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# 1. Introduction

**S**OUTH AFRICA HAS one of the most progressive constitutions in the world: its Bill of Rights explicitly prohibits discrimination on the basis of sexual orientation and gender (among other things), and includes a number of protections relating to labour and employment. There are also many laws, policies and agreements in place that address human rights in the workplace.

Despite these many protections, lesbian, gay, bisexual and transgender (LGBT) workers continue to experience discrimination, harassment and violence. LGBT job seekers are often denied employment due to their sexual orientation or gender identity, or because of a so-called masculine or feminine style of dress. Those who do find work report having their duties restricted, being passed over for promotions and training, and encountering regular animosity from colleagues and supervisors. Other forms of harassment can include name-calling, intimidation, blackmail and in some cases physical and sexual violence. LGBT employees are often reluctant to report such incidents out of fear of further discrimination. This in turn prompts anxiety, depression and thoughts of suicide, leading many LGBT workers to rely on casual work or

Unsure about some of the words being used here? If so, consult the 'Helpful Definitions' section near the end of the booklet. There you will find information about the LGBT acronym as well as straightforward definitions for 'sexual orientation', 'gender identity' and other relevant concepts.



self-employment rather than on formal employment.

To make matters worse, LGBT people often struggle to find information on the laws and policies intended to protect them. Many are unaware or misinformed about their rights, or are unsure of what to do when these rights have been violated. Employers also often lack this information and are confused about how



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to handle incidents involving sexual orientation or gender identity. Similarly, trade unions have limited awareness of

## PROJECT BACKGROUND

Gay and Lesbian Memory in Action (GALA) has for some time recognised a need for initiatives promoting the rights of LGBT workers. Activities in this field began in early 2013, when the organisation invited the Labour Research Service (LRS) to co-host a sensitisation and information-sharing workshop with trade unions. This was the start of an important collaboration between the two organisations – GALA, with its long history of working with the LGBT community, and the LRS, with its extensive experience developing organisational and leadership capacity within the labour movement.

Since then the two organisations have, in conjunction with MyWage and the Labour Rights for Women campaign, held several workshops, debates, discussions and focus groups. These have been attended by LGBT workers and activists, members of the four major labour federations (FEDUSA, COSATU, NACTU

the challenges facing LGBT workers and so often fail to take action in response to their needs.

This booklet addresses some of these problems by providing accurate and accessible information for LGBT workers, their employers and trade unions, including practical advice on preventing or managing cases of discrimination.

and CONSAWU), and representatives of human rights and social justice organisations.

This booklet has emerged from these activities, as well as from a number of research projects. It has been produced alongside the discussion paper *Are Our Workplaces Safe and Supportive? Real-life Experiences of Lesbian, Bisexual and Gender-nonconforming Women*. It is hoped that both publications will inspire further efforts to combat discrimination and to promote the rights of LGBT workers.

It is important to acknowledge that this booklet does not provide specific information on workplace rights for intersex persons. This is due to difficulties in locating intersex participants for the research component and thus a resulting lack of data. It is hoped that the issue will be more thoroughly addressed in future publications.

## USING THIS BOOKLET

This booklet has been developed as a multipurpose resource. It can be used by LGBT workers and job seekers, their employers and colleagues, HR departments, trade unions, and human rights organisations.

As well as outlining the various laws relating to workplace rights, this booklet provides advice on preventing and responding to discrimination based on sexual orientation or gender identity. Each section has been colour-coded to make it easier to find the information you need. Where appropriate, we have also divided the content according to particular audiences – for instance, advice for LGBT workers, for employers, for

trade unions and so on. Even if you are looking for specific information, it is worth reading the other sections, as this will help you to better understand the issues facing LGBT workers.

Near the end of the booklet you will find a section called ‘Helpful Definitions’. As well as providing simple explanations of the key concepts, this section includes some FAQs that will help you to better understand sexual orientation and gender identity. If you encounter any unfamiliar words while reading this booklet, it is recommended that you consult this section. We have also included a number of ‘info bubbles’ that provide additional details and/or definitions.

### **The booklet has five primary aims:**

1. To provide an overview of existing laws, policies and agreements, as well as information on how to make use of these protections.
2. To explain relevant international responses to LGBT rights in the workplace.
3. To share real-life experiences of LGBT workers, including examples of what they have done to address workplace discrimination.
4. To inform employers, trade unions, HR departments and others on the challenges facing LGBT workers, and how these can be better addressed.
5. To offer practical suggestions on how to move forward: what is needed to improve conditions, who needs to be involved and so on.





## 2. The Labour Market

### IN TODAY'S SOUTH AFRICA

**I**N THE PAST, a workplace was any location (for instance, an office, factory, farm, shop, hospital or school) where a full-time employee worked for and was paid by an employer until retirement. In this traditional set-up, employers and employees operated according to a range of international and national labour laws, and remuneration and conditions were dealt with through a process of bargaining.

Today's workplaces are a far cry from the one described above. South Africa has very high rates of unemployment, and of those people who are able to enter the labour market, very few are able to secure full-time work. Most fall into what can best be described as precarious forms of employment, such as contract, temporary, outsourced or self-employed work. Low wages, long working hours, poor occupational health and safety conditions, and unsafe, insecure and unregulated working environments are often associated with these forms of employment. In many cases, those in precarious jobs are denied their basic rights and protections.

The government's Labour Inspectorate has the important role of ensuring that regulations protecting workers are followed in all workplaces. Yet, a report from the inspectorate's 2011 national con-

ference identifies a number of challenges that impede its ability to fulfil this mandate. These include companies not complying with legislation, a lack of visibility, insufficient training for inspectors, and inadequate resourcing. These findings are of particular concern for those workers who are most in need of protection against discrimination and violence, such as women, young or old persons, workers with a disability and LGBT employees.

In the 2011 report *We'll Show You You're a Woman*, Human Rights Watch notes that South Africa has some of the highest rates of violence in the world. It goes on to state that 'violence against lesbians, transgender men and gender-nonconforming people occurs within the context of an epidemic of gender-based violence in South Africa'. The working environment is not immune to such violence (we speak of 'working environment' as violence can occur outside of the formal workplace – for instance, at social events linked to work, or when meeting in a client's home). Gender-based violence can include sexual assault, psychological abuse, sexual exploitation, sexual harassment, harmful traditional practices and discriminatory practices based on gender.

'Gender transition' refers to the process of changing one's physical body to align it with one's gender identity. This is a complicated, multi-step process that can take years. A transition can take different forms - some people may choose to take hormones only, while others may undergo various forms of surgery.



## THE SITUATION FOR LGBT WORKERS

Discrimination based on sexual orientation and gender identity can take many forms. It can range from interpersonal animosity and offensive jokes, to verbal, physical and even sexual abuse. LGBT workers have also spoken about biased employment practices, such as having job duties restricted, being passed over for a promotion, or not being equitably rewarded for tasks completed. LGBT employees exposed to these forms of discrimination can experience anger, low self-esteem, limited job satisfaction and emotional withdrawal from work, often accompanied by feelings of isolation, stress and other mental health issues.

Below are some common forms of discrimination experienced by LGBT workers. Some specific issues facing transgender workers have been listed separately.

### ***Issues facing LGBT workers:***

- Being asked repeatedly about one's sexual orientation or gender identity
- Being refused a job because of one's sexual orientation or gender identity
- Discrimination based on choice of clothes
- Threats of or actual physical violence (for instance, being beaten up or assaulted)
- Sexual violence, including rape
- Verbal abuse and hate speech

- Being passed over for promotion because of one's sexual orientation or gender identity
- Differential treatment, either in terms of task allocation or recognition of achievements
- Difficulty accessing health and other benefits related to same-sex partners
- Harassment (for instance, name-calling, repetitive requests for dates, homophobic jokes, being ridiculed or mocked in front of colleagues and so on)
- Having no recourse to raise complaints and grievances in relation to experiences of discrimination
- Being forced to hide one's sexual orientation or gender identity
- Being forced to reveal one's sexual orientation or gender identity
- Getting dismissed on spurious charges.

### ***Specific issues facing transgender workers:***

- Limited knowledge among colleagues and employers regarding gender transitioning
- No protocols to facilitate a name change (for instance, ensuring names are changed on all workplace records, including payroll)
- Gender markers in identity documents that specify a different gender to what a worker presents
- Being dismissed for starting a job while presenting as a certain gender, but then subsequently presenting as a different gender
- Not being able to adopt a workplace dress code matching one's gender identity
- Not being able to use facilities matching one's gender identity (for instance, toilets and changing rooms)
- Difficulty accessing leave for medical treatments relating to gender transitioning
- Being provided with a job reference in one's birth name
- Having academic or technical qualifications in one's birth name.





## 3. Real-Life Experiences OF LGBT WORKERS

**I**N THIS SECTION we share some lived experiences of LGBT workers. Some of them are negative and some of them are positive – all of them point to the difficult, distressing and sometimes dangerous conditions that LGBT workers must negotiate.

**As you read through the stories, try to put yourself in the shoes of the worker.**

- How do you think this person felt?
- What effect would this experience have had on the individual?

**If you are an employer or trade union representative, try to imagine how you would have reacted if faced with a similar situation.**

- What would you have done to ensure the LGBT worker's rights were protected?
- What steps could have been taken to support this person?

### NEGATIVE EXPERIENCES

Nkele is a lesbian from Limpopo. She felt discriminated against because her employer would not allow her to care for her sick girlfriend:

*I was working in the doctor's surgery and it happened that my girlfriend got very sick.*

*She was transferred to a hospital. She was critical and needed assistance when she was discharged, and was provided with a doctor's report indicating that she needs care and rest. I requested a few days of Family Responsibility Leave in order for me to take care of her. My employer said no. This was a closed discussion because I am lesbian. If I were heterosexual, I would have gotten sympathy and been granted permission to take care of my partner.*

Nkele also recalled a time she was unfairly accused of lying:

*All of my colleagues were married and had children. I didn't have a child so it meant that I worked for eleven years without taking Family Responsibility Leave. All my colleagues had been taking days off because they had children or had to attend to family matters. They always took leave if someone in the family or extended family passed away. They even took leave when their husbands or partners were sick. I remember the day I took leave because my girlfriend's father passed away. I took leave because I wanted to attend the funeral. When I returned to work all of my colleagues were angry with me. They accused me of going to a party in Mpumalanga.*

Alex is a trans-man from Pretoria. Here he shares an experience of being bullied by his boss:

*I am a full-time student studying civil engineering. I started at the technikon in Pretoria, and in my third year I got a bursary and started from scratch at university. My bursary was sponsored by the company I currently work for. I signed a contract with them to work back the number of years they funded me at university. Engineering was one of the careers I chose at a very young age in preparation for what I knew I would one day do: undergo sex-reassignment surgery. Fortunately, I'm very capable and my job satisfaction is very high.*

*One day, when I was twenty-one, my boss asked me what my long-term goal was. Because I had never mentioned to him that I could see myself getting married and having kids, he asked me if I had any 'tendencies,' as he put it. I explained that I wasn't lesbian, but rather transgender. I decided to tell him that I would be starting hormone replacement therapy. I wanted to be honest with the company so that they couldn't withhold the bursary on the grounds that I'd been dishonest.*

*I got a lot of flak from my boss. I remember being Bible-bashed for over an hour, with him sitting on the other side of the desk telling me what he thought was right and wrong. He said that I was taking the easy way out and asked whether it was my psychologist's idea to start with hormones. It was horrible to be attacked by someone who calls himself a religious*

**A trans-man is a person who was designated as female at birth but who identifies and lives as male. Similarly, a trans-woman is a person who was designated as male at birth but who identifies and lives as female.**



*person – but he is religious only in word, never in deed. He made all sorts of suggestions, even wanting to call in a psychologist he knew. He also thought it best for me to discontinue my studies for a while, as he felt I was emotionally unstable and needed to take some time out. He was really just interfering in my life. While I was sitting there in the office I was silent because I was so angry. I thought there was no way that I wanted to convince him to be accepting of transgender people because I could see that this person was way too narrow-minded. However, I decided to write him a letter in which I told him, in a very diplomatic way, to back off. Then I took it as far as our HR manager, who told me my boss had no right to question me in this way.*

*In any case, my boss got it completely wrong. He confused gender identity with sexual orientation. He thought I was lesbian. I did not lodge a formal complaint with HR, but I felt a lot better for having informed*

*someone with the authority to help me. Just to let her know what had been happening and having someone on my side was a tremendous relief. She told me that if anything like that happens in the future, I should come to her and she will take it up with him. I am still with that company.*

**T Man is a lesbian from Polokwane. She describes her difficulty finding work because of how she presents and dresses:**

*I have never worked for any company because, as a butch lesbian, I'm easily identifiable during an interview. Anyone can pick up that I'm lesbian; as a result, I do not get hired. I have always worked for NGOs. There are very few lesbians employed in companies. Most of them are working for NGOs or are self-employed. Those who are employed got the job through a referral or a network. They may be referred by a friend, cousin or a relative who is employed in the same company. But if you make one mistake, you are fired.*

## POSITIVE EXPERIENCES

**Mamkete is a lesbian from Johannesburg. She is open about her sexual orientation, which has been accepted by most of her colleagues:**

*I happen to work with a very lovely team of women. I am their supervisor, but we've managed to have a good relationship. I treat them as family. They know what I like, and I also know what they like. When I see a*

*mistake, I deal with it immediately.*

*The challenge I have is usually with the new males who are recruited. They become very stubborn in the beginning and refuse to take instructions from me because I'm a woman. Some of them even make a point of reminding me that I'm not a man and that I must stop behaving like one. I do not report them because the grievance process takes too long, but I gently educate them. In short, I make them my project. Men also have a tendency to think that if they treat you nicely or propose love, you will change and become straight.*

*The other challenge I have is that when I fight or quarrel with my colleagues, they sometimes call me a stabane. I do not allow this to get to me because this only happens when we fight. As a person who grew up with siblings, I know that this always happens in a fight. Some of them apologise afterwards. When they say stabane, my response is 'Proudly so, my dear!' My spirituality has taught me that forgiveness is an important part of building any relationship.*

*Because I'm open, people find it easy to accept me. When they speak about their families on Mondays, I also tell them about my partner. When I keep quiet or stay out of the discussion, they worry. Most of my colleagues ask me to help them when a relative discloses their sexual orientation. I really do not have a problem at work. Everyone knows that I'm lesbian, and after attending my first Pride this year, I brought pictures and shared them with the team. I am very jolly and outspoken.*

Nonkululeko is a lesbian from Johannesburg. She works in the male-dominated chemical industry, where she has found some colleagues to be accepting:

*As time goes by people start accepting me. I have a strong personality and stand my ground. I have not experienced much discrimination at work, not like as a child being called names.*

*My work is male dominated. I have forty-eight in the shift I supervise, and ten of these are older women who have been there a long time. For young women, there is a huge gap. Perhaps it is this particular industry. I have found a group of older men who accept me. They say: 'You like women, we like women – you are one of us!' I say: 'No, I am not one of you.' But they were very welcoming towards me.*

*A former gay male colleague of mine was harassed. I did not spend much time with him, but afterwards when we met up – he had moved to a different company – he said he was being harassed but decided to bottle it up. Sometimes I think it is easier to be lesbian in a male-dominated environment than to be gay, which is associated with femininity. We work with chemicals and at the end of each shift we shower. In the showers, he was called stabane, but he kept quiet and left. He kept quiet and decided that this was not for him.*

## AN EXAMPLE OF GOOD PRACTICE

Lester is a trans-man from Cape Town. He works as a quality assurance manager and decided to reveal his transgender identity to his colleagues:

*I had a definite picture of how I wanted to come out at work. I listened to what a lot of people had to say. Many people didn't have the courage to do it and simply resigned. I couldn't afford to do that. I have a family to maintain; I have a household. I've worked very hard to be where I am. I wasn't just going to resign and run away in order to be who I wanted to be.*

*The new constitution worked in my favour because it says you have the right to protect your sexual orientation and gender identity. When I decided I was ready to come out, I discussed it with our HR manager. I said it was my journey and a process I had to follow, but that I needed the support of my colleagues in order to continue. He was very understanding, which encouraged me to talk to the managing director, who was also very supportive. We had a meeting to decide how we were going to deal with the situation.*

*Gender DynamiX [an organisation in Cape Town] was brought in on a consultation basis, since we were all committed to having this go as smoothly as possible. The first step was to draw up a policy in which discrimination was prohibited, no matter what gender a person is or wanted to be. We drafted the policy and also sent it to International Labour Solutions, which went through it and agreed it was a good policy.*

*After the MD and the HR manager signed the policy, it was displayed on noticeboards all around the factory. We also got posters from Gender DynamiX about LGBT issues. These were not too in your face, but rather helped to raise awareness.*

*The next step was to tackle the management team. Gender DynamiX again facilitated a workshop, and I was given the opportunity to tell my story and to explain what the process was going to be and what it all entailed. Management gave me their total support. Next, we held a workshop for the rest of the admin team and the shop floor. The feedback I got the next day was unbelievable. We also drafted a letter to all my customers, giving them a date when my email address would change and asking that they support me in this as my company supports me fully and it is indeed constitutional.*

## ACTIVISM IN THE WORKPLACE

Carla is a trans-woman from Carletonville. She works for a mining company and is determined to educate her colleagues about her workplace rights:

*I tend to be very gender fluid. Five years ago, when I first started my job, my manager informed me that a client had written him a letter. After only seeing me once – and hardly speaking to me during that meeting – the client had asked that I be replaced. My manager wrote a letter back stating that I have excellent skills and that I would be more than competent. Months later, the client came back to my manager and*

*said he was impressed with my work and the improvements made. The client was originally not willing to work with a gender-nonconforming person, but the support of my manager led to a positive outcome for both the client and myself.*

*It can sometimes be difficult negotiating such a masculine working environment. I've had men whistling at me behind my back and asking for my number as a joke. I always hear men asking in Fanagalo and a variety of different languages if I am a madoda or a bafazi. Luckily, the company has a strict sexual harassment policy that explicitly mentions sexual orientation and gender. I have often used this policy as a springboard to educate training candidates on issues of gender, sexual orientation and feminism. I also got the opportunity to positively influence colleagues who are facilitators to think differently about issues like gender roles and various forms of harassment.*

*At times I've had to deal with patriarchal male supervisors shouting at me and degrading me. My work and professional opinions have also been repeatedly and unreasonably scrutinised, and I have often found myself battling both managers and supervisors. I did research into my labour rights and this helped me take management to task to stop policing my work and being overbearing, especially when I consistently deliver a high standard of work.*

*But despite these challenges, and despite working with some very religious and conservative colleagues, I have been met with much love and respect.*



## 4. Know your rights

### WHAT DOES THE LAW SAY?

**S**OUTH AFRICA HAS extensive legislative protections relating to equality, dignity and human rights. The most significant of these is the Bill of Rights contained in the constitution. The Bill of Rights declares that every person is equal before the law and has access to the same legal protections and benefits. In Chapter 2.9.3, it specifically states that no person may be discriminated against on the basis of sexual orientation or gender. This clause comes with certain responsibilities on the part of the state, which must ensure that these rights are promoted and protected. *The Promotion of Equality and Prevention of Unfair Discrimination Act (2000)* gives further detail to the protections of the constitution by defining and prohibiting various forms of discrimination.

There are also many laws relating to employment rights, such as the *Labour Relations Act (1995)*, the *Basic Conditions of Employment Act (1997)* and the *Employment Equity Act (1998)*. These Acts outline the rights and responsibilities available to all workers, including some protections relating to sexual orientation. For example, Section 187 (1) (f) of the *Labour Relations Act* prohibits dismissal

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on the grounds of sexual orientation. Section 6 of the *Employment Equity Act* also prohibits discrimination on the basis of sexual orientation. It also stipulates that the courts can hold employers liable, under certain circumstances, for acts of discrimination by any of their employees while at work. It must be noted, however, that these Acts are not clear when it comes to the specific needs of transgender workers.

The *Medical Schemes Act (1998)* also offers important protections for lesbian and gay workers. It prohibits discrimination against an employee on the basis of HIV status or sexual orientation, but again makes no specific reference to the needs of transgender workers. The Act also recognises same-sex dependents as legal beneficiaries.



HUMAN  
RIGHTS



The Department of Labour has released a number of codes of good practice that employers are required to implement. But while these documents are worded in an inclusive manner and make mention of the constitution, they do not include LGBT persons as one of the priority groups considered 'vulnerable' to workplace discrimination.

The 1998 *Code of Good Practice on Handling Sexual Harassment Cases* declares that all unwanted communication and/or physical contact of a sexual nature is defined as harassment. It states that employers have a responsibility to eliminate any environments that perpetuate these kinds of behaviours, to have clear policies in place regarding sexual harassment, and to create systems and procedures for reporting, investigating and responding to such cases. This code is written using gender-neutral terms, with no specific mention of women or LGBT persons.

The 1999 *Code of Good Practice on Employment Equity* advises workplaces to set up assessment structures to review policies, practices, procedures and work environments, and to create a workplace profile that identifies places of discrimination. The workplace is then advised to conduct and execute a plan to change any identified sites of discrimination.

If you believe your rights have been violated, you can ask the **COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION (CCMA)** to investigate.

The **CCMA** offers redress to anyone who can prove a **prima facie** case of discrimination on the basis of sexual orientation or gender identity.

For more information about raising a case with the **CCMA**, see Chapter 7 of this booklet.



## HOW DOES THE LAW AFFECT ME?

***Do I have to reveal my sexual orientation in the workplace?*** No, you do not. Nobody can force you to do this.

***What can I do if my boss or colleagues keep asking me about my personal life or partner?*** Again, you do not have to answer. You can explain that you do not wish to discuss personal matters at work, and that you cannot be forced to do so.

***Are my colleagues or managers allowed to tease me or call me names because of my sexual orientation?*** No. If you are experiencing harassment of any kind, you can report the perpetrators to your HR department, shop steward or the CCMA.

***Can I be fired for having a partner of the same sex?*** No, you cannot. This would be discrimination and is therefore illegal under the constitution and the *Labour Relations Act*.

***Can I be fired for being transgender?*** No, you cannot. This would be discrimination and is therefore illegal under the constitution and the *Labour Relations Act*.

***Can I include my same-sex partner in my medical scheme?*** Yes. The *Medical Schemes Act* prohibits discrimination against an employee on the basis of sexual orientation and protects the right of same-sex partners to access benefits.

***As a transgender employee, does my employer have the right to tell me how to dress for work?*** No. This would be a form of discrimination and is not allowed.

***Can I be held back from promotion because of my sexual orientation or gender identity?*** No. This would be a form of discrimination and is not allowed.

***If a colleague insults me because of my sexual orientation or gender identity, can I report the person?*** Yes. Depending on the nature of the insult, you can follow your workplace's guidelines for reporting sexual harassment, or raise the incident with your HR department, shop steward, the labour inspectorate or the CCMA.





## 5. Trade Unions & LGBT RIGHTS

**I**N SOUTH AFRICA, all workers have the right to join a union, and unions have the right to collectively bargain and strike. All of these rights are protected by the constitution and related legislation.

Trade unions operate at both a local level and as larger federations (such as FEDUSA, COSATU, NACTU and CONSAWU). Unions are responsible for representing the needs of their members and can be a powerful force in fighting discrimination. They play an important role in securing collective bargaining agreements (reached through formal negotiations between unions and employers) that are legally binding in ways that other kinds of policies and protections may not be. A collective bargaining agreement standardises employment protections for the unit that has been bargained for.

In South African unions, LGBT issues are rarely addressed in policy or collective bargaining practices. Many unions choose to include 'life partners' alongside of spouses in the wording of employee benefits, but very few make mention of other issues or protections relating to LGBT workers. In a recent search of South African trade union websites, only one was found to have a policy that

included sexual orientation in employment bargaining; two others were found to make mention of sexual orientation discrimination but with no strategies for, or practical examples of, protection measures.

There are many opportunities to integrate LGBT issues into trade union agendas, including into collective bargaining practices, and to launch programmes to promote sexual and gender diversity.

### GLOBAL RESPONSES

A number of South African trade unions are affiliates of global union federations (GUFs). GUFs are made up of national and regional trade unions organising within specific industries or occupation groups. GUFs are involved in agreements with multinational corporations, and some of these international framework agreements (IFAs) now include sexual orientation in their non-discrimination clauses.

This section outlines the steps taken by some GUFs to address workplace discrimination on the basis of sexual orientation or gender identity. It will help you to understand how this issue is being framed at the global level, including any protocols and tools already in place.



### **International Labour Organisation (ILO)**

The Discrimination (Employment and Occupation) Convention (1958) is one of the eight fundamental ILO conventions, and is one of the most widely ratified (South Africa signed the convention on 5 March 1997). While the convention does not specifically list sexual orientation or gender identity, Article 1 does stipulate a range of related prohibitions:

*[Discrimination is defined as] any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;*  
*(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.*

Countries that have ratified the convention can add additional prohibited grounds of discrimination, such as discrimination based on sexual orientation or gender identity.

### **International Trade Union Confederation (ITUC)**

Founded in November 2006, the ITUC represents 175 million workers in 153 countries, with 308 national affiliates (including FEDUSA, COSATU, NACTU and CONSAWU). Its 2010 congress affirmed that discrimination on the basis of sexual orientation was against human rights, and called on its member unions to combat homophobia, though no specific action plans were adopted.

### **UNI Global Union**

The UNI is the most diverse global union, covering workers in sectors such as cleaning, media, arts, gaming, sports and tourism. South African affiliates include the South African Commercial, Catering and Allied Workers Union (SACCAWU) and the South African Society of Bank Officials (SASBO).

In 2014, on the occasion of the International Day against Homophobia and Transphobia, the equal opportunities department of UNI emphasised the importance of ending all types of discrimination in both professional and private spheres. UNI has developed educational programmes that encourage members to recognise sexual orientation as a serious problem.

### **Public Services International (PSI)**

PSI is made up of public service unions from 150 countries. It was the first of the global unions to tackle sexual orientation discrimination in the workplace. PSI has the following South African trade union affiliates: the Democratic Nursing Organisation of South Africa (DENOSA), the Health and Other Service Personnel Trade Union of South Africa (HOSPERSA), the National Education, Health and Allied Workers' Union (NEHAWU), the National Public Service Workers Union (NPSWU), the National Union of Public Service and Allied Workers (NUPSAW), the Police and Prisons Civil Rights Union (POPCRU), the South African Democratic Nurses Union (SADNU) and the South African Municipal Workers' Union (SAMWU).

The PSI's programme of action, adopted at its world congress in 2012, confirms its commitment to equal opportunities irrespective of sex, marital status, ethnic origin, national identity, disability, sexual orientation, age or religion.

### **Education International (EI)**

EI represents teacher organisations from around the world, including the South African Democratic Teachers Union (SADTU), the National Professional Teachers' Organisation of South Africa (NAPTOSA) and the Suid-Afrikaanse Onderwysersunie (SAOU).

In 1998, EI developed a wide-ranging policy statement on sexual orientation. This resolution indicated that sexual orientation bias was a violation of human rights and stated its strong support for teachers to be open at work. The resolution called on its member unions to increase educational efforts and to lobby their national government for reforms.

### **GUFs working together**

EI and PSI have worked closely to make discrimination on the basis of sexual orientation a priority. Together they represent over 50 million workers, covering 950 nationally based unions.

In 1999, PSI and EI jointly published *Working for Lesbian and Gay Members* (updated in 2007), which maps out a comprehensive strategy for trade union action. Five years later, an international LGBT forum was established, which includes representatives from member unions of both federations. The forum was created to generate awareness of sexual diversity issues, to document cases of discrimination, to organise training sessions and to push for the inclusion of sexual and gender diversity in international conventions and policies.

## 6. Promoting diversity WITHIN WORKPLACES

**E**MLOYERS HAVE A duty to ensure that workplaces are safe for and supportive of LGBT persons. Likewise, trade unions have a responsibility to take action in support of LGBT members and to actively promote their rights.

This section outlines some basic needs of LGBT workers, as shared in their own words. It also lists simple steps that employers and trade unions can take to create inclusive and affirming work environments.

### WHAT EMPLOYMENT CONDITIONS AND BENEFITS HAVE LGBT WORKERS CALLED FOR?

- ‘One toilet for us to be comfortable, because currently we do not feel comfortable. We do not want people staring and asking: “Are you a man or a woman?”’
- ‘I should be able to get parental leave if my same-sex partner has a child.’
- ‘We want employee assistance programmes that provide expert services and counselling for LGBT people who feel that they need the support.’
- ‘We’d like LGBT safe-sex packs to be available in the same way that male condoms are made available.’
- ‘We should have provident fund contributions that take note of all types of relationships, including those relevant to the LGBT community. On my provident fund nomination form there is a space for children but not for LGBT relationships. I cannot write “my partner” so I have to leave my money to my mother. I am contributing, but it does not cover my lifestyle.’
- ‘We need access and visibility in our workplaces – you will find pictures of heterosexuals everywhere but never pictures that relate to us. There is nothing that relates to LGBT people.’
- ‘We want visibility in the union, and the election of LGBT persons as shop stewards.’
- ‘Change the language of workplace policies so there is no single focus on he/she, and so instead of “wife” or “husband” use “partner”.’
- ‘Ensure that workplace dress codes are not discriminatory.’

Treating all people with respect and dignity is not only a legal requirement, it is also in the spirit of South Africa's constitution.



### DEVELOPING LGBT-INCLUSIVE POLICIES AND PROCEDURES

The following actions will help you to ensure your policies and procedures adequately address the needs of LGBT workers. Remember that having strong policies and procedures is only the first step – it is also necessary to promote and correctly follow such documents.

- Adopt inclusion as a key management principle and ensure it guides management decisions and practices.
- Assess the level of inclusion in your workplace – for instance, analyse your employee demographics, formal policies and procedures, informal and unwritten practices, and so on.
- Review existing policies and procedures that deal with sexual harassment, bullying, workplace tensions and so on. These could lay the basis for promoting the rights of LGBT workers.
- Ensure that disciplinary and grievance procedures are in place, are well known and accepted by staff, and are appropriate for issues relating to discrimination based on sexual orientation and gender identity.
- Evaluate any gaps between policies and day-to-day practices – for instance, staff attitudes in relation to sexual harassment may undermine the effectiveness of policies.
- Identify any activities that can bring staff together for discussions on policies and procedures.
- Engage with employee networks and trade unions to promote inclusion and knowledge of relevant policies and procedures.
- Develop an action plan with clear outcomes and monitoring mechanisms.

### STEPS EMPLOYERS CAN TAKE TO PREVENT DISCRIMINATION AGAINST LGBT WORKERS

Inclusive workplaces don't develop out of nowhere – employers must be proactive in building a culture of respect. Here are some easy steps you can take to create a diversity-friendly workplace.

- Show that you value respect and inclusion – for instance, by making public statements against discrimination, sending out clear messages that the company prohibits discrimination and so on.
- Review terms and conditions of employment to ensure that LGBT workers are treated fairly.
- Use inclusive language in all communication – for instance, use 'partners' instead of 'wives' or 'husbands'.
- Create and enforce an anti-discrimination programme. Ensure policy documents use clear language to explain that discrimination will not be tolerated, and check that staff are aware of grievance procedures and penalties.
- Take immediate action to address discrimination, harassment and bullying.
- Ensure there is a confidentiality clause protecting workers' right to privacy.
- Put in place procedures to raise complaints about homophobic and transphobic behaviour on the part of management, staff or clients.
- Publicise your equality policies as examples of good practice.
- Make sure that the services you provide are friendly and acceptable to LGBT people.
- Conduct training for all staff – both current and new – on inclusive practices, human rights and related issues.
- Appoint 'human rights champions' within the workforce.
- Implement education and training programmes aimed at combating discrimination, and offer these to all levels of the workforce, as well as to clients.
- Ensure that employee wellness programmes include counselling services for LGBT persons who have experienced discrimination.
- Guarantee equal access to benefits and leave.
- Confirm that all relevant policies include same-sex partners and that the definition of 'family' includes same-sex couples and their children.
- Implement policies that ensure that there are no discriminatory gender-specific dress codes in the workplace.





The words 'HOMOPHOBIA' and 'TRANSPHOBIA' describe a fear and hatred of LGBT people, and any discriminatory practices stemming from this hatred.

A related word is 'HETEROSEXISM'. This refers to the belief that heterosexuality is the only natural, normal and acceptable form of sexuality, and is therefore superior to other sexual orientations.

## RESPONDING TO COMPLAINTS

An employer must respond to all complaints about discrimination, including those relating to sexual orientation and gender identity. Being seen to take action will send a clear signal that bullying and harassment will not be tolerated.

- Swiftly, fairly, comprehensively and confidentially investigate all complaints of discrimination.
- Assure the reporting employee that he or she will not be retaliated against or punished.
- Individually interview the complaining employee, the accused and any potential witnesses.
- Take clear notes regarding all relevant facts (including names, dates, times, places and so on).
- Follow the same procedures used in other investigations – in other words, adopt a zero-tolerance approach to discrimination on the basis of sexual orientation or gender identity.

## STEPS TRADE UNIONS CAN TAKE TO PREVENT DISCRIMINATION AGAINST LGBT WORKERS

Unions have a responsibility to protect the rights of all members, including those who identify as LGBT. Unions can put pressure on employers to take this issue seriously and to ensure adequate protections are in force. As collective spaces, unions can also help to educate members and to promote inclusive practices.

- Create opportunities to discuss LGBT rights.
- Adopt an anti-discrimination policy that specifically refers to sexual orientation and gender identity.
- Adopt an anti-harassment policy that specifically refers to sexual orientation and gender identity.
- Extend union benefits to include same-sex partners and the families of same-sex couples.
- Use inclusive language in all communications – for instance, use 'partners' instead of 'wives' or 'husbands'.
- Ensure gender coordinators undergo training so that they understand different forms of discrimination and are able to implement sensitisation programmes.
- Include LGBT rights on the collective bargaining agenda.
- Demand and enforce transparent employment, disciplinary and termination practices that protect all workers.
- Organise union education strategies aimed at combating heterosexism, homophobia and transphobia.
- Create programmes that let all members know that discrimination will not be tolerated and share these widely using different forms of media.
- Design and conduct diversity trainings for union staff and members, with a higher level of training offered to shop stewards and others handling grievances.
- Increase the visibility of LGBT workers – for example, by including stories and columns about LGBT workers in newsletters.
- Ensure LGBT workers are adequately represented in leadership positions.
- Appoint LGBT 'human rights champions'.

## 7. What to do if you EXPERIENCE DISCRIMINATION

### MAKING A COMPLAINT

**YOU SHOULD REPORT** any discrimination you experience in the workplace. Your employer must comply with the law, which means that all complaints must be investigated and that corrective action must be taken against the offenders. Sadly, not all employers take these matters seriously – but that does not mean you have to put up with harassment. Remember that you are not alone: there are structures in place to ensure you are supported and protected when raising a complaint.

Record as much information as possible about what happened to you. Be sure to write down the place of the incident, the time it occurred, who was involved, what was said, details of any violence or unwanted physical contact, and any witnesses. You should try to record these details while they are still fresh in your mind. Be sure to also collect any evidence (for example, offensive notes, pictures or objects) that may help you to prove what took place. Keep this documentation somewhere safe and easily accessible.

If your company has a grievance or anti-discrimination policy, follow the steps for lodging a complaint. Should the incident relate to your supervisor, or

**When making the complaint, tell your employer that you feel you have been discriminated against because of your sexual orientation or gender identity. Let your manager know that you take this matter very seriously.**

if your supervisor is homophobic or transphobic, you may choose to raise the matter with your HR department or senior management.

When making the complaint, tell your employer that you feel you have been discriminated against because of your sexual orientation or gender identity. Let your manager know that you take this matter very seriously, that such behaviours are a violation of your rights and that action must be taken in line with relevant labour laws. If you are feeling intimidated or nervous, you can ask a supportive colleague, relative or friend to accompany you to this meeting. This person may then act as a witness if you need to escalate the matter. You may also want to seek the support of your shop steward or trade union.

If you are unsatisfied with how your employer handles the situation, you can refer the matter to the CCMA.



### **The CCMA**

The CCMA promotes fair practices in the labour sector. It is an independent authority that resolves employment-related disputes. The CCMA is not controlled by any political party, trade union or business, and has been established to make sure that your rights are protected.

Common issues handled by the CCMA include disputes over dismissal, wages, working conditions, sexual harassment, discrimination and violence. You can seek help from the CCMA if your employer has engaged in discriminatory practices, has made threats against you, or has not taken a complaint seriously.

Any worker is free to lodge a claim with the CCMA – you do not need a lawyer to do so, nor do you have to pay a fee.

### **Referring a case to the CCMA**

If you have a problem with your employer, it is very important that you take action immediately. In the case of an unfair dismissal dispute, you only have thirty days from the date on which the dispute arose to open a case; if the case is an unfair labour practice, you have only ninety days; if the case is related to discrimination, you have six months.

It is important that you exhaust all other ways of settling the dispute before raising the matter with the CCMA. For instance, if there is a grievance policy in place, you must follow the process outlined in this document. Similarly, you should try to negotiate a mutually agreeable outcome with your supervisor or, if the complaint relates to your supervisor, with your HR department or senior management.

Disputes can only be lodged with the CCMA using a case referral form. These are available from CCMA offices, the Department of Labour, or online ([www.ccma.org.za](http://www.ccma.org.za)). CCMA officials can provide assistance if you are having difficulty filling in the form. It is your duty to ensure a copy of the claim form is delivered to your employer. You must be able to prove this by presenting a fax report slip, a registered mail receipt, a signed courier form or another type of documentation.

**The first process that is conducted by the CCMA is conciliation. Should an agreement not be reached, the CCMA will begin a process of arbitration. This means the commissioner will hear both sides of the story and will then make a legally binding decision. If either party is dissatisfied with this outcome, they may apply to the Labour Court for a review.**

The first process that is conducted by the CCMA is *conciliation*. This is when the commissioner facilitates a discussion between the two parties in the hope of reaching a settlement. The commissioner does not have any powers to make decisions at this stage, but may make recommendations. If the matter is settled, the commissioner will draft an agreement recording the terms of the settlement, which both parties must then sign.

Should an agreement not be reached, the CCMA will begin a process of *arbitration*. This means that the commissioner will hear both sides of the story and will then make a legally binding decision. If either party is dissatisfied with this outcome, they may apply to the Labour Court for a review.



### **Mary's story – a real-life experience with the CCMA**

Mary worked as a teacher at a faith-based organisation. A few months after she had been hired, Mary was asked about her sexual orientation. She answered truthfully – she identifies as lesbian – and soon began being harassed by management and colleagues, some of whom would preach to her or make negative comments.

Soon after Mary's sexual orientation was revealed, an allegation was made that she had used physical force with a child, and this was used as grounds for her dismissal. Because there was no evidence in support of the allegation, and because the colleague making the claim had been homophobic on a number of occasions, Mary began to think her employer was using this as a way to fire her illegally.

Here, Mary explains her suspicions:

*The lady who made the allegation against me was very homophobic. On that particular day she had been quoting biblical scriptures. She is aware of what the law says about discrimination based on sexual orientation and so she played it in a very careful way. But I knew deep down that her actions were motivated by homophobia. She had reacted badly when I disclosed my sexual orientation and was never friendly after that.*

Mary tried to raise her concerns with the chairperson of the organisation, but found he would not take her seriously. The chairperson told Mary that her sexual orientation was not relevant and that, if she had in fact experienced homophobia, she should have reported this earlier. Mary was unsatisfied with the chairperson's handling of the matter and pointed out that there were no systems in place for raising complaints relating to discrimination.

Mary decided to pursue the matter with the Human Rights Commission and the Commission for Gender Equality. She was advised to put together a written account of everything that had happened, including details of the homophobic harassment and her conversation with the chairperson, and to then lodge the matter with the CCMA.

The CCMA's first process is always conciliation. The commissioner met with Mary and a lawyer representing her former employer. Because Mary had raised the complaint, the commissioner wanted to hear the other side of the story. However, because a management representative had not attended the meeting, the commissioner could not ask specific questions about the alleged incident, the workplace culture, or existing policies and procedures. The commissioner felt that, by sending a lawyer, the employer did not take the matter seriously.

For Mary, the conciliation process was a positive and affirming experience:

*The commissioner completely objected to the discrimination. She made it clear to the lawyer representing the evangelical services that they had no right to discriminate on the basis of sexual orientation. The lawyer said she did not think they are discriminating against me on the basis of my sexual orientation, but the commissioner said: 'How do you know? You have been hired externally to represent them and so don't know what really happened. She [Mary] is talking from a personal experience and therefore I don't expect you to engage with her about it.' The commissioner made it clear that the CCMA does not condone discrimination based on sexual orientation, religion, country of origin – she mentioned all these things.*

The commissioner then asked Mary about her ideal outcome:

*The commissioner asked me: 'What would you like as an outcome? Would you like to be reinstated back into the working environment or would you want to be compensated?' But then the commissioner added: 'You are a strong force inside that workplace and that is probably the reason they were trying to get rid of you. They are aware that you are very observant to their practices so you are a challenge for them. They will never interfere with you again if*

**Whatever the outcome, her experience shows the commitment of the CCMA to fighting discrimination on the basis of sexual orientation or gender identity.**

*you return back into the workplace because you have exposed them for who they are and they will be very scared of you now. So don't just consider yourself: there will be other workers who will walk through those doors – it may be your daughters and grandchildren. Don't be too greedy to take the money, but rather think of going back and fighting for the workers who are presently there in order to change that working environment.'*

Mary decided that 'accepting money would feel like a bribe – buy me out and then get rid of me'. Instead, she told the commissioner that she wants to return to work. But her previous employer would not accept this and so the case has now been referred to arbitration.

Mary's case is ongoing. Whatever the outcome, her experience shows the commitment of the CCMA to fighting discrimination on the basis of sexual orientation or gender identity.



## 8. A Practical Guide

### FOR LGBT WORKERS

#### COMING OUT

**C**OMING OUT SHOULD be a personal choice. It should be your decision whether you want to reveal your sexual orientation or gender identity. You may decide to tell everyone at your workplace (the CEO, supervisors, colleagues, clients and so on) or just a few individuals. Whatever your decision, it is important that you do not feel pressured or intimidated into discussing the topic.

There are many reasons why you might choose not to reveal your sexual orientation or gender identity (for instance, a lack of support structures, hostility from management, or safety concerns). In some environments, it can

be scary or dangerous to come out and so you should think carefully about your options.

Each workplace is different and thus each person's coming out experience will be different: it may be a challenging or confronting experience for some people, yet rewarding and affirming for others. Thinking through the process of coming out and doing it on your own terms will help to make the experience more positive. It is important to remember that coming out is rarely a single event: it is a continuous process that can happen over months or even years.



*'Coming Out' is the process of recognising and acknowledging one's sexual orientation or gender identity, and the decision to be open about it with oneself and with others.*



**It may be useful to discuss your decision with a trusted relative or friend, as they can help you decide if coming out is in your best interests.**

### **Motivation**

People have different reasons for coming out at work and so it is important that you think through your own motivations. Remember that coming out should be your decision; you should determine if it will be of benefit to you. If you have been bullied, persecuted or threatened, then you should contact appropriate support services.

It may be useful to discuss your decision with a trusted relative or friend, as they can help you decide if coming out is in your best interests. Here are some questions to consider:

- Why is it important for me that I come out at work?
- Will being open about my sexual orientation or gender identity help me to exercise my rights?
- What sort of personal information am I willing to share?
- Am I happy for everyone in my workplace to know?
- Am I willing to educate and inform others in my workplace?

Being clear on what you hope to achieve with coming out will help you to determine the best approach to take.

### **Know your rights**

It will be helpful to have this booklet on hand when speaking to colleagues or managers, especially if they are unaware of the relevant legal protections. It may also be wise to explain your rights to your manager or supervisor before speaking to other colleagues.

### **Assessing the risk**

Even though your rights are protected by law, it can still be difficult – and sometimes even dangerous – to come out at work. It is worth taking the time to analyse your work environment and to identify any personal or professional risks. Identifying risks does not mean you shouldn't come out, but rather allows you to formulate a strategy.

Ask yourself the following questions.

It is important that you are honest and realistic in your responses, as this will help you minimise any risks. You may find it useful to create a table that lists both the positives and negatives associated with coming out.

- What attitudes toward sexual and gender diversity are present in my workplace?
- How would I describe my work environment? For instance, is it a positive and affirming space? Are there any tensions around gender roles?

- What sort of relationships do I have with my colleagues and supervisors?
- How do people talk about personal relationships/issues in my workplace?
- In what ways do my colleagues and supervisors support diversity?
- Can I expect support from my colleagues and supervisors?
- Does my work have any policies in place relating to discrimination or harassment?
- Are there specific people I can reach out to for support, such as the HR manager or shop steward?
- Is there any chance that my safety and security may be compromised?

Find ways to mitigate potential risks – for instance, if you know that your direct supervisor is homophobic, consider talking to a different manager first, or perhaps asking a union representative or supportive colleague to accompany you. LGBT organisations may also be able to assist you by providing workplace training. It is worth making contact with some organisations before coming out so that you are aware of their services.

### **Available resources and support**

Coming out can cause anxiety and distress, and so it is important that you have trusted people with whom you can talk. In some cases, you might want to consider professional psychosocial

support while you navigate the coming out process.

Before making a decision, speak to relatives, friends and colleagues about your plans. They will be able to offer advice and can, if necessary, accompany you to meetings. It is important to let them know the date on which you're planning to come out so that they can check in with you.

Remember that it is okay to ask for help – do not keep emotions bottled up, and seek immediate support if your rights have been violated.

### **Managing the conversation**

Thinking carefully about when and where to have the conversation will help you to stay in control. It is unlikely there will ever be a 'perfect time' to come out and so it is wise to plan ahead. And while some people may prefer a dramatic coming out – for instance, turning up to a work function with a same-sex partner – this approach may create anxieties or provoke a heated response from colleagues. You may want to consider coming out on a one-on-one basis as this will help you to build strong relationships with your colleagues.

**Remember that it is okay to ask for help – do not keep emotions bottled up, and seek immediate support if your rights have been violated.**

**Remember that people are likely to talk about your sexual orientation or gender identity once you come out and so it is in your interest to be prepared for every conversation ... Helping your colleagues to understand sexual and gender diversity from the outset will help limit gossip, lies or other discriminatory behaviours.**

If you suspect people in your workplace will need further information, then it is best to talk to them in a casual space where they feel safe to ask questions. In such circumstances it is advisable to talk to your colleagues in small groups. Addressing everyone at once may cause shock or confusion, and people may not feel comfortable asking questions.

It is important to think about how you would like to frame the message. Speaking casually about an LGBT-related news story or public figure may provide a useful introduction to the topic. Similarly, finding common ground – for instance, marriage, children or day-to-day aspects of a relationship – may help your colleagues relate to your personal situation.

Remember that people are likely to talk about your sexual orientation or gender identity once you come out and so it is in your interests to be prepared for every conversation. Look online for appropriate resources or contact your

local LGBT organisation to ensure you have accurate information on hand. Helping your colleagues to understand sexual and gender diversity from the outset will help limit gossip, lies or other discriminatory behaviours.

### ***Safety first***

Your physical and mental wellbeing must be your priority. Be smart in your approach and make sure that you have people in your life who can offer support. Tell your family or friends in advance what you plan to do, and make sure they are free to help you if need be.

Coming out at work can have many benefits, but it can also be tough, even when there are policies in place to protect your rights. Colleagues can react badly and you may experience harassment; there may also be consequences for your career. However, if you make a plan, are informed and have adequate support, you may find that coming out is a positive and rewarding experience.

*These are just a few of the ways you can champion sexual and gender diversity in your workplace. Be sure to also include supportive colleagues and managers in these activities - working together is the best way to fight prejudice!*

## **ACTIVISM IN THE WORKPLACE**

**There are many ways that you can promote sexual and gender diversity in your workplace. Coming out is only the first step to tackling prejudice; you can play a key role in educating your colleagues and in shifting attitudes. Here are a few simple ways that you can promote diversity:**

- Contact an LGBT organisation in your area and ask them to provide resources (brochures, pamphlets and booklets such as this one can be easily shared with colleagues).
- Invite local activists to speak at your workplace. Some organisations may also be able to provide basic sensitisation training.
- Ask your supervisor to include sexual orientation and gender identity in relevant policy statements and to ensure inclusive principles inform all management decisions.
- Encourage your employer to clearly display policies or procedures relating to discrimination and harassment.
- Insist on inclusion and diversity being included in induction training.
- Talk openly to your colleagues about workplace rights and the role we can all play in creating a safe work environment.
- Explain the meaning of the LGBT acronym and teach colleagues the correct terms to use when discussing sexual and gender diversity. Remember that prejudice often stems from misinformation or myths.
- Share stories about your day-to-day life. Helping people to see similarities rather than differences can be a great way to overcome discrimination.
- Volunteer to be a 'human rights champion'. Having a trustworthy and informed point of contact will help people to open up about discrimination and other rights-based issues.
- Contact your trade union and ask them to include sexual and gender diversity in meetings, workshops or other forums.
- Share LGBT-related news stories and other media content. This will help to educate your colleagues and supervisors, while also exposing them to the many challenges facing LGBT people.
- Start a social/support group for LGBT staff members.





## 9. Helpful definitions & FAQs

### SEX AND GENDER – THE BASICS

**P**EOPLE OFTEN MAKE the mistake of thinking that sex and gender are the same things – but these are, in fact, quite different. How someone feels inside may not correspond to their physical body or the expectations of society, and so it is important that you don't confuse a person's sex with their gender identity.

**1. SEX:** Sex is all about biology. A person's sex (whether they are considered male or female) is usually determined by their physical features – for instance, if they have a penis or vagina, XY or XX chromosomes, and their level of testosterone or oestrogen.

Sometimes people do not easily fit into the two categories of male or female. This may be because of their sex anatomy, reproductive organs or chromosomes. This is known as *intersex* and is natural and normal.

**2. GENDER:** Gender is all about the behaviours expected of the two sexes. It refers to the roles, activities and attributes that a society considers appropriate for men and for women. In other words, it is the different qualities associated with being masculine or feminine.

There are a number of assumptions about how men and women 'should' behave. These are known as *gender roles*. In the past, women were considered to be natural caregivers and nurturers, and as more suited to domestic chores such as cooking and cleaning; men, on the other hand, were considered to be natural leaders and providers, and as more suited to manual tasks and decision-making. These assumptions are *cultural*, not natural. They change over time and are not the same in all societies. In other words, there is no one way to be a man or a woman.

Sometimes a person's understanding of their gender doesn't align with their physical body. These individuals may identify as *transgender*. A transgender person may choose to dress, live and act in a way that is different to what society expects of them. Some people may also choose to change parts of their body through surgery or other medical treatments.

Below are some other important terms you should know:

**GENDER IDENTITY:** an individual's inner sense of being male or female (or both or neither). For some people, their gender identity differs from their physical anatomy or expected social roles.

**GENDER EXPRESSION:** how a person expresses their gender identity – for instance, through clothing, behaviours, mannerisms, speech patterns, social activities and so on.

**GENDER TRANSITION:** the process of changing one's physical body to align with one's gender identity. This is a complicated, multi-step process that can take years. A transition can take different forms – some people may choose to take hormones only, while others may also undergo various forms of surgery.

**TRANS-MAN OR FTM (FEMALE-TO-MALE):** a transgender person who was designated as female at birth but who identifies as male.

**TRANS-WOMAN OR MTF (MALE-TO-FEMALE):** a transgender person who was designated as male at birth but who identifies as female.

## SEXUAL ORIENTATION

Everyone has a sexual orientation – some of us are attracted to the opposite sex, but others are attracted to the same sex or to both sexes. This is a natural and normal part of who we are as individuals.

The term 'sexual orientation' refers to physical, emotional and romantic attraction, rather than to specific sexual practices. Remember that a person's sexual orientation is not the same as their gender identity or expression.

Below are some of the most common words associated with sexual orientation:

**HOMOSEXUAL:** a person who is emotionally and sexually attracted to people of the same sex.

**HETEROSEXUAL:** a person who is emotionally and sexually attracted to people of the opposite sex.

**BISEXUAL:** a person who is emotionally and sexually attracted to both sexes.

**LESBIAN:** a woman who is emotionally and sexually attracted to other women.

**GAY:** a man who is emotionally and sexually attracted to other men.

LGBT people regularly experience bullying, harassment and violence. There are two words we use to describe these discriminatory behaviours:

**HOMOPHOBIA:** the fear or hatred of those assumed to be lesbian, gay or bisexual, and of anything connected to these persons and their communities.

**TRANSPHOBIA:** the fear or hatred of those seen to transgress or blur social expectations of gender, and of anything connected to these persons and their communities.

Homophobia and transphobia can be experienced in many ways, from negative attitudes and beliefs, to harassment, intimidation and physical or sexual violence. Homophobia and transphobia can occur at a personal, institutional or societal level. Like all forms of discrimination, homophobia and transphobia are damaging not just to individuals but also to society as a whole.

## FREQUENTLY ASKED QUESTIONS

You've probably heard different things about sexual orientation and gender identity, but not all of these may be true. A lot of the time people are confused about what these terms mean, or have been given incorrect or misleading information. The FAQs below will help you to know the facts and to share correct information with your employees or colleagues.

### *Why are some people attracted to the same sex?*

It is not yet certain what causes a person's sexual orientation. It is likely to be a number of factors, including genetics, hormones and socialisation. Homosexuality is not an illness, so it cannot be caught or cured. Lesbian and gay people are not able to influence or change another person's sexual orientation and do not 'recruit' other people. It is also not true that a homosexual person is confused or has been abused/mis-treated as a child.

### *Why are some people transgender?*

A person's gender identity is caused by a number of factors, including genetics, hormones and socialisation, some of which may occur before birth. Identifying as transgender is not an illness.

### *How do you tell if someone is LGBT?*

It is not always possible to tell whether someone is LGBT just by looking at them. Like the rest of society, LGBT people express themselves and live in many different ways. People are not homosexual or transgender because of their income, where they live, their choice of clothing or mannerisms, but because of how they feel and identify.

### *Do gay men want to be women? Do lesbian women want to be men?*

No. A homosexual person is someone who is emotionally and sexually attracted to people of the same sex, not someone who wants to be the opposite gender.



It is important not to confuse sexual orientation (who a person is attracted to) with gender identity (how a person understands their gender). Some people do not identify with their biological sex – for example, a person who was born with male sex organs may feel and need to live as female. A person whose gender identity does not match their biological sex is described as *transgender*.

**Can LGBT people be fixed?**

LGBT people are neither sick nor damaged, so there is nothing that needs to be fixed. Whether a person is homosexual, heterosexual or bisexual, it is not possible to change their sexual orientation – it is a natural and normal part of who that person is. Likewise, a transgender person is not suffering from an illness.

Some people think lesbians need to be taught to be ‘proper women’ by having sex with a man. This is not true. Having sex with a person against his or her will is rape and is illegal.

**Are LGBT people un-African?**

LGBT people exist in all African cultures. In fact, there is rich history of sexual and gender diversity in a number of African traditions. In many societies, LGBT people are celebrated and respected.

**Is homosexuality unnatural or un-Christian?**

No, it is not. A person’s sexual orientation is a natural and normal part of that person. Christianity teaches love and respect for all people. Many religious leaders, including Archbishop Emeritus Desmond Tutu, preach that all people are equal and must be treated with love, respect and dignity.

In South Africa, people are free to hold their own religious beliefs, but this does not mean that they can discriminate against or mistreat others.

**Is homosexuality anti-family?**

No, it is not. There are many different types of family in South Africa. Some children are adopted, and others are raised by only their mother or only their father, or by their grandparents. There are also some children who are raised by two mothers or two fathers. There is no evidence that this is bad for a child.

**What is a hate crime?**

Any crime committed against a person because of a particular characteristic or group to which they belong is called a ‘hate crime’. For example, it is a hate crime if a person is attacked because of his or her race, country of birth, religion, sexual orientation or gender identity. Hate crimes can include physical and sexual violence, intimidation or blackmail.

# 10. Further information & SUPPORT

**THE COMMISSION FOR CONCILIATION, MEDIATION & ARBITRATION**

*National office*

**Location:** Johannesburg

**Tel:** 011 377 6650/00

**Email:** info@ccma.org.za

**Web:** www.ccma.org.za

*Provincial offices*

LOCATION	PHONE	EMAIL
<b>EASTERN CAPE</b>		
East London	043 711 5400	el@ccma.org.za
Port Elizabeth	041 509 1000	pe@ccma.org.za
<b>FREE STATE</b>		
Bloemfontein	051 411 1700	blm@ccma.org.za
Welkom	057 910 8300	blm@ccma.org.za
<b>GAUTENG</b>		
Ekurhuleni	011 845 9000	ekurhuleni@ccma.org.za
Johannesburg	011 220 5000	johannesburg@ccma.org.za
Tshwane (Pretoria)	012 317 7800	pta@ccma.org.za
Vaal	016 422 1862	johannesburg@ccma.org.za
<b>KWAZULU-NATAL</b>		
Durban	031 362 2300	kzn@ccma.org.za
Pietermaritzburg	033 328 5000	kzn@ccma.org.za
Port Shepstone	039 688 3700	kzn@ccma.org.za
Newcastle	034 328 2400	kzn@ccma.org.za
Richards Bay	035 799 3300	kzn@ccma.org.za

LOCATION	PHONE	EMAIL
LIMPOPO		
Polokwane	015 287 7400	ptb@ccma.org.za
MPUMALANGA		
Witbank	013 655 2600	wtb@ccma.org.za
NORTHERN CAPE		
Kimberly	053 836 7300	kmb@ccma.org.za
NORTH-WEST		
Klerksdorp	018 487 4600	kdb@ccma.org.za
Rustenburg	014 591 6400	kdb@ccma.org.za
WESTERN CAPE		
Cape Town	021 469 0111	ctn@ccma.org.za
George	044 805 7700	ctn@ccma.org.za

## HEALTH, WELLBEING & SUPPORT

### DURBAN LESBIAN & GAY COMMUNITY & HEALTH CENTRE

Drop-in centre providing legal, personal and health counselling for LGBT communities.

**Location:** Durban

**Tel:** 031 312 7402

**Web:** www.gaycentre.org.za

### GAY & LESBIAN NETWORK

Provides free face-to-face, online or phone counselling by well-equipped and dedicated volunteers (9 am to 4 pm, Monday to Friday).

**Location:** Pietermaritzburg

**Tel:** 033 342 6165

**Helpline:** 086 033 3331

**Web:** www.gaylesbiankzn.org

### OUT – LGBT WELLBEING

Offers direct sexual and mental health services, and engages in advocacy to promote the health and rights of LGBT people.

**Location:** Pretoria

**Tel:** 012 430 3272

**Helpline:** 0860 688 688

**Web:** www.out.org.za

### TRIANGLE PROJECT

Runs a health clinic, helpline (1 pm to 9 pm daily), support groups and outreach programmes as well as public education and training.

**Location:** Cape Town

**Tel:** 021 686 1475

**Helpline:** 021 712 6699

**Web:** www.triangle.org.za

## WORKPLACE RIGHTS (ADVOCACY AND SUPPORT)

### LABOUR RESEARCH SERVICE

Specialises in research, dialogue-building and developmental projects focusing on labour and workplace rights.

**Location:** Cape Town **Tel:** 021 486 1100

**Email:** lrs@lrs.org.za **Web:** www.lrs.org.za

## LEGAL SUPPORT

### LEGAL RESOURCES CENTRE

A public interest, human rights law clinic.

**Location:** Johannesburg

**Tel:** 011 836 9831

**Web:** www.lrc.org.za

### TSHWARANANG

#### LEGAL ADVOCACY CENTRE

Legal advocacy for women who are survivors of violence.

**Location:** Johannesburg

**Tel:** 011 403 4267

**Web:** www.tlac.org.za

### MASIMANYANE

#### WOMEN'S SUPPORT CENTRE

Promotion of women's social, emotional, physical and economic wellbeing.

**Location:** East London

**Tel:** 043 743 9169

**Web:** www.masimanyane.org.za

#### WOMEN'S LEGAL CENTRE

A non-profit, independent law centre providing women with access to free legal advice on violence, health care and families.

**Location:** Cape Town

**Tel:** 021 424 5660

**Web:** www.wlce.co.za

## LGBT RESOURCES, ADVOCACY & SUPPORT

### GAY AND LESBIAN

#### MEMORY IN ACTION (GALA)

A centre for LGBT culture and education, with a focus on education, knowledge-production and movement-building.

**Location:** Johannesburg

**Tel:** 011 717 4239

**Web:** www.gala.co.za

### GENDER DYNAMIX

Provides resources and assistance for transgender people and their employers, families and partners.

**Location:** Cape Town

**Tel:** 021 633 5287

**Web:** www.genderdynamix.org.za



## LGBT RESOURCES, ADVOCACY & SUPPORT (CONTINUED)

### FORUM FOR THE EMPOWERMENT OF WOMEN (FEW)

*Runs programmes to empower and improve the psychological, socio-economic and political situation of black lesbian women.*

**Location:** Johannesburg  
**Tel:** 011 403 1906/7

### TRANSGENDER AND INTERSEX AFRICA

*Provides support and resources for transgender and intersex people, and runs visibility and education initiatives.*

**Location:** Pretoria  
**Web:** [www.transgenderintersexafrica.org.za](http://www.transgenderintersexafrica.org.za)

## NATIONAL RIGHTS BODIES

### COMMISSION FOR GENDER EQUALITY

*Investigates gender-related complaints, monitors compliance with gender policies and legislation, and runs public information programmes.*

**Location:** National  
**Tel:** 011 403 7182 (head office)  
**Web:** [www.cge.org.za](http://www.cge.org.za)

### SOUTH AFRICAN HUMAN RIGHTS COMMISSION

*Promotes, protects and monitors human rights in South Africa by investigating and reporting on violations.*

**Location:** Johannesburg  
**Tel:** 011 877 3600 (head office)  
**Web:** [www.sahrc.org.za](http://www.sahrc.org.za)

## ONLINE RESOURCES

### ASIPHEPHE

**[www.asiphephe.org](http://www.asiphephe.org)**

*An online information and services database for LGBT victims of discrimination and violence.*

# Acknowledgements

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## ABOUT GAY AND LESBIAN MEMORY IN ACTION

Gay and Lesbian Memory in Action (GALA) is a Johannesburg-based centre for lesbian, gay, bisexual, transgender and intersex (LGBTI) culture and education. Its mission is, first and foremost, to act as a catalyst for the production, preservation and dissemination of knowledge on the history, culture and contemporary experiences of LGBTI people in Africa.

As well as serving as an archive and research facility, GALA undertakes direct advocacy work and has a strong commitment in the areas of youth leadership, education rights, workplace rights and movement-building. Through its different areas of work, GALA makes an important contribution to the achievement and development of the human rights of LGBTI people on the continent.

Further information and downloadable resources can be found at [www.gala.co.za](http://www.gala.co.za).

## ABOUT THE LABOUR RESEARCH SERVICE

The Labour Research Service (LRS) was established in 1986 as a non-profit labour service organisation. It works to promote the full and active participation of working women and men in the political and socioeconomic activities of South Africa. This is achieved primarily through developing the organisational and leadership capacity of trade unions and labour-focused organisations.

The LRS specialises in research, dialogue-building and developmental projects, and regularly produces reports, resources and promotional materials on a range of topics related to workplace rights.

Further information and downloadable resources can be found at [www.lrs.org.za](http://www.lrs.org.za).