

Defending Your Rights:

A Transgender, Lesbian, Gay and Bisexual User's Guide to the New York Commission on Human Rights

Prepared by the Sexuality and Gender Law Clinic | Columbia Law School | January 2008

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The Sexuality and Gender Law Clinic at Columbia Law School, founded in 2006, advocates for the rights of women and gay, lesbian, bisexual, and transgender (GLBT) people. Students in the Clinic participate in litigation, legislative and policy development, and educational outreach on legal issues that affect women and GLBT communities. The Clinic works with advocacy organizations and law firms on these issues at local, national, and international levels. For more information please visit http://www.law.columbia.edu/focusareas/clinics/sexuality.

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The New York City Human Rights Law

The New York City Human Rights Law makes it illegal to discriminate in the City because of gender identity or sexual orientation. This Guide is about the Law, and about ways you can use it to protect yourself against discrimination.

This Guide provides general information, but cannot give you advice about your specific situation. If you have questions about your own case, contact one of the organizations listed in the Appendix.

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Una versión de esta guía en español está disponible en http://www.law.columbia.edu/focusareas/clinics/sexuality.

What does the New York City Human Rights Law say?

The New York City Human Rights Law makes it illegal for some people and businesses to discriminate because of gender identity or sexual orientation. Discrimination is a complicated legal idea, but the basic point is that in the areas the Law covers, people can't mistreat you or treat you differently because you are (or because they think you are) transgender, lesbian, gay, or bisexual.



The Law applies in three areas: in your job, in your housing, and in what are called "public accommodations."

The Law applies in three areas: in your job, in your housing, and in what are called "public accommodations"—places like stores and restaurants that are open to the public. The Law also protects you from retaliation, like being fired for complaining about discrimination. The rest of this section explains more about these three areas, and gives some examples of behavior the Law might cover. There isn't room to include everything that would be illegal, but these examples should give you some idea. The section concludes by noting other ways that the law protects you.

The Law also created the New York City Commission on Human Rights to enforce the Law and help protect people from discrimination. More information about the Commission begins on page eight.

How am I protected at work?

The Law says that employers with more than four employees can't fire you, can't reject you for a job, or treat you differently than other employees because of your gender identity or sexual orientation. The Commission's "Guidelines Regarding 'Gender Identity' Discrimination" give some more examples of actions that could be illegal under the Law and are available on their website, http://www.nyc.gov/html/cchr/html/trans_guide.html.

The entire text of the Human Rights Law is available at http://www.nyc.gov/html/cchr/html/hrlaw.html.

The Law also makes sexual harassment illegal. This means that an employer can't make you perform sexual acts to keep your job or get promoted, can't touch you in a sexual way, and can't make sexual comments to you. For sexual comments to be unlawful, the comments have to be so bad that you can't work effectively, and you have to make it clear that you want the comments to stop. All of these behaviors are illegal whether your employer is the same gender as you, or a different gender.

EXAMPLES OF CONDUCT THAT MAY BE ILLEGAL:

- Paying you less because you are a lesbian.
- Giving you different (or worse) assignments because you are gay.
- Asking personal questions about your sexual relationships or your anatomy.
- Requiring you to have a medical exam before hiring you (but employers may require some medical exams after hiring you).
- Creating a discriminatory atmosphere that might include inappropriate jokes and comments, refusing to use the name or pronouns you prefer, and preventing you from dressing according to your gender identity (but employers may enforce gender-specific dress codes as long as they allow you to follow the dress code that matches your gender identity).

Discrimination is a complicated legal idea, but the basic point is that in the areas the Law covers, people can't mistreat you or treat you differently because you are (or because they think you are) transgender, lesbian, gay, or bisexual.



I How am I protected in my housing?

The Law says that landlords and owners can't refuse to sell or rent to you, or to someone you would be living with, because of your sexual orientation or gender identity. The Law protects anyone who lives in an apartment building, co-op, condo, government-assisted housing, or most multiple-family dwellings. The Law also says that if you apply for a loan or a mortgage, the bank or credit union cannot deny your application or charge you higher interest rates because of your gender identity or sexual orientation.

EXAMPLES OF CONDUCT THAT MAY BE ILLEGAL:

- Posting an apartment listing that says or implies the landlord will not rent to same-sex couples.
- Requiring you to answer personal questions on a housing application about your sexual orientation or gender identity, including questions about your marital or partnership status.
- Not making repairs to your apartment because the superintendent is uncomfortable around transgender or gay people.
- Refusing to consider your partner's income when applying for housing.

How am I protected in places like stores and restaurants?

The Law also protects you in "public accommodations" like stores, restaurants, movie theaters, and hospitals. These businesses can't treat you differently or refuse to serve you because of your sexual orientation or gender identity.

EXAMPLES OF CONDUCT THAT MAY BE ILLEGAL:

- Advertising in a way that says that gay people are not welcome at their business.
- Refusing to give you medical treatment because you are transgender, lesbian, gay or bisexual (but doctors are allowed to refuse to treat you if they are *not qualified* to give the kind of treatment you need).
- Not letting you use any restroom, locker room, or changing room because you are transgender (but businesses may be allowed to restrict a bathroom to use by people of the same birth sex).

How else does the Law protect me?

The Law says that nobody can threaten, harass, scare, or attack you because of your gender identity or sexual orientation. In addition to going to the Commission, you may be able to press charges with the police if someone assaults you because of your gender identity or sexual orientation.

Finally, the Law says that "retaliation" is illegal. This means that people cannot, for example, fire you, demote you, or evict you because you have complained about illegal acts.

The New York City Human Rights Law also created the New York City Commission on Human Rights to enforce the Law and help protect people from discrimination. The Commission is an option even if you don't have a lawyer.

Should I file a complaint with the New York City Commission on Human Rights, or should I do something else?

If you think that you might have been discriminated against in New York City because of your gender identity or sexual orientation, there are a few different ways you can respond. This Guide will help you understand the New York City Commission on Human Rights. And this section will fill you in on some of your other options, too.



Part of the Commission's job is to help people file discrimination complaints and to investigate those complaints.

What is the New York City Commission on Human Rights?

The New York City Commission on Human Rights is the government office that enforces the City's Human Rights Law. Part of the Commission's job is to help people file discrimination complaints and to investigate those complaints. Filing a complaint with the Commission has advantages when compared to other options. First, New York City law clearly prohibits gender identity discrimination. Second, the Commission doesn't charge a fee, so going to the Commission is less expensive than going to court. It can often be faster, and can lead to some of the same results, such as money payments or getting your job back. Finally, while it is better to have a lawyer with you if you can, you are not required to have a lawyer at the Commission. So, if you can't find a lawyer you can afford, the Commission is still an option for you.

It is important to decide carefully because there are some disadvantages to the Commission. Most importantly, the Commission can only consider discrimination claims. Sometimes, if you have been discriminated against, you may have more than one legal claim. For example, if your employer hits you because you are transgender, you have a claim both for discrimination (treating you badly because you are transgender) and for assault (hitting you). But the Commission will only be able to consider the discrimination case.

Do I have any other official options?

Besides the Commission, courts and other commissions provide a few options for legal action in response to discrimination. First, you can sue in state or federal court. Courts have the advantage of being able to consider all of your legal claims at once. And some people prefer to go to court simply because they want to stand in a courtroom and tell their story. But going to court can be expensive, and court cases can drag on for months or even years. Plus, it is very difficult to go to court without a lawyer, which can be very expensive, although some lawyers take discrimination cases for free, and some take cases for a percentage of any money you win.

Second, if you were discriminated against because of your sex or sexual orientation, you can file a complaint with the New York State Division of Human Rights (DHR). Like the City Commission on Human Rights, the DHR is cheaper than court, and can be faster, but it can only consider discrimination claims. One important difference, though, is that the State's law is less clear



than the City's law that discrimination against transgender people is illegal, so the DHR may not take your case if you were discriminated against for being transgender, unless it involves sex or sexual orientation discrimination as well.

Finally, the United States Equal Employment Opportunity Commission (E.E.O.C.) handles sex discrimination cases under federal law. Federal law (law for the entire country) does not specifically ban discrimination based on sexual orientation or gender identity, though, so for many cases that the New York City Commission would listen to, the E.E.O.C. is not an option. Keep in mind that in some cases transgender, lesbian, gay and bisexual people have successfully argued that federal law protects them from discrimination based on their sex.

What are some of my non-legal options?

There are many ways to respond to discrimination besides filing a complaint with the Commission or in court. For example, grassroots organizing, boycotts, protests, and public events can draw attention to a pattern of discrimination. Also, if you have been discriminated against at work and your employer has its own non-discrimination policy, filing an internal complaint could resolve the situation more quietly.

Depending on your own personal situation, you might choose to use any of these tactics in addition to, or instead of, going to the Commission. And sometimes, even if you have been discriminated against, going to the Commission or anywhere else may not be the best choice for you. You might even choose not to do anything, if you decide that the possible benefits of bringing a claim don't outweigh the difficulties and emotional strain involved. Just remember that discrimination against transgender, lesbian, gay and bisexual people is illegal in New York City, and you have several options for responding.

To sum up, the New York City Commission on Human Rights is an inexpensive option for responding to an incident of gender-identity or sexual orientation discrimination available in the City and has the power to provide a range of solutions. As with all the options, though, there are advantages and disadvantages you should consider before deciding how to respond to an instance of discrimination.



If I decide to file a complaint with the Commission, how should I prepare?

If you decide to file a discrimination complaint with the Commission, you will need to do a little work to get ready. Part of the Commission's job is to help you describe the discrimination you suffered. They do this work by helping you prepare your Commission complaint. Your preparation will help this process go smoothly.

THE FIRST STEPS ARE:

- Scheduling an "intake interview" with the Commission.
- Finding an attorney or advocate, if you have access to one and want one.
- Organizing your thoughts and papers regarding the discrimination.
- Preparing yourself for the intake interview.

How do I get started?

To file a complaint with the New York City Commission on Human Rights, you will need to make an appointment for an "intake interview," during which a Commission employee will talk with you about the discrimination you have experienced. To make an appointment, call the Commission's main office at 212-306-7450, or your local borough office.

Most intake interviews happen at the Commission's main office at 40 Rector Street in downtown Manhattan. The local borough offices also handle intakes. If you are unable to travel to the Commission offices, explain your situation when you call to make an appointment, and they will make arrangements.

NYC COMMISSION ON HUMAN RIGHTS | COMMUNITY SERVICE CENTERS

Manhattan

40 Rector Street, 10th Floor New York, NY 10006 212-306-5070

Brooklyn

275 Livingston Street, 2nd Floor Brooklyn, NY 11217 718-722-3130

Staten Island

60 Bay Street, 7th Floor Staten Island, NY 10301 718-390-8506

Bronx

1932 Arthur Avenue, Room 203A Bronx, NY 10457 718-579-6900

Queens

136-56 39th Avenue, 3rd Floor Flushing, NY 11354 718-886-6162

Do I need a lawyer to file a complaint with the Commission?

You do not need a lawyer to file a complaint with the Commission. Part of the Commission's job is to help people who have been discriminated against and who cannot find, or cannot afford, an attorney. Hiring your own lawyer can be very expensive, and you can look for a pro bono attorney (a lawyer who will work without charging a fee), but there are very few of them. So it will not always be possible to bring a lawyer with you to the Commission and that's OK. You can use the Commission without hiring a lawyer—you will just need to be sure that you have done your homework, and that you stay involved in the process.

If you are able to find a lawyer, though, it can make things go more smoothly and quickly and may increase your chances of a good outcome. The end of this Guide lists legal organizations that work for transgender, lesbian, gay, and bisexual people in New York City. You should think about contacting some of these organizations to try to find a lawyer who can assist you.

Even though you don't need a formal document, you should write down your story as soon as possible.



Should I write out my story before I get to the commission?

Unlike if you were going to court, you don't need to write out your story in a formal complaint with legal language for the Commission. Part of the Commission's job is to write out a complaint for you based on what you tell them.

But even though you don't need a formal document, you should write down your story as soon as possible. Writing out what happened to you will help you to remember the details, so it is important to record your memories as soon as you can. The longer you wait, the less vivid your memory will be. Try sitting down and writing out your story as if you were telling a friend. Tell your story from start to finish and include as much detail as you can. Who was there? If you can remember what people said, you should write that down. If you've written down a description of what happened to you, you can bring that with you when you go to the Commission to help you remember

You can use the Commission without hiring a lawyer—you will just need to be sure that you have done your homework, and that you stay involved in the process.

everything you need to say. Keep in mind that the people you are complaining about can ask to see anything you've written down, especially anything you bring with you to the Commission.

What else should I bring with me to the Commission?

When you file a complaint with the Commission, it will start an investigation. The investigator will gather evidence, which can include interviewing people and gathering documents. The Commission process may go more smoothly if you bring any documents or other materials you have about the discrimination to your first meeting. The list below includes things that might be useful if you can bring them with you to the Commission. None of these documents is required, and if you can't bring them you can still make an appointment with the Commission:

- A list of dates: Try to write down any dates when you were discriminated against. If you can, include details about who discriminated against you and where the discrimination occurred.
- A contact list: If you can, write down the names and contact information of everyone involved in the incident you are complaining about—for example, yourself, any friends who witnessed the event, any coworkers or employers who were involved—as well as the name of the place where you experienced discrimination.
- Statements from friends: If you have any friends who witnessed the event, you might have them write down what they saw and heard, along with their phone number so the investigator can contact them easily. You can also bring the friend with you to speak with the investigator directly.
- Medical records: If you were hospitalized as a result of the discrimination you suffered (if you were physically attacked or suffer from depression, for example), you should bring your medical records if you can. You can get these records from the hospital or your doctor.
- Employment documents: If you were discriminated against at your job, you should bring a copy of your employee handbook, if there is one and you have a copy, and copies of your pay stubs.

If you do bring any of these things to the Commission, you should give them a copy and keep the original for yourself. Keep in mind that the business that discriminated against you will probably be allowed to see any documents you provide to the Commission. If you feel strongly that you would prefer to keep

some of the above information private, you don't need to provide it, but it may make it more difficult to show that you were discriminated against.

How should I prepare to tell my story at the Commission?

When you get to the Commission for your intake, you will meet with a Commission employee to discuss your case. You will need to help this person understand what happened to you by telling your story very clearly. That means that you should spend a little time making sure you remember as clearly and in as much detail possible. Writing out your story should help with this. After you first write out your story, wait a few days, and then re-read it to see if anything seems wrong and make any corrections you need to. If you have a friend you can trust, you might ask them to listen to you tell your story and point out any places where you were unclear. Even if you don't want to tell your story to a friend, try telling it to yourself out loud, just to hear how it sounds.



You don't need to memorize the particular way you tell your story. Just practice telling your story a few times so that you are comfortable talking about it, and know how you want to tell it.

Should I be worried about my immigration status or minor criminal violations?

The Commission will not report undocumented immigrants, so you don't have to worry about your immigration status when bringing your case. Also, the Commission will generally not report minor criminal violations, though no law forces the Commission to keep this information confidential.

What should I expect at my Commission intake?

On the day of your Commission intake, dress nicely and comfortably. You are not going to court, and you do not need to wear a suit, but you are going into an office environment. Unless you have arranged a different intake location with the Commission, your intake will be at 40 Rector Street. The security guard in the lobby will ask you if you have an appointment, and will ask for a photo I.D. The Commission is on the 10th floor.

Remember that the most important thing you are providing to the Commission is your story. Second, bring the documents you gathered together in preparation for the intake (the list of dates, names and contact information, etc.). Make sure to bring copies and keep the originals for yourself. You may also bring a friend, witness, or advocate with you.

Your appointment will be with an attorney or an "investigator" who will write a complaint based on what you say during the intake. This person is supposed to be a neutral fact-finder. This means the investigator is not working for you, and is not working for the people or organizations you are complaining about. The investigator is working for the Commission and is just supposed to find the truth about what happened.

The investigator may ask you a lot of questions, or may just let you tell your story. Remember that this person is gathering information, so it is important to make it as easy as possible for the investigator to understand. Tell the whole story of what happened to you: nothing more and nothing less. This may be your only chance to tell the investigator face-to-face what happened to you,

so you don't want to leave out important details. On the other hand, be careful not to exaggerate. Some people are tempted to make what happened to them sound even worse than it actually was, so that the investigator will take them seriously. The truth should be enough to get the Commission's attention.

What happens after the Commission intake?

After the intake, your discrimination or harassment claim will follow this timeline:

1. Complaint and answer: The investigator will send you a copy of the written complaint prepared for you. This will probably be very short (2-3 pages), and will include only the basic facts of what happened to you. You should read this carefully and let the investigator know if anything is wrong or missing. If you are satisfied with the complaint, the Commission will then send it to





Probable cause: When the Commission believes you may be able to prove that you were harassed or discriminated against.

the respondents. The respondents have a chance to answer your complaint—they can admit or deny what you have accused them of.

2. Investigation/settlement: The next step in the process is the investigation. The investigator is supposed to gather evidence, interview witnesses, and get information from you and from the respondents. Gather together any useful information that you did not take with you to your intake (like an employee handbook or medical records, for example), and give it to the investigator. The more information you can gather for the investigator, the more likely it is that your case will have a good result. Also, make sure the investigator can find you. If your address or phone number changes during this time, let the Commission know.

The Commission encourages settlement: that is, a compromise between you and the respondents to end the claim immediately in exchange for some of the things you want. During the investigation process the Commission may contact you with a settlement offer from the respondents. This can be a good way of quickly getting some of the things you are demanding, like getting

your job back, an order saying that an organization has to train its employees better, or some of the money you deserve. Sometimes settlement offers can be complicated or confusing. If you don't understand the offer, you should talk to a lawyer or another advocate to help you. If you do not have an advocate, the Commission investigator should help you. Remember, though, investigators don't work for you; they work for the Commission.

3. Determination: If your case does not settle, the next step is called the "Determination." This is when the investigator decides if they think you have a good claim of illegal discrimination. This is called "probable cause." If this happens, your case will be assigned to an attorney, and it will go on to the next step. This attorney is on your side, and will try to get the best result possible for you.

At this stage, the respondents are allowed to interview you. They, or their attorney, can conduct a formal, recorded interview of you (called a "deposition"), in which they ask you questions about your case. These questions may be personal and intrusive—a deposition can be an unpleasant affair. You are allowed to have an attorney or advocate with you at a deposition, which is a good idea, both for moral support, and if they are familiar with the law they can prevent the respondents from asking inappropriate questions.

If the investigator decides that you do not have probable cause, it means that the investigator does not think the respondents did anything illegal. Your case will then be dismissed and is over unless you appeal to the Commission. If you appeal to Commission, and your case is dismissed again, you can still appeal to New York State Court.

- 4. Pre-trial Conference: If the Commission determines that you have probable cause, and your case does not settle, the case will be assigned to a judge. The first thing the judge will do is hold a pre-trial conference. This is another chance for the respondents to agree to a settlement without a hearing. The attorney assigned to your case will attend this conference—you don't have to attend unless you want to.
- **5. Hearing:** If your case never settles, the judge will hold a hearing. A hearing is like a short trial, but there's no jury. At the hearing, the attorney who was assigned to your case will argue that you were discriminated against. The respondents might have their own attorneys. After the hearing, the judge will issue a "Report and Recommendation" to the Commission. The Com-

A settlement can be a good way of quickly getting some of the things you are demanding.

mission will decide what to do next based on this report. There may be a long wait between your hearing and when the report is issued—complicated cases may take several months, others cases, only a few weeks.

6. Relief: If the Commission decides that the respondents did do something illegal, the Commission will order what is called "relief." If the Commission decides that the respondents did not do anything illegal, your case will be dismissed. If your case is dismissed, you can appeal the decision, first to the Commission, then to State Court.

Relief can be almost anything the Commission thinks is a good way of making up for the harm that was done to you, or of making sure it doesn't happen to anyone else. Some examples of what the Commission can order the respondents to do are things like:

- hire, rehire, or promote you
- pay you money for lost wages
- pay your medical bills
- pay you for the emotional trauma of your experience
- train their employees to treat people better in the future
- pay a "civil penalty" (money that is paid to the City, like a fine, rather than to you)

We hope this Guide has helped you learn how to file a complaint with the New York City Commission of Human Rights so that you feel comfortable bringing a case to the Commission. We believe that going to the Commission can be an effective way to fight gender identity and sexual orientation discrimination. The information in this Guide will help you decide if it is the best option in your situation.

Glossary of Terms

- Complaint. The first legal document in a Commission case that describes the discrimination vou suffered.
- Complainant. When you go to the Commission to tell them that you have been discriminated against, you are a "complainant"-you are "complaining" about the discrimination you have suffered. The people you are complaining about are the "respondents."
- **Deposition.** A formal, recorded interview of a witness, complainant, or respondent by the opposing side.
- **Determination.** The stage in the Commission process, after the Investigation, when the Commission decides whether you will have a Hearing. The Commission will find that there is "probable cause" and assign an attorney to your case if it thinks there is enough proof that you were harassed or discriminated against.
- **Discrimination.** When you are mistreated or treated differently because you have certain characteristics, or are a member of certain communities. The New York City Human Rights Law makes it illegal to discriminate, for example, on the basis of race, color, creed, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, or marital status. The ban on gender discrimination is defined to include anti-transgender discrimination.
- **Gender identity.** A person's sense of their own gender. The New York City Human Rights Law says you cannot be discriminated against because of your gender identity, even if your self-image, appearance, and behavior do not match the sex you were assigned at birth.
- Harassment. Words or acts that make you uncomfortable or hurt you. The New York City Human Rights Law makes harassment illegal when it is about or because of your sexual orientation or gender identity.

- **Investigator.** A lawyer or other Commission staff member who handles your intake with the Commission and then investigates your case. The investigator is supposed to be neutral: not working for you or against you.
- Pro bono attorney. A lawyer who will work on your case without charging you (but you may still need to pay court fees and other expenses). Many lawyers do some civil rights work without charging-but there are never enough pro bono attorneys to go around.
- **Probable cause.** When the Commission believes you may be able to prove that you were harassed or discriminated against. The Commission will decide that you have "probable cause" when they think that you are "more likely than not" to prove discrimination occurred.
- Public accommodation. Any service that is available to the public, from restaurants, to medical care, to retail shops, to government offices.
- Relief. Different ways the Commission can order the people or organizations that mistreated you to pay for what they did or fix the problem.
- **Respondents.** The people, employers, or businesses that you complain about to the Commission because they discriminated against you or harassed you. They are called "respondents" because they will have a chance to respond to your complaint.
- Sexual harassment. Sexual words or acts, often at work, that make you uncomfortable or hurt you. This can be anything from making sexual jokes, to asking you on a date after you made it clear that you don't want to be asked, to saying you cannot get a promotion if you do not perform sexual acts.

Photo: Briana Wuagneux

Appendix Legal Services Organizations

LAMBDA LEGAL

The Help Desk provides referrals to lawyers and legal services organizations for TLGB and HIVpositive individuals.

www.lambdalegal.org/help/ **Help Desk: 212-809-8585** (during regular business hours or Monday evenings 5:30-8:00 p.m.)

PETER CICCHINO YOUTH PROJECT

This project provides legal services for TLGB homeless youth.

www.urbanjustice.org pcyp@urbanjustice.org 877-LGBT-LAW

The project also organizes drop-in legal clinics at Ali Forney Center, Streetwork Project, and Hetrick Martin Institute. (In order to participate in one of these legal clinics, you must be a member of the drop-in center.)

SYLVIA RIVERA LAW PROJECT

This project provides legal services for lowincome transgender people of color.

www.srlp.org 212-337-8550

TRANSGENDER LEGAL DEFENSE & EDUCATION FUND

This organization provides legal services for transgender individuals.

www.transgenderlegal.org 347-284-6710 info@transgenderlegal.org

LESBIAN, GAY, BISEXUAL AND TRANSGENDER LAW ASSOCIATION OF GREATER NEW YORK

This organization has a free walk-in legal clinic every Tuesday at the LGBT Community Center in Manhattan. Walk-in legal clinics are also held in Brooklyn and Long Island.

www.le-gal.org 212-353-9118 le qal@earthlink.net



