



AP PHOTO/DAN JAKA

The Freedom to Serve and the Freedom to Work

LGBT Service Members and Veterans
Deserve Employment Protections

By Katie Miller

February 2014

Center for American Progress



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Foreword

Note: This is a portion of an op-ed that originally appeared in Reuters on November 7, 2013.¹

Hanging in my office is the vote tally for the Employment Non-Discrimination Act, sent to me by Senator Edward Kennedy soon after September 10, 1996. That day, I had watched from the Senate gallery as a bill to protect gay and lesbian workers from on-the-job discrimination based on their sexual orientation failed to pass by one vote ...

... Recent victories in the march toward equality have been historic. This summer, for example, the Supreme Court struck down key segments of the Defense of Marriage Act, which I had seen voted into law 85–14 just hours before ENDA failed. In 2010, Congress passed the repeal of Don't Ask Don't Tell, which President Barack Obama signed.

Yet our work is far from over. Protecting America's LGBT veterans and current military members is an essential measure of the progress of our nation—and one that federal law has ignored for too long. On [November 7, 2013, the Senate had] the opportunity to make meaningful progress by passing ENDA.

Most Americans—90 percent in fact—believe that this non-discrimination act is already the law. Majorities in every state support it. Democrats, Independents and Republicans alike back ENDA by strong majorities. So it was in the months before the Don't Ask Don't Tell was repealed—78 percent of Americans supported that move toward equality and fairness.

We know ENDA shares the same strong support from every party and in every state. Even 45 percent of Tea Party members in the key swing state of Ohio support the measure.

What many Americans don't know, however, is that service members who can now proudly serve our country openly, without fear of discrimination based on sexual orientation, will not always receive these protections when they return home. In fact, gay and lesbian veterans can leave the military with full honors and their nation's gratitude—only to be fired solely because of their sexual orientation or gender identity. In 33 states, they have no recourse for this profound injustice.

More than 1 million veterans and 70,000 current military members are LGBT. They must all return to civilian life when they finish their term of service—which includes finding a job. We cannot honor the commitment and sacrifice of all our veterans if we sit idle to something as callous and unethical as workplace discrimination.

Though Congress has passed laws prohibiting discrimination on the basis of military service, set up affirmative action programs among federal contractors for hiring veterans, and offered tax credits for hiring veterans, our lawmakers have done nothing when it comes to something as simple as ensuring veterans are not discriminated against because of their sexual orientation or gender identity.

Service members volunteer to deploy overseas to defend our values, including equality under the law and the right to make a decent living. It is unacceptable for these men and women to fight for us abroad, only to come home and realize they are not entitled to these same basic freedoms as other Americans.

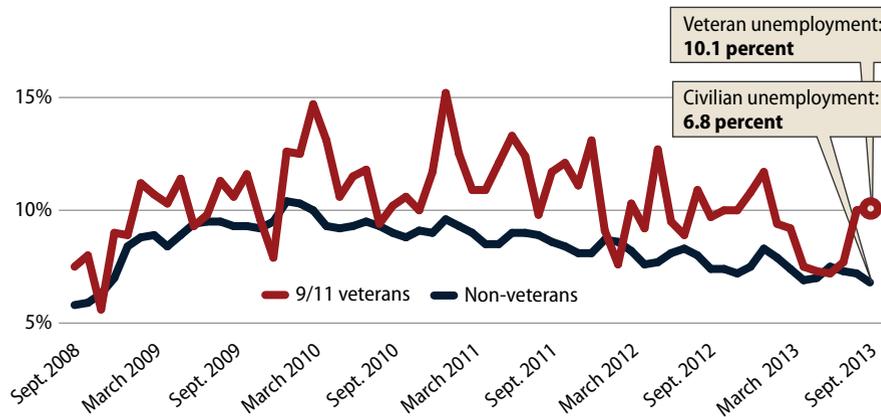
Policymakers should be fully aware that voting against ENDA is a vote against those who have served. With Don't Ask Don't Tell relegated to the dustbin of history three years ago, our veterans, along with every American, deserve a fair shot in the workplace—regardless of who they are or who they love.

Winnie Stachelberg
Executive Vice President for External Affairs
Center for American Progress

LGBT service members and veterans by the numbers

Veterans experience higher rates of unemployment than non-veterans

Unemployment since recession



A majority of LGBT service members are not active-duty so they must also find civilian employment

LGB military population



Military service

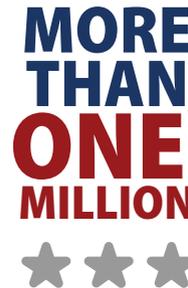


Lesbians are **3 times** more likely to serve in the military than other women



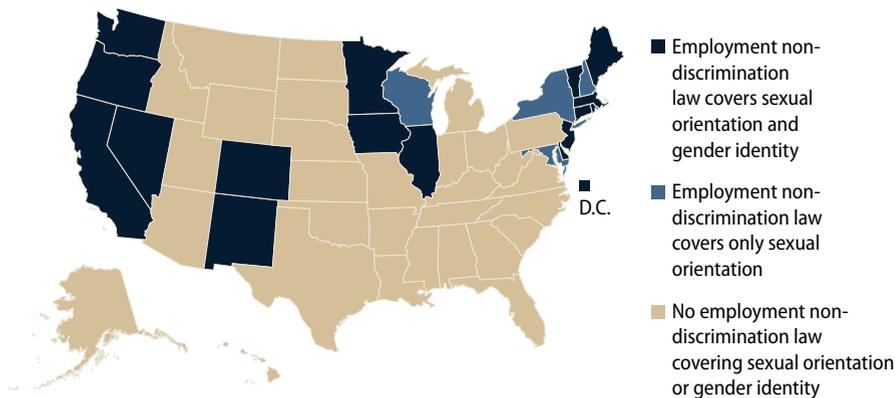
Transgender Americans are **2 times** more likely to serve in the military than other Americans

LGBT veteran population



LGBT workers experience widespread discrimination

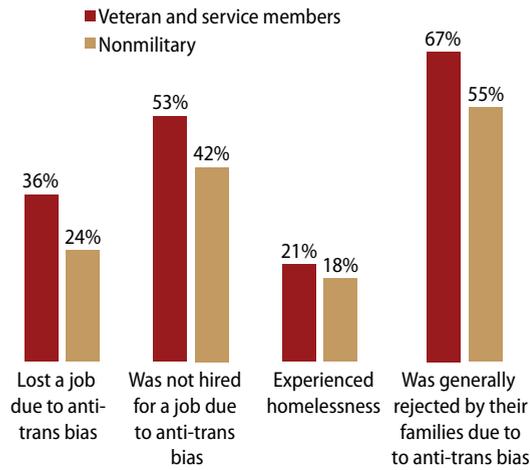
It is perfectly legal in most states to fire someone for being LGBT



Harrassment on the job



Transgender veterans have worse life outcomes than their non-veteran counterparts



Sources: Bureau of Labor Statistics, "Employment status of the civilian population 18 years and over by veteran status," available at <http://www.bls.gov/webapps/legacy/cpsatab5.htm> (last accessed February 2014); Gary J. Gates, "Lesbian, Gay, and Bisexual Men and Women in the US Military: Updated Estimates" (Los Angeles: The Williams Institute, 2010), available at <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lesbian-gay-and-bisexual-men-and-women-in-the-us-military-updated-estimates-2/>; Gary J. Gates, "Gay Men and Lesbians in the U.S. Military: Estimates from the Census 2000" (Washington: The Urban Institute, 2004), available at http://www.urban.org/UploadedPDF/411069_GayLesbianMilitary.pdf; Gary J. Gates, "Gay Veterans Top One Million" (Washington: The Urban Institute, 2003), available at <http://www.urban.org/publications/900642.html>; Movement Advancement Project, Human Rights Campaign, and Center for American Progress, "A Broken Bargain: Discrimination, Fewer Benefits and More Taxes for LGBT Workers" (2013), available at <http://www.americanprogress.org/issues/lgbt/report/2013/06/04/65133/a-broken-bargain/>; Jack Harrison-Quintana and Jody L. Herman, "Still Serving in Silence: Transgender Service Members and Veterans in the National Transgender Discrimination Survey" (Los Angeles: The Williams Institute, 2013), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Harrison-Quintana-Herman-LGBTQ-Policy-Journal-2013.pdf>.

Introduction and summary

The mid-1990s were a dark time for lesbian, gay, bisexual, and transgender, or LGBT, Americans.

In 1993, Congress passed the so-called Don't Ask, Don't Tell policy, a law that mandated that gay, lesbian, and bisexual service members keep their sexual orientation a secret or face discharge from the military.² In 1996, President Bill Clinton signed into law the Defense of Marriage Act, or DOMA, defining marriage as between one man and one woman for the purposes of the federal government and federal benefits. That same day, Congress failed—by a single vote—to pass the Employment Non-Discrimination Act, or ENDA, which would have prevented employers from discriminating against workers and job applicants on the basis of sexual orientation.³

In the past three years, we have come a long way toward reversing the setbacks of the 1990s, particularly by highlighting the way in which these laws went against the American commitment to support and care for those who have contributed to the defense of this country: LGBT service members and veterans. First, in 2010, Congress repealed Don't Ask, Don't Tell, or DADT, meaning service members no longer had to hide who they love in order to serve the country they love. History was made again in 2013 when the Supreme Court struck down key provisions of the Defense of Marriage Act, thereby allowing the Department of Defense to recognize the same-sex spouses of service members for the purpose of military support programs and benefits. The American public has come to realize the gross injustice of subjecting LGBT service members and veterans to discrimination at the hands of the federal government.

Unfortunately, the third piece of legislation that Congress took up in the 1990s—basic civilian employment protections—does not address service members and veterans. There are more than 1 million members of the military and veterans who could benefit from ENDA,⁴ as these brave men and women also must eventually transition back to civilian life and earn a living to provide for their families. The freedom to serve and the freedom to work are interconnected.

LGBT Americans continue to face discrimination on an everyday basis, particularly in employment settings. Recent research suggests that these disparities are compounded for LGBT Americans who have served in uniform.⁵ It is imperative that our lawmakers honor the service of all veterans to ensure that they receive a fair shot at employment when they come home.

This report begins by highlighting some federal government actions to combat service member and veteran unemployment and the ways in which these actions fall short for LGBT people. Subsequently, we review the barriers to economic stability experienced by some LGBT workers in the general population and identify additional challenges facing LGBT service members and veterans specifically. More broadly, this report articulates how LGBT members of the military live at the intersection of two or more marginalized populations and shoulder the burden of multiple forms of discrimination simultaneously.

This report recommends the following actions be taken to address discrimination against LGBT service members and veterans and to give these Americans a fair shot at making a living and participating in our growing economy.

- Congress must pass the Employment Non-Discrimination Act to ensure that every service member and veteran has an equal shot at finding employment when they finish their tour of service.
- Alongside an inclusive ENDA, President Barack Obama should issue an executive order banning discrimination among federal contractors.
- Congress should pass the Restore Honor to Service Members Act in order to prevent discrimination and scrutiny in hiring service members discharged prior to 1993 for sexual orientation.
- Congress should pass the Charlie Morgan Military Spouses Equal Treatment Act of 2013 so that the Department of Veterans Affairs can recognize the legal marriages of all veterans, regardless of where they live.
- Congress should repeal the “license to discriminate” language that was included in the FY 2014 National Defense Authorization Act so that commanders have the proper tools at their disposal to prevent harassment and discrimination in the ranks.

The freedom to serve and the freedom to work are interconnected when we consider that there are more than 1 million LGBT veterans who must find work in the civilian sector after they finish their term of service.

- The Department of Veterans Affairs should continue to expand LGBT inclusive health care policies, especially for transgender veterans.
- The Department of Defense should review and update the medical regulations that govern enlistment in order to remove unnecessary barriers to service.

A sacred obligation to American veterans

The American commitment to those who serve runs deep. It is the duty of the federal government, businesses, and the public to ensure that those who serve are supported in full while in uniform and that they are fully capable of reestablishing themselves in civilian society after their service ends. In the midst of a recovering economy, helping military members and veterans make a living and provide for their families when they come home fittingly has been a major focus of our lawmakers.

On the launch of Joining Forces, a White House initiative to combat veteran unemployment, Vice President Joe Biden stated:

We have a lot of obligations—to our children, to the elderly, to the poor. But there's only one truly sacred obligation in my view, and that's to equip those we send to war and care for those who come home from war and their families. That's a sacred obligation.⁶

At that same event, President Obama emphasized:

Our troops and our military families who serve right alongside them keep us strong and they keep us safe. And as Commander-in-Chief, I've pledged that just as they've left their homes and families to take care of us, we've got to make sure we're taking care of them when they come home. That's our sacred obligation: To make sure that they get the care and the benefits and opportunities that they deserve. And that includes economic opportunity—good jobs worthy of their incredible talents.⁷

U.S. military members face considerable challenges finding civilian employment, both while they are serving (if they are in the National Guard or Reserve) and after they complete their time of service. LGBT Americans face an additional set of obstacles finding and keeping a job. While Congress has taken broad steps to ensure that those who have defended this country can successfully reestablish themselves in civilian society and are protected from discriminatory workplace practices, its work has largely neglected the specific challenges that LGBT veterans face.

This section of the report outlines the employment challenges facing service members, veterans, and LGBT military populations and describes how the federal government's response.

Members of the National Guard and the Reserves

Members of the National Guard and Reserve component of the military are critical to our nation's military. Of the more than 2 million Americans currently serving in the military, 850,000 are National Guards members and reservists.⁸ National Guard members and reservists are sometimes referred to as citizen soldiers because they work full time as civilians and train with their military units part time—usually only one weekend per month. Active-duty service members, in contrast, perform military duties full time and do not need to find civilian employment as a primary source of income.

National Guard members and reservists can be and often are placed on active status during a time of war, resulting in deployment overseas with active-duty troops. In fact, three out of every four service members currently in the National Guard or Reserve report having served in combat or in a war zone at least once.⁹ It is precisely because of the possibility of deployment that guards members and reservists are more vulnerable than active-duty service members to workplace discrimination.¹⁰ Employers may be reluctant to hire service members who serve in the National Guard or the Reserves because they can be called to service at any time, disrupting their civilian employment for several months.¹¹ In addition to discrimination in hiring, service members also have to worry if their employers will re-employ them once they return from a tour of service.

A 2010 Department of Veterans Affairs survey confirmed high levels of unemployment for the National Guard and Reserve population. Nearly 17 percent responded they were unemployed and looking work. Another 5 percent were unemployed but not looking for work.¹²

The federal response

To address these vulnerabilities, the Uniformed Services Employment and Reemployment Rights Act, or USERRA is a federal law that passed in 1994 and protects service members' re-employment rights when returning from a period of military service. It also prohibits employers from discriminating against

employees and job applicants on the basis of military service or future military obligation.¹³ Under USERRA, service members returning from military duty must be re-employed in the job that they would have attained had they not been absent during that time period. Additionally, employers cannot refuse to hire someone in the National Guard or Reserve component of the military simply because there is a possibility that applicant may be called upon for a tour of duty in the future.

The law also allows service members to report violations and creates a pathway for civil remedy. Since the terrorist attacks on September 11, 2001—and the consequential deployment of hundreds of thousands of reservists and National Guard members—there has been a rise in USERRA claims filed by service members.¹⁴ Although USERRA is meant to prevent discrimination, it remains a powerful tool for service members to combat workplace discrimination on the basis of military service or obligation.

Veterans

Recent Bureau of Labor and Statistics data show that of the 2 million veterans who served in the military post-9/11, 10 percent were unemployed at the end of 2013, compared to 7 percent for the general population.¹⁵ In fact, since September 2009, veterans of the wars in Iraq and Afghanistan average an unemployment rate 2 percentage points higher than Americans who have never served.¹⁶

The reasons for veteran unemployment are complex, but one major obstacle for veterans is a lack of understanding among employers about how military training translates into civilian work skills. A 2007 survey showed that 61 percent of employers do not have a complete understanding of how military service translates into job qualifications.¹⁷ Moreover, 81 percent of service members believe they are not fully prepared to enter the civilian workforce.¹⁸ This lack of understanding likely contributes to the high rates of unemployment for qualified veterans.

The federal response

To address this issue, Congress passed the Vietnam Era Veterans' Readjustment Assistant Act, or VEVRAA, which prohibits government contractors and subcontractors from discriminating against veterans. The law, which was first passed in 1974, also requires employers to take deliberate steps to hire and promote veteran employees.¹⁹ Specifically, VEVRAA creates an affirmative action program for veterans with companies that do business with the federal government.

The law was successful in the past, as veterans of wars before 9/11 experience lower rates of unemployment than the general population.²⁰ However, the law was updated in 2013 in order to address the high rates of unemployment among America's newest veterans—those returning from Afghanistan and Iraq—stating that “the laws haven't always worked as intended.”²¹ VEVRAA, although far from comprehensive, has presented a basic framework for lawmakers and administration officials to address veteran unemployment.

In 2011, the Obama administration launched the Joining Forces Initiative, a federal government-wide program to provide service members, veterans, and military families with the resources they need to gain employment.²² A cornerstone achievement of the initiative was the passage of the Vow to Hire Heroes Act, which established a veterans retraining assistance program, improved the existing transition assistance program, and incentivized businesses to hire veterans by offering a tax credit.²³ In 2013 alone, 2,000 businesses contributed to the hiring of more than 125,000 veterans and military spouses and agreed to continue their efforts until they have hired 250,000 more.²⁴

As demonstrated by the high rate of veteran unemployment among post-9/11 veterans, these laws cannot completely prevent workplace discrimination against military members, but they offer significant employment protections and opportunities and ensure those who have served have access to remedies.

Veterans lead the way

Sen. Bob Dole (R-KS) fights for Americans with disabilities

Veterans of the U.S. armed forces fight for American principles abroad and are often at the forefront of progress and change at home as well. In 1969, newly elected Sen. Bob Dole (R-KS) delivered his first speech on the floor of Congress on behalf of public accommodations protections for Americans with disabilities. Sen. Dole, who served in the Army's 10th Mountain Division, was wounded by machine gun fire in Italy during World War II. His right arm is permanently disabled, and his left arm is barely functional.²⁵ His story was not unlike those of thousands of other service members who have returned home from war forever changed. In 1969, Sen. Dole spoke of the challenges he faced as an American veteran with a disability:

Mr. President, my remarks today concern an exceptional group which I joined on another April 14, 24 years ago, during World War II. It is a minority group whose existence effects every person in our society and the very fiber of our nation...

As a minority, it has always known exclusion—maybe not exclusion from the front of the bus, but perhaps from even climbing aboard it; maybe not exclusion from pursuing advanced education, but perhaps from experiencing any formal education; maybe not exclusion from day-to-day life itself, but perhaps from an adequate opportunity to develop and contribute to his or her fullest capacity...²⁶

Our handicapped citizens are one of our Nation's greatest unmet

responsibilities and untapped resources. We must do better.²⁷

Americans with disabilities seek the same things as other Americans: to be included; to contribute to society; to make a living; to provide for one's family; to avoid adding to the taxpayer's burden; and to be entitled to basic human dignity. As Sen. Dole's wife rightly noted, "This mission is made all the more important by the ongoing courage and sacrifice of the men and women who wear the uniform of our country."²⁸ Giving those with disabilities an equal shot at the American Dream is a national imperative. Leading up to the passage of the Americans with Disabilities Act in 1990, veteran organizations such as the Paralyzed Veterans of America were instrumental in advocating for sensible public accommodations for disabled individuals.²⁹

The core of Sen. Dole's message was simple: Veterans are a valuable asset to this country and it is up to all of us to ensure they have the same opportunity to contribute to society as every other American. When in 1988 former member of Congress Rep. Tony Coelho (D-CA) pointed to the shame of sending men and women overseas "only to come home to a society that subjects them to discrimination and injustice" if they returned with a disability, he could have just as easily been speaking about LGBT Americans too.³⁰ Employment protections that benefit veterans and non-veterans alike are grounded in strong precedent.

LGBT service members and veterans

In 1993, Congress signed DADT into law, requiring that gay, lesbian, and bisexual service members keep their sexual orientation a secret or be discharged from the U.S. armed forces. During that time, military leaders warned that allowing service members to be open about their sexual orientation would compromise unit cohesion and undermine good order and discipline in the ranks, thereby weakening the force.³¹ The policy was actually intended to be a compromise because prior to 1993, the U.S. military simply did not allow gay and lesbian individuals to serve at all. Service members who were outed during the course of their service were discharged, usually with a Less than Honorable characterization.³²

Ironically, there were more gay-related discharges *after* 1993 when the policy was implemented than ever before in our military's history. Moreover, the number of service members discharged under DADT steadily increased every year leading up to September 11, 2001.³³ As a result, more than 14,000 service members were discharged under the law at the expense of \$40,000 of taxpayer money per discharged service member.³⁴ The cost of enforcing the policy between 1994 and 2003 alone came at a cost of \$363 million.³⁵ More than 800 of those discharged were deemed to have "mission critical" skills, such as helicopter pilots and Arabic linguists. In short, the law was counterproductive, costly, and harmed the military.

The federal response

In 2010, a vast majority of service members and the American public supported open service for gay military members; Congress repealed DADT and President Obama signed the repeal into law.³⁶ Since 2011, members of our nation's military can serve openly and with honesty, no longer living in fear of getting kicked out of the military as a result of sexual orientation.

What a majority of Americans do not know, however, is that service members who can now proudly and openly serve our country, without fear of discrimination based on sexual orientation, are not entitled to the same promise when they return home.

Most LGBT veterans eventually transition out of the service and find employment in the civilian sector. Unlike the specific protections for service members and veterans, there is no federal statute that protects LGBT Americans from workplace discrimination. Only 17 states and the District of Columbia currently have laws on the books preventing discrimination in the workplace on the basis of sexual orientation and gender identity. In 29 states, it is perfectly legal to fire, refuse to hire, or pass over an employee on the basis of sexual orientation, and in 33 states the same is legal on the basis of gender identity.³⁷ As demonstrated in the table below, more than half of the LGBT population lives in a state lacking basic employment protections. An even greater proportion of veterans live in states where they are vulnerable to sexual orientation and gender identity discrimination.

Percent of population covered by LGBT employment protection laws³⁸

State employment protections	Percent of LGBT population covered	Percent of veteran population covered
States prohibiting sexual orientation and gender identity discrimination	37 percent	30 percent
State prohibiting sexual orientation discrimination only	48 percent	38 percent
State that prohibits neither sexual orientation nor gender identity discrimination	52 percent	62 percent

Sources: Movement Advancement Project, "Non-Discrimination Laws," available at http://www.lgbtmap.org/equality-maps/non_discrimination_laws (last accessed December 2013); Department of Veterans Affairs, "Veteran Population Projection Model 2011," available at http://www.va.gov/vetdata/veteran_population.asp/ (last accessed December 2013).

Fortunately, a handful of states and municipalities have taken the initiative to prevent unfair workplace practices that harm LGBT employees. But even when considered together, these protections do not go nearly far enough to prevent LGBT workplace discrimination.

There has been important, albeit modest, progress when it comes to federal protections for LGBT Americans. In 2012, the U.S. Equal Employment Opportunity Commission, or EEOC, issued a ruling giving some employment protections to transgender Americans. The decision in *Macy v. Holder* held that employers who discriminate against job applicants or current employees on the basis of gender identity can be found in violation of Title VII of the Civil Rights Act of 1964 because it constitutes a form of sex discrimination.³⁹

As an administrative ruling, however, *Macy* is not binding on federal courts, which serve as the bodies of appeal for all civil matters. While the decision enhances the legal foundation for interpreting sex discrimination to include gender identity, federal courts outside of the 6th and 11th circuit courts are free to dismiss the EEOC's ruling, and with it the notion that sex discrimination includes individuals who are transitioning genders.⁴⁰ In other words, the decision is reversible and far from universal within the U.S. judicial system.

As subsequent sections of this report detail, LGBT Americans and especially LGBT veterans struggle economically, experiencing challenges such as high unemployment, wage gaps, discriminatory hiring practices, harassment on the job, and the lack of legal marriage recognition and the associated benefits.

Veterans lead the way

Mia Macy and her fight against employment discrimination



Mia Macy is a military veteran and former police officer. She and her wife moved to the San Francisco Bay area in 2010 after Mia was recruited for a position as a ballistics technician with the Department of Alcohol, Tobacco, Firearms, and Explosives,

or ATF. Mia was well qualified for her new role due in large part to her military and law enforcement background. In addition, she was trained and certified to do the job.

After she had completed and passed her background check and her colleagues were notified that Mia would be starting work soon, Mia was informed that the position was no longer available and she would not be given the job due to federal budget constraints.⁴¹

The decision not to hire Mia occurred shortly after informing her employer that she was undergoing gender transition.

While searching for employment elsewhere, Mia became aware that someone else filled the job she was hired for at ATF . Moreover, the person who was hired was demonstrably less qualified than Mia.⁴²

As she learned in the military, giving up was never an option. Mia filed suit in *Macy v. Holder* claiming that these actions were the result of sex-based discrimination. In a watershed decision, the judge ruled in her Mia's favor, which resulted in protections for transgender people under Title VII of the Civil Rights Act of 1964. Though the gain for LGBT workplace protection is limited, it was nonetheless a significant victory with national implications.

A broken bargain for LGBT workers

In order to fully understand the barriers to economic prosperity for LGBT service members and veterans, it is first necessary to understand the challenges LGBT Americans face more broadly. For a more in-depth account of the state of LGBT workers please refer to the 2013 report “A Broken Bargain: Discrimination, Fewer Benefits, and More Taxes for LGBT Workers” from the Center for American Progress, the Movement Advancement Project, and the Human Rights Campaign.⁴³

Who are LGBT workers?

LGBT individuals and their families are a part of the American fabric. Recent research shows that 3.4 percent of U.S. adults identify as LGBT; same-sex couples live in 93 percent of all U.S. counties; and there are an estimated 5.4 million LGBT Americans in today’s workforce.⁴⁴

Studies have also shown that the LGBT community is racially and ethnically diverse, as one in three individuals who identify as LGBT also identify as a person of color.⁴⁵ In contrast, only 27 percent of the overall American population are people of color.

Finally, LGBT people are parents. A recent analysis showed that 37 percent of LGBT adults have had a child, while another analysis of three different data sources suggests that LGBT parents are raising between 2 million and 2.8 million American children.⁴⁶ A separate analysis shows that as many as 6 million Americans have been raised by an LGBT parent.⁴⁷

Although the media usually depicts the LGBT community as white, gay, male, upper-middle class, metropolitan, and without children, this rendering is grossly inaccurate. In particular, it masks the many vulnerabilities and struggles experienced by the LGBT people, including in the workplace.

Discrimination at work

As many as 4.3 million LGBT people live in states with no state laws providing employment protections based on sexual orientation or gender identity. The impact of this lack of protections is tangible. As many as 16 percent of gay, lesbian, and bisexual workers report being passed over for a job or fired because of their sexual orientation,⁴⁸ and an appalling 47 percent of transgender Americans have reported the same on the basis of their gender identity.⁴⁹ Research has verified these experiences. When nearly identical resumes are submitted to prospective employers, gay men are 40 percent less likely than heterosexual men to receive interviews and transgender individuals are 42 percent less likely when their resume indicates their sexual orientation or gender identity.⁵⁰

Even when LGBT individuals are able to secure employment, they often face hostility, which negatively affects their work life. Nearly 4 in 10 lesbian, gay, and bisexual individuals and nearly 8 in 10 transgender individuals who are out at work experience some type of harassment on the job. This type of discrimination is disruptive, resulting in lower rates of workplace satisfaction, weaker job commitment, and decreased productivity and output.⁵¹

These behaviors are often accompanied by discrimination in earnings. Gay and bisexual men earn 10 percent to 32 percent less than similarly qualified heterosexual men.⁵² Although lesbian and bisexual women make roughly the same as heterosexual women, that is still on average 77 cents for every dollar that a heterosexual man is paid for the same work.⁵³

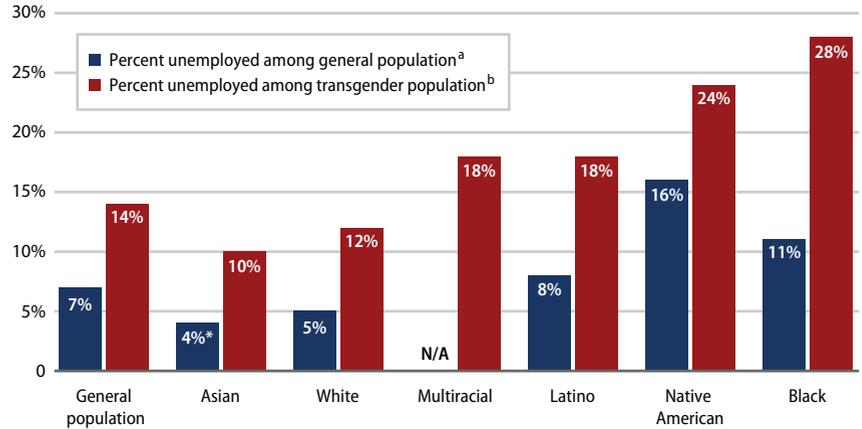
High rates of unemployment

A recent study found that lesbian, gay, and bisexual adults are unemployed at a rate 40 percent higher than the overall average.⁵⁴ The numbers are even worse for transgender workers: “The National Transgender Discrimination Survey” from the National Center for Transgender Equality and the National Gay and Lesbian Task Force found that transgender adults report unemployment rates double the rates of the non-transgender population, with transgender workers of color reporting nearly four times the national average.⁵⁵

Poverty

In addition to unemployment, wage gaps, and discrimination, it should come as no surprise that as a community, LGBT Americans experience high rates of poverty. A 2012 Gallup report showed that 35 percent of LGBT Americans report an annual income less than \$24,000, compared to 24 percent of the overall population.⁵⁶ Consequently, same-sex couples are more likely to rely on public assistance programs such as food stamps.⁵⁷

FIGURE 1
Unemployment rates among transgender adults by racial and ethnic group



* While the other rates are based on seasonally adjusted data, such data are not available for Asian Americans in September 2008. The figure is therefore based on the nonseasonally adjusted rate for September 2008.

a. Unemployment rates are based on September 2008 figures. See U.S. Bureau of Labor Statistics, "The Employment Situation: September 2008," Press release, October 3, 2008, available at http://www.bls.gov/news.release/archives/empisit_10032008.htm.

b. Jaime M. Grant and others, "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey" (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), available at http://www.thetaskforce.org/reports_and_research/ntds.

Some members of the group fare worse than others. A 2013 Williams Institute report that pulled from several data sources showed that gay men are sometimes poorer than their heterosexual counterparts but found that lesbians across data sets are consistently poorer than their straight women counterparts.⁵⁸ African American same-sex couples report a poverty rate two times as high as African Americans in different-sex marriages. The National Transgender Discrimination survey reported that transgender Americans are nearly four times more likely than the general population to earn less than \$10,000 annually.⁵⁹

Economic instability among LGBT workers is not only bad for these individuals but also for their families. Twenty-three percent of children living with a male same-sex couple and 19 percent of children living with a female same-sex couple are in poverty, compared to 12 percent of children living with married different-sex couples. What's worse, 52 percent of black children in households headed by gay males are in poverty.⁶⁰

Lack of employment security is one reason why LGBT Americans, despite prominent stereotypes and mainstream media depictions, are actually among the most economically vulnerable populations in this country today.

A promise broken: LGBT service members and veterans

Whereas numerous statutes and initiatives have been aimed at aiding the military and veteran population broadly to find employment, little attention and resources have been paid to LGBT service members and veterans who, now serving openly since the repeal of Don't Ask, Don't Tell, must necessarily become a part of this narrative too. Recent research indicates that LGBT veterans may actually face harsher life outcomes than LGBT people with no record of military service, in addition to facing challenges unique to them as a result of both their military service and sexual orientation and gender identity. Thus the obligation of ensuring the welfare of service members is left unfinished until all men and women in the military enjoy the full protection of federal law.

This section of our report describes who LGBT service members and veterans are and outlines some of the unique challenges facing this population as a result of living at the intersection of the military and LGBT communities. When all demographic factors are taken into account, it is clear that LGBT service members and veterans shoulder a heavy burden of discrimination, which calls for a robust federal response.

Who are LGBT service members and veterans?

There are more than 1 million lesbian, gay, bisexual, and transgender veterans in the United States, and nearly 50,000 lesbian, gay, and bisexual service members on active duty or in the National Guards and Reserves, according to a study conducted before the repeal of DADT.⁶¹

Women, and particularly women of color, are represented in disproportionate numbers in the LGBT military population, and transgender Americans are twice as likely to serve in the military as the general population.⁶² These demographics are particularly relevant because LGBT service members and veterans are likely

LGBT Americans who have served in the military face the same barriers to employment as other veterans but encounter additional and unique challenges in the absence of basic employment protections.

grappling with several layers of discrimination when it comes to hiring, whether on the basis of sex, race, or military status. Unfair workplace practices on the basis of sexual orientation and gender identity add to the already heavy load of discrimination and disparities American veterans face in today's workforce.

The data also show that lesbian, gay, and bisexual service members are more likely to serve in the National Guard or the Reserve than on active-duty, so civilian workplace protections for these Americans are critical because they must derive their primary source of income in the civilian sector.⁶³

Gender identity discrimination

Despite the repeal of DADT, transgender Americans are not eligible to serve in the U.S. armed forces.⁶⁴ Although there is some documentation of transgender individuals serving and keeping their gender identities a secret,⁶⁵ little is known about currently serving transgender service members as a population. But even more so than the gay, lesbian, and bisexual veteran population, there is a surprisingly large amount of information we know about the transgender veteran population.

In 2013, the Williams Institute analyzed data from the National Transgender Discrimination Survey and found that transgender Americans serve in the military at twice the rate of the general population.⁶⁶ While transgender Americans in general face widespread discrimination, those with military service often reported higher rates of harassment, discrimination, and violence compared to transgender people in the civilian population. For example, 35 percent of transgender veterans reported losing a job due to anti-transgender violence, compared to 24 percent of the civilian transgender population.⁶⁷ Two out of three transgender veterans reported family rejection whereas just a little more than half of civilians reported the same. And 21 percent of veterans reported homelessness due to anti-transgender bias compared to 18 percent of civilian respondents.⁶⁸

Beyond poor experiences in the civilian workforce and at home with families, transgender veterans also run into institutional discrimination. The Department of Veterans Affairs, or VA, has taken various strides toward LGBT equality in health services, such as requiring all VA facilities adopt nondiscrimination policies that include sexual orientation and gender identity.⁶⁹ Despite these strides toward inclusive health care, outdated regulations continue to prevent some veterans from accessing medically necessary care. Regulations governing the VA medical

benefits package prohibit transgender veterans from accessing “gender alterations,” which the Veterans Health Administration, or VHA, has interpreted to mean that the benefits package available to veterans does not include transition-related surgical care.⁷⁰ This kind of exclusion targeting transgender veterans lacks basis in medical science or even cost savings.⁷¹ As such, despite significant VA policy advances, transgender veterans continue to be denied medically necessary care because of arbitrary and outdated policies.

Transgender Americans are subjected to extreme societal stigma and outright hostility at times. Moreover, studies suggest that their military service does nothing to improve their social or economic standing later in their lives.⁷² This is in stark contrast to the Department of Veterans Affairs profiles of veteran communities. For example, women and people of color who have served in the military, on average, have lower rates of poverty than their non-veteran counterparts.⁷³

Lingering damage of “homosexual discharges”

Most service members who were discharged for “homosexual conduct” under DADT received Honorable or Gender Under Honorable discharges.⁷⁴ But before 1993, when the military policy was implemented, service members who were found to have engaged in homosexual conduct were likely to receive discharges that were Less than Honorable.⁷⁵ A Less than Honorable discharge has severe consequences that follow a veteran for his or her entire life. In most states, it is legal for private employers to discriminate on the basis of discharge characterization, and a Less than Honorable discharge all but disqualifies a person from ever working in the public sector. Additionally, a Less than Honorable discharge characterization may mean forfeiture of veterans’ benefits, such as G.I. Bill education benefits and health care coverage.

Moreover, some discharge paperwork makes note of a service member’s sexual orientation, which marks veterans for potential discrimination on the basis of sexual orientation in private employment because employers request access to these documents as part of the hiring process routine. A recent Harvard study found that gay men were 40 percent less likely to receive an interview with an employer if their resumes indicated that they were gay.⁷⁶ Outing, or exposing a person’s sexual orientation, in many cases, negatively affects a veteran’s job prospects. As long as it remains legal in 29 states to fire an employee or refuse to hire a job applicant on the basis of sexual orientation, veterans discharged before 1993 for being gay, lesbian, or bisexual are vulnerable to discriminatory workplace practices in the private sector.

Discrimination in the ranks

Since the repeal of DADT, lesbian, gay, and bisexual service members have been able to serve openly in the military without fear of being discharged. And members of Congress who have vowed to bring the old policy back have so far had little success, particularly in the wake of a study demonstrating that openly gay service members had little effect on military readiness and the Pentagon signaling it has no intention to turn back the clock on LGBT equality.⁷⁷ Notably, the Department of Defense held its first annual LGBT Pride Month Celebration in 2012.⁷⁸

Although the military as an institution has encountered few challenges implementing the repeal of DADT, an independent survey conducted since the repeal showed that LGBT service members continue to face harassment and victimization and are frequently passed over for career opportunities.⁷⁹

Short of reinstating DADT, opponents of equality are also trying to make it easier for service members to harass gay troops by establishing broad exemptions for the religious views of service members. In December 2013, Congress voted to include an amendment by Rep. John Fleming (R-LA) into the fiscal year 2014 National Defense Authorization Act, or NDAA, that would require the accommodating the religious beliefs, actions, and speech of service members unless a commander can prove that the speech would cause “actual harm” to the unit.⁸⁰ Essentially, service members cannot be punished for any discriminatory language or conduct—such as harassing gay service members because they view homosexuality as immoral—as long as they are acting out of their religious belief. The amendment will apply to active-duty service members, as well as guards members and reservists during their monthly training, including if they are placed on active status.

Unsurprisingly, the Pentagon has resisted such legislation, stating that current law already grants “reasonable accommodation” of religious freedom to service members.⁸¹ Furthermore, the White House pointed out that the amendment would actually tie the hands of commanders, who have the ultimate responsibility to ensure good order, discipline, and unit morale and who would be helpless to stop religious bullying or harassment under the amendment.⁸² Regardless of the Pentagon and the Obama administration’s objections, the House of Representatives adopted the language into the 2014 National Defense Authorization Act and the Senate approved it in December.⁸³

Marriage and relationship recognition by the Department of Veterans Affairs

Although the Department of Veterans Affairs, like all other federal agencies, now finds it lawful to extend benefits to same-sex spouses, another factor complicates the situation. The Department of Defense has decided it will judge the validity of marriages based on where a couple was married instead of where the military member is currently stationed; but it remains unclear whether or not the Department of Veterans Affairs is permitted to do the same because an entirely separate statute governs veterans' benefits.⁸⁴ For example, if a veteran is married in Maryland, a state that recognizes marriage equality, and then moves to West Virginia, a state without marriage equality, that veteran could lose all of his or her spousal benefits even though the federal government grants these benefits of concern. Spousal benefits include a wide array of assistances and services—such as access to vocational training and death and indemnity compensation—that promote financial stability for veterans and their families.

In December 2013, the Department of Veterans Affairs refused to recognize the marriage of former Army Sergeant Earl Rector and his husband, Alan Rodriguez, who were preapproved for a VA home loan.⁸⁵ The two were legally married in Seattle, Washington, but actually lived in Texas. After receiving news that they had been preapproved for the loan, the couple sold their house and signed a contract for a new home, only to find out days before closing the deal that the VA had revoked their guaranty of the loan. When the VA determines if a couple qualifies for a loan and at what interest rate, they take into account the income of both spouses, as it initially did with Sgt. Rector and Mr. Rodriguez. But since Texas does not recognize Mr. Rodriguez as the spouse of Sgt. Rector, the VA was forced to revoke the preapproval and treat Sgt. Rector as if he were a single man applying for the loan. This decision might force the couple to pay a higher interest rate or be unable to meet their closing date, subjecting them to substantial legal risk.⁸⁶

The Department of Veterans Affairs must issue guidance regarding the implementation of the Defense of Marriage Act, and Congress must act to clarify the statute that is the source of this confusion. Until then, veterans applying for benefits in non-marriage equality states cannot expect relationship recognition for their spouses. For the purpose of veterans' benefits, the spouse of a legally married veteran is a stranger.

Military spouses harmed by workplace discrimination

Note: This is a portion of an op-ed that originally appeared on the American Military Partners Association webpage on November 4, 2013.⁸⁷

Kathryn Trammell is a high school English teacher who lives with her Air Force wife in Fort Walton Beach, Florida. Here is some of her story:

The end of “Don’t Ask Don’t Tell” (DADT) was a landmark event in our history that affected families like mine all over the world. My wife (then my fiancée) had just commissioned and graduated from college when DADT was repealed. . . . high on the thought that we no longer had to hide, I asked her to marry me.

. . . While she and I were finally able to reveal our relationship with her ROTC friends, we knew that I still had to adhere to my own form of DADT at work. Like those serving under DADT, I too, along with hundreds of other LGBT people who work every day in our country, understand that we must work under a form of personal censorship that hasn’t been discussed as seriously as it should until now with the proposal of the Employment Non-Discrimination Act (ENDA) legislation. While some workplaces have already included sexual orientation in their equal opportunity policies, the profession for which I have devoted years of study, care, and hard work, is, I feel, among the most discriminatory towards LGBT workers.

I am a teacher. . . . while these unfortunate discussions overheard in teachers’ lounges won’t get me fired, I know that the beliefs expressed by some of my colleagues would be enough to get me fired if my relationship were to ever be discovered during my employment at a school.

This knowledge became extremely clear to me a couple years ago before moving to Okinawa with my wife. I was working at a school in Tennessee . . . and when I was fortunate enough to acquire my very own classroom, I knew that my first decorative move would be to place “safe space” signs in the doorway to let my kids know that discrimination would not be tolerated. My classroom would be somewhere they could come to get away from the bullying. Sadly, I was told to take the signs down because they featured upside down

rainbow triangles and my students “might get the wrong idea that it was okay to be gay.” I kept them up.

In a moment of respectful honesty (and now I realize possible stupidity) I confessed I was gay and explained my opinions and suggestions on the matter. Shortly after the discussion, some teachers with whom I had become very close began to ignore me. Discussion would stop when I walked into lounges and attitudes changed when I spoke during staff meetings. Then some of my students, as well as students whom I had never met or taught, started walking by my classroom screaming words like [homophobic slur] and [homophobic slur] as they passed my door. . . . I didn’t care that they were calling me names, but I did care that my students were being subjected to such hate after I promised them that my room would be a safe space.

. . . I began to loath going to work every day. I loved my job and I loved my students. I advocated for them and cared for them and fed them. I bought gifts for them and told them I was proud of them, but I began to hate the job that allowed me the opportunity to be with these amazing kids. So I did what I felt I had to do to make the harassment stop: I resigned. And when my principle and my students wanted an explanation as to why I was leaving, I told them that my boyfriend had proposed and that he and I were being sent to Okinawa with the Air Force. It was a lie. A sickening lie. But the harassment stopped, and it stopped that day.

Since this incident, I told myself I would never lie about my relationship again. Now that I have PCS’d [Permanent Change of Station] again to Florida, I am again worried about beginning the interview process with area public schools all over again. I know I don’t want to lie to a prospective employer upon our first meeting, but dodging questions about my spouse and trying to stay away from using “she” and “her” pronouns gets tiring. So maybe I won’t be a teacher, or maybe I will. What I do know is that if ENDA is passed then I will have the ability to create more safe spaces for my students, and to have one made for me as well. I will be able to be an example to the students who struggle every day with believing their differences should be condemned instead of accepted. I and other hard-working, tax-paying Americans will be one step closer to truly feeling equal. And I will know that I don’t have to hide anymore.

Policy recommendations

The odds are currently stacked against LGBT service members and veterans who hope to make a decent living and provide for their families. In addition to the barriers to economic stability for LGBT and veterans communities, LGBT Americans who have served in the line of duty also face a unique set of challenges. Senior veterans are still fighting for discharge upgrades. Depending on where a veteran lives, he or she may not be entitled to spousal support. And members of Congress are succeeding in establishing a right to harass service members on the basis of sexual orientation. Inaction is simply not an option.

The American promise to honor those who have served is broken for LGBT service members and veterans. The policy recommendations in the following section, if adopted by Congress, President Obama, and the departments of Defense and Veterans Affairs, would constitute a strong federal response to the indignity of discrimination against U.S. military members.

Congress must pass the Employment Non-Discrimination Act

If lawmakers truly want to address the problem of LGBT workplace discrimination, they must pass the Employment Non-Discrimination Act. If passed into law, ENDA would prohibit most employers in this country from discriminating against an employee or job applicant on the basis of sexual orientation and gender identity.⁸⁸ It is the single most efficient way to ensure that all Americans, regardless of who they are and whom they love, will get a fair shot at finding a job, climbing the ladder of economic mobility, and providing for their families.

President Obama should issue an executive order prohibiting sexual orientation and gender identity discrimination among federal contractors

Although the Senate passed ENDA in November 2013 for the first time ever, the bill faces little chance of passing a conservative-led House of Representatives in 2014. Speaker John Boehner (R-OH) has gone on the record to state that he has

no intention to bring the bill to a vote in the second chamber of Congress as long as he remains the majority leader.⁸⁹

While waiting for congressional action, President Obama should live up to his promise of signing an executive order that prohibits federal contractors from discriminating on the basis of sexual orientation and gender identity. Such a measure has precedent; President Harry S. Truman issued an executive order in 1948 that desegregated troops, banned racial discrimination in the military, and established an equal opportunity program.⁹⁰ Moreover, research indicates that the executive order would benefit workers, businesses, and the federal government.⁹¹

Congress should pass the Restore Honor to Service Members Act

Reps. Mark Pocan (D-WI) and Charlie Rangel (D-NY) introduced the Restore Honor to Service Members Act in the House of Representatives in 2013. The act would set up a process within the Department of Defense to review the records of service members discharged due to sexual orientation and upgrade Less than Honorable discharges to Honorable. The bill would also remove all indications of a veteran's sexual orientation from the record so gay service members are not outed when applying for jobs. Broadly, the bill streamlines and expedites the process of upgrading discharges based on sexual orientation so veterans can receive the honor and benefits due to them in exchange for their military service.

Congress should pass the Charlie Morgan Military Spouses Equal Treatment Act

The Charlie Morgan Military Spouses Equal Treatment Act would expand federal benefits to all legally married same-sex spouses of service members and veterans. Sen. Jeanne Shaheen (D-NH) introduced the bill in the Senate, and Rep. Adam Smith (D-WA) introduced the bill in the House of Representatives in 2013.⁹²

The bill is named after Army National Guard Chief Warrant Officer Charlie Morgan, who passed away in February after a battle with breast cancer. At the time of her death, Morgan's wife and daughter were not eligible for certain survivor benefits because of the Defense of Marriage Act, or DOMA, prevented the military from recognizing her marriage. The Charlie Morgan Military Spouses Equal Treatment Act was originally intended to offer an exception to military families

while DOMA remained the law of the land.⁹³ But even after the Supreme Court decision, the Charlie Morgan Military Spouses Equal Treatment Act remains necessary. Until the Department of Veterans Affairs issues guidance on the implementation of DOMA repeal, it remains unclear whether veterans in same-sex marriages will be eligible for federal benefits if they reside in a state that does not recognize their marriage.

Because of this problem, Department of Veterans Affairs should follow the Department of Defense's precedent and recognize the marriages of same-sex couples based on the state they were married, not the state in which they reside. In the event that the VA fails to recognize the legally valid marriages of same-sex couples in non-marriage-equality states, it will be imperative that Congress pass the Charlie Morgan Military Spouses Equal Treatment Act so that all service members and veterans' families are honored and compensated appropriately.

Congress should repeal the Fleming amendment

Late in 2013, the House of Representatives voted to include the Fleming amendment in their version of the FY 2014 National Defense Authorization Act. The law has been dubbed a "license to discriminate" and essentially strips commanders of their ability to prevent anti-gay harassment within their units if the harasser cites a religious objection to LGBT people.⁹⁴ Members of Congress should repeal the Rep. Fleming's language so that commanders will once again have the discretion and the tools necessary to maintain good order and discipline with their units.

The Department of Veterans Affairs should continue to expand LGBT-inclusive care

The Department of Veterans Affairs should continue to expand the scope of their LGBT-inclusive clinical and cultural competency initiatives. Ongoing clinical competency trainings are key in ensuring the provision of high-quality care for transgender veterans. Cultural competency trainings and inclusive language guides in development by VHA will help to ensure full implementation of the department's exemplary policies on the treatment of LGBT veterans. Finally, full and comprehensive care requires that transgender veterans be provided parity in access to medically necessary services related to gender transition. Removing the regulatory exclusion on transition-related surgeries and bringing the coverage provided by the benefits package in line with currently accepted medical practice are imperative in providing fair coverage for the transgender veterans.

The Department of Defense should review and update transgender medical regulations

Unlike DADT, the ban on transgender service is embedded in military medical policy, not federal statute. So it would not take an act of Congress to lift the blanket ban on transgender Americans joining and serving in the military. The military should revisit its policy on transgender service so that regulation is based on the most medically up-to-date research rather than on stigma and misunderstanding. Recent changes to the Diagnostic and Statistical Manual of Mental Disorders requires an update to military medical regulations for enlistment and retention so that the military is basing all of its health assessments on the most recent medical information. The branches should review their respective policies so they are no longer unnecessarily discriminating against the transgender Americans who wish to serve or who already wear the uniform.

Conclusion

Veteran unemployment is more than just a data point on a graph or a number on a spreadsheet. Having a job is the difference between a mother putting food on the table or her kids going hungry; a father making rent or getting evicted; a veteran feeling pride or experiencing indignity.

Unemployment has become incidental to military service, a disturbing trend that every American can help to eradicate. It is encouraging to see lawmakers and businesses come together to make a commitment to hire veterans, but we are not doing everything in our power to help veterans as long as they can be fired or passed over for reasons not relevant to their experience or qualifications, such as their sexual orientation or gender identity.

The yellow ribbons proudly placed on the backs of cars or the flags flown at half-mast honoring veterans must remind us not only to be grateful to those who serve but also that we owe veterans and their families a great debt. We must honor the service of all veterans to ensure that they receive a fair shot at employment.

About the Author

Katie Miller is a Research Assistant at the Center for American Progress, where her work focuses on lesbian, gay, bisexual and transgender issues in the military. She has been invited to speak at college campuses across the country and has appeared on national television multiple times to discuss the military's Don't Ask, Don't Tell policy. A Truman scholar, Miller holds a bachelor of arts in political science from Yale University.

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