gender identity.

Similarly to ban-the-box policies, court rulings and local ordinances help bolster nondiscrimination protections for the LGBTQI+ community. Yet not all states have committed to updating their nondiscrimination protections based on the *Bostock* ruling. Additionally, most state nondiscrimination laws apply to more employers than the federal law in question in *Bostock*. This makes state LGBTQI+ nondiscrimination laws critical to ensuring the best and strongest protections for LGBTQI+ employees.

How many states ban-the-box and have LGBTQI+ nondiscrimination laws?

For LGBTQI+ people with records, it is important that their state protect them from discrimination on both the basis of LGBTQI+ identity and record history.



TABLE 1

Most states don't have laws sufficiently protecting LGBTQI+ people with criminal records

Ban-the-box laws and LGBTQI+ nondiscrimination laws by state, 2021/2024

Search by state

Ban-the-box laws

	Public or state employment	Private employment	nor
Alabama	—	—	
Alaska	—	—	
Arizona	—	—	

———— **Ban-the-box laws** ————

Arkansas	—	—	
California	✓	✓	
Colorado	✓	✓	
Connecticut	✓	✓	
Delaware	✓	—	
Florida	—	—	
Georgia	—	—	
Hawaii	✓	✓	
Idaho	—	—	
Illinois	✓	✓	
Indiana	—	—	
Iowa	—	—	
Kansas	—	—	
Kentucky	—	—	
Louisiana	✓	—	
Maine	✓	✓	
Maryland	✓	✓	
Massachusetts	✓	✓	
Michigan	—	—	
Minnesota	✓	✓	
Mississippi	—	—	
Missouri	—	—	
Montana	—	—	
Nebraska	✓	—	
Nevada	✓	—	

———— **Ban-the-box laws** ————

New Hampshire	✓	—	
New Jersey	✓	✓	
New Mexico	✓	✓	
New York	—	—	
North Carolina	—	—	
North Dakota	✓	—	
Ohio	✓	—	
Oklahoma	—	—	
Oregon	✓	✓	
Pennsylvania	—	—	
Rhode Island	✓	✓	
South Carolina	—	—	
South Dakota	—	—	
Tennessee	✓	—	
Texas	—	—	
Utah	✓	—	
Vermont	✓	✓	
Virginia	✓	—	
Washington	✓	✓	
West Virginia	—	—	
Wisconsin	✓	—	

► *Methodology*

Source: Movement Advancement Project, "State Nondiscrimination Laws: Employment" (Boulder, CO: 2024), available at <https://www.lgbtmap.org/img/maps/citations-nondisc-employment.pdf>; Beth Avery and Han Lu, "Ban the Box: U.S. Cities, Counties, and States Adopt Fair-Chance Policies to Advance Employment Opportunities for People with Past

Convictions” (New York: National Employment Law Project, 2021), available at <https://www.nelp.org/wp-content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide-Oct-2021.pdf>.

Table: Center for American Progress

Twenty-three states have passed laws banning employment discrimination based on sexual orientation or gender identity.

Just more than half of states—26—have passed laws banning at least some employers from inquiring about arrest or conviction records in initial job applications. Fifteen of these states have passed laws that extend their ban-the-box policy to include private employers. All states that extend ban-the-box laws to private employers also have laws protecting LGBTQI+ employees from discrimination. This means that just 15 states and Washington, D.C., have passed both types of policies, and that the LGBTQI+ people living with records in those states have these important protections from discrimination in the hiring process.

In the other 35 states, LGBTQI+ people with records are vulnerable to discrimination under state law due to their LGBTQI+ identity, their involvement in the legal system, or both. While they may be protected from these types of discrimination by administrative policies or local ordinances, the overall complexity is a direct example of the confusion that people facing these layered risks must navigate. LGBTQI+ people with records deserve to know that they are protected from discrimination in all areas of law.

What other policies could help LGBTQI+ people with records access employment?

National ban-the-box and LGBTQI+ nondiscrimination laws

Right now, the patchwork of ban-the-box and nondiscrimination protections can cause confusion and inconsistencies for both employees and employers. The most effective way to ensure the enforcement of these policies nationally is for Congress to pass federal comprehensive protections.

In 2019, Congress passed the Fair Chance to Compete for Jobs Act, banning the box in certain circumstances. The policies only applied to federal agencies and federal contractors, leaving most of the workforce unprotected. Now, Congress should extend these protections to private employers. Congress should also pass the Equality Act, a bill that would provide comprehensive LGBTQI+ nondiscrimination protections.

Clean slate laws

Most states allow people to petition to have certain criminal records sealed or expunged. However, few places automate this process. Instead, those eligible to clear their record must navigate complex, confusing, and often costly processes.

Clean slate laws at both the state and federal levels would help or require eligible records to be sealed or expunged automatically. Such policies would significantly increase the number of people able to clear their records, allowing them to better access employment, education, and housing.

Conclusion

LGBTQI+ people with records face a number of challenges when applying for jobs, but there are ways states can help. Ban-the-box laws and LGBTQI+ nondiscrimination protections are key first steps in dismantling discrimination in the initial job application process, but most states have yet to pass both of these important policies. The patchwork of ban-the-box and LGBTQI+ nondiscrimination laws leaves millions of people vulnerable to discrimination. It is crucial for states and the federal government to pass these protections to support equitable access to employment for LGBTQI+ people with records. Additionally, clean slate laws are another crucial step toward equity for this community.

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