

## An Analysis of Workplace Discrimination Based on Sexual Orientation

S. M. Tebele and Kola O. Odeku

*Faculty of Management and Law, School of Law, University of Limpopo, South Africa*

**KEYWORDS** Discrimination. Sexual-orientation. Homophobia. Constitutional Rights. Remedies

**ABSTRACT** Discrimination on the basis of sexual orientation like other forms of prohibited discriminations has become an area of concern in the workplace. The law prohibits discrimination in whatever form and declares it unlawful to discriminate against people on the basis of sexual orientation. People have been harassed and constructively dismissed through homophobia especially when they have openly declared their homosexual, bisexual or transsexual identities. Pursuant to this, this paper examines the legal position and at the same time considers the social implications and concerns for discrimination on the grounds of sexual orientation. The paper highlights the consequences and remedies available to the victims.

### INTRODUCTION

Undoubtedly, nowadays, discrimination and inequality encountered by gays and lesbians (homosexuals), bisexuals and transsexuals in the workplace is rampant and this must be addressed by prohibiting it and putting perpetrators through the processes of justice system to face consequences for their actions (Moshenberg 2009).

This paper looks at homophobic practices towards lesbian, gay, bisexual and transsexual people (LGBT). In South Africa for instance, LGBT are treated as non-beneficiaries of contemporary democratic laws and dividends of democracy enshrined in section 9(4) of the Republic of South Africa Constitution of 1996 and 6(1) of the Employment Equity Act (EEA) 55 of 1998 which provide that no person may unfairly discriminate another on the grounds of sexual orientation.

Discrimination on the basis of sexual orientation is harassment or differential treatment based on someone's perception as being gay, lesbian, bi-sexual or heterosexual (Adja-kwaku et al. 2013). In the medical parlance, "lesbians are homosexuals who are female-orientated, gays are homosexuals who are male-orientated and bisexuals are attracted to both males and females" (Rubio-Aurioles and Wylie 2008). However, it has been observed that "sexual orientation as a consequence of transgender or transsexuality has to

do with changing of organs by undergoing an operation to suit a preferred sex" (Califia 2013).

Nowadays, employers are obligated to ensure that their workplaces are discrimination and harassment-free including instances of discrimination based on sexual orientation (Strossen 1992). Employers are required by law to take steps to promote equal opportunities in the workplace by eliminating unfair discrimination in any employment policy or practice (Bagenstos 2006).

In South Africa, section 186(2) of the Labour Relations Act (LRA) Act 55 of 1998, provides that unfair discrimination is an example of unfair labour practice. The LRA defines unfair labour practice and dismissal in section 187(1)(f) as when the employer unfairly discriminates against an employee directly or indirectly, on any arbitrary grounds including, but not limited to race, gender, sex, ethnicity, colour, sexual orientation and so on. To this end, unfair discrimination in the workplace based on sexual orientation, falls within the purview of the LRA as defined in item 2(1)(a) of Schedule 7, of LRA.

According to Du Toit (1995), the concept discrimination emanates from racial and economic disparities of the past in a society that is characterized by statutory inequalities; hence discrimination became an ingrained feature of employment relations. Under the current democratic dispensation, discriminations in whatever forms are outlawed in South Africa (Gutto 2001).

On the international level, unfair discrimination on the basis of sexual orientation is prohibited in Article 1 of the International Labour Organisation (ILO) Convention III of 1958. Taking a lead from this, the South African Constitution

---

*Address for correspondence:*

Kola O. Odeku  
Faculty of Management and Law,  
School of Law, University of Limpopo,  
South Africa  
E-mail: kooacademics@gmail.com

expressly provides for the regulation of discrimination on the basis of sexual orientation in section 9(3) that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including sexual orientation, and section 9(4) provides that no person may directly or indirectly discriminate against anyone on one or more grounds, including sexual orientation. The other legislation that regulates unfair labour practice and discrimination is section 6(1) EEA, which provides that discrimination is prohibited on listed grounds, such as; gender, sex, pregnancy, marital status, belief, colour, ethnicity, age, disability, religion, conscience, belief, culture, language, race and on the basis of sexual orientation. In view of the discriminatory tendencies being perpetrated and faced by employees on the basis of their sexual orientation, this paper seeks to highlight the important provisions of the laws that are available to victims of discrimination on the basis of sexual orientations and sensitise them on how to bring perpetrators to justice.

### **Objective of the Study**

The key objective of this paper is to show how law is being used to eradicate discrimination on the basis of sexual orientation in the workplace. More importantly, the law prohibits discrimination and provides ample remedies for the victims.

### **METHODOLOGY**

The method for this paper was purely qualitative research approach wherein literature was extensively reviewed and important aspects of the literature used to accentuate the point that discrimination on the basis of sexual orientation in the workplace violates the rights of the victims. Pursuant to this, the paper makes strong argument for prohibition of discrimination based on sexual orientation in the workplace and that perpetrators should be brought to justice.

### **OBSERVATIONS AND DISCUSSION**

LGBTH, sometimes referred to as sexual minority are vulnerable people due to their sexual orientation. It is pertinent to point out that sexual orientation of individuals may evoke different reactions from others and could lead to situa-

tions where the LGBTH are treated differently in the workplace and the society (Veenstra 2012).

Sexual orientation is viewed by Wintemute (1995), as a complex phenomenon which may occur in various forms such as being sexually attracted to the person of same sex or persons of opposite sex, and to persons of both sexes. According to DeCecco (1981), sexual orientation determines whom people are attracted to sexually, physically and emotionally. Sexual orientation is a person's preference to gratify sexual and erotic feelings, thoughts, fantasies and behaviour towards people of the same sex (Gonsiorek et al. 1995). They argued that sexual orientation is all about the way a person sees himself physically like a male, female or both (Giddens 2013). And this is why, sometimes, it is possible for a person who was born a male to see himself as a female (Wikan 1997). In this context a person views his/her body and soul being trapped in a wrong body (Barnsley 2013). This is why transsexuals exist as they change their body via operations to suit the way they view themselves. It is important to point out that in a workplace, discrimination on the basis of sexual orientation is becoming disturbing and a cause for huge concern as Ragins (2004) asserts that "lesbian, gay and bisexual (LGB) employees constitute one of the largest, but least studied, minority groups in the workforce." However, there is an ongoing debate surrounding the issue which now makes it a topical issue hence efforts are now being channelled to find solution to the problem posed by discrimination on the basis of sexual orientation in the workplace.

Discrimination on the basis of sexual orientation takes place when an individual is treated less favourably than other people for a reason related to his or her sexual views and preferences. According to Drydakis (2009), "*despite the significant amount of public policy debate underway, it is apparent that sexual minority individuals are still facing unfair treatment in significant areas of their lives. In particular, the lack of legal recognition of family structures, the persistence of threats, the perpetuation of false stereotypes, and the lack of political will shown by the authorities in the fight against discrimination are the demonstrations of such attitudes.*"

Deitch and Brief (2004), state that workplace discrimination can be viewed as a negative action directed at LGBTs when it is based on their

sexual orientation that does not directly involve organizational policies. It is coupled with a tendency to manifest itself in the form of interpersonal animosity, derogatory jokes and comments from co-workers or superiors. Opperman (2009) points out that “sexual orientation (discrimination) as a part of diversity management in organisations is a controversial issue and people in management positions are not always comfortable to address issues relating to gay employees. This is evident from the lack of adequate policies and processes that exist within public organisations. Ignorance and prejudice, heterosexism and homophobia, religious and moral beliefs and stigmatisation contribute to why employees discriminate against their co-workers based on sexual orientation” (Blackwell 2005). Based on their vulnerability and inadequate protection in workplaces, most LGBTs are afraid of disclosing their sexual orientation for fear of victimization. This state of constant fear often causes homosexuals to develop a psychological syndrome which impacts negatively to the productivity of the business (Deitch and Brief 2004).

Existing literature and studies have shown that LGBT are afraid of reporting discriminatory practices against them. Sometimes, some of them are not even aware that there are legal provisions in place to protect them (Hovey 2009).

McGregor (2013) describes the extent of the vulnerability of LGBT as people who “had been, and still are, often subjected to isolation, alienation, marginalization, ridicule, discrimination, stigma, harassment, stereotyping, labeling, humiliation and prejudice in all aspects of life, including their working lives, the primary focus of this note. Presently efforts are made in South Africa to counteract ignorance and harmful stereotyping of transsexual people and to lobby for their human rights. This note hopes to contribute in this regard by investigating the nature and prevalence of transsexualism, South African laws protecting transsexual people from discrimination in the workplace and legislation which recognizes a changed sex description (and the problems in this regard both pre and post-transition), the secondary focus of the note.”

In offering a workable solution to the problem, Opperman (2009) asserts that “the following measures can be taken by the organisation in combating this phenomenon: writing anti-

*discriminatory statements; re-evaluating the current state of the organisational culture and whether it is supportive of gay employees disclosing their sexual orientation at work; developing an employee assistance programme. The success of these measures will largely depend on the capacity of the Human Resource department in making the organisation more inclusive. Therefore, the Integrated Development Plan of Stellenbosch Municipality as its organisational strategy plays a vital role in this entire process, as it cannot be separated from the Human Resource management strategy of this organisation. These initiatives will only be effective and efficient if there is commitment from top management as well as the employees to ensure a safe work environment for lesbian, gay and bisexual employees.”* Against the backdrop of this, employers are therefore encouraged to emulate above stated methods in order to create discrimination-free workplaces for LGBTs (Jones et al. 2013).

In the United Kingdom, the study conducted by Jones et al. (2013) in the police force revealed “widespread prejudice and hostility toward lesbian, gay and bisexual police officers in nine forces across England and Wales. These serving officers were felt to represent the most serious kind of contamination and threat to the integrity of the British Police Service by their heterosexual colleagues...evidences that just under one-fifth reported experiencing discrimination, with those in small and large forces, those in senior ranks and non-uniformed positions, and those who identify as gay male and Black, Minority Ethnic experiencing the highest levels of victimisation in training, deployment and promotion.”

A key concept of discrimination is well defined by Grogan (2009), as the prohibition of acts or omissions involving unfair discrimination, either directly or indirectly against an employee and could embrace any employment practice which has the effect of unfair discriminating in any way, for whatever motive. The discriminatory practice according to him must impact on the dignity of the affected individual, who must be a member of a group deemed worthy of protection.

There have been numerous judicial pronouncements on sexual orientation in the workplace and the courts have offered definitions and meanings of sexual orientation and its discrimi-

nation. In the case of the National Coalition for Gays and Lesbians Equality v Minister of Justice 1999 (1) SA 6 (CC), sexual orientation is defined as an enduring emotional, romantic, sexual or affection attraction to another person. In the case of Geldenhuys v National Director of Public Prosecution (2009) (1) SACR 1 (SCA), sexual orientation discrimination is viewed as an undesirable inequality. The case of Pearce v Governing Body of Mayfield School (2003) IRLR 512 stated that discrimination of sexual orientation may also manifests itself in the form of verbal abuse, and in some instances like the case of Fourie v Minister of Home Affairs (2000) (1) SA 524 (CC), discrimination based on sexual orientation is by prohibiting same-sex from marrying and having their union registered by the Department of Home Affairs.

In South Africa, despite the prohibition of discrimination on the basis of sexual orientation, discrimination in the form of sexual harassments, killings and corrective rapes is regarded as a serious violation of the victims' rights to life, inherent human dignity and unfair labour practice as enshrined in the South African Constitution but the irony is that it continues to be perpetrated with impunity (Dupper 2001).

### **Dismissal from Work on the Basis of Sexual Orientation**

Dismissal is defined in the LRA as the termination of a contract of employment with or without notice (Vettori 2011). Dismissal in terms of section 187(1) (f) is based on sexual orientation and classified as automatically unfair dismissal (Partington and Van der Walt 2005). As such, employer who terminates an employment contract of an employee on the basis of sexual orientation will be held civilly responsible and there will be consequences under the law (Morrison 2013).

Termination of the contract of employment in terms of section 187(1)(f) of the LRA 1995 is applicable to bisexuals, homosexuals and transsexuals particularly after they must have disclosed preferred sexual orientation to their employers (McGregor 2013). Such dismissals are automatically unfair, and may be referred to the CCMA (McGregor 2013). However, in order to avoid high legal costs, in some instances direct access to the Labour Court may be preferred. Examples of such dismissals based on sexual discrimination referred to the legal justice are:

In the case of Atkins v Datacentrix Pty Ltd (2010) 4 BLLR 351 (LC) the court confirmed the applicant's dismissal to be based on sexual orientation. The facts of the case go thus: the applicant was interviewed for a post as an IT technician. He was successful in the interview and after the contract was concluded he informed the respondent (employer) that he intends to undergo sex-change operation based on his sexual orientation of viewing himself as a female instead of a male. Sexual orientation of transsexuals has to do with changing of organs by way of undergoing an operation to suit a preferred sex. The respondent employer immediately dismissed the applicant. The applicant approached the labour Court and claimed that his dismissal constitutes automatically unfair dismissal in terms of Section 187(1) (f) of the LRA and the court awarded him a compensation for four month. Practices such as being overlooked for promotion, being given baseless write-ups or improvement plans, and wrongful termination of employment because the employer disagrees with one's sexual orientation are differential treatment based on discrimination on the bases of sexual orientation in the workplace. According to Badgett and Jeff (2007), distinction should be drawn between differential treatment which carries no negative connotation, such as providing separate toilet facilities for men and women and that which carries negative connotation like providing toilet facilities for women that are substantially inferior to those provided for men. Differential treatment becomes unfair discrimination if it amounts to treating persons differently in such a way that impairs their fundamental dignity as human beings (Badgett and Jeff 2007).

In Finland, two lesbians, Amy and Linda, living together as a couple were expecting a baby. Excited for them, a colleague circulated a card around the office for everyone to sign. When the manager saw it she commented that she would not have promoted Linda if she had known that she was a lesbian. As her words were against the Human Resource anti-discrimination policy on the basis of sexual orientation, Linda was entitled to a legal claim against her employer.

In Pearce v Governing Body of Mayfield School (2003) IRLR 512, the Employment Appeal Tribunal (EAT) ruled that a female teacher who was subjected to gender-specific homophobic verbal abuse was not unlawfully discriminated on the grounds of sex but on the basis of sexual orientation.

The facts in Pearce's case are: Ms Shirley Pearce was employed as a science teacher at Mayfield Secondary School in Portsmouth from 1975. In 1992, she started to experience verbal abuses of being called a lesbian. These were reported to the deputy headmaster but the abuse continued. Ms Pearce took a long leave as a result of stress emanating from the abuse. In 1995 she went back to work but the abuse still continued. When she complained about the abuses again to the school's authority, the head of Department advised her to look for another job. Ms Pearce consequently took an early retirement. She brought a complaint of unlawful discrimination on the basis of sex; however the employment tribunal referred to it as discrimination of sexual orientation but not sex discrimination and she was given a compensation for sexual orientation on out of court settlement basis.

In the case of *Price Waterhouse v Hopkins* 490 US 228 (1989), the Supreme Court ruled that discrimination of sexual orientation against Ms Hopkins violates Title VII of the Civil Rights Act 17 of 1981. In 1989, Hopkins was employed as a senior manager at an accounting firm, and was denied consideration for partnership because she was not deemed feminine enough by partners who were evaluating her. The court held that, when a plaintiff in a Title VII case proves that her gender played a part in an employment decision, the defendant may avoid a finding of liability by proving by a preponderance of the evidence that it would have made the same decision even if it had not taken the plaintiff's gender into account.

In the case of *Oncale Petitioner v Sundowner Offshore Services Incorporated* 523 US, 75, 118 S. 1998, where an employee was called names suggesting that he is a homosexual and was sometimes assaulted in a sexual manner. Because of the intense discriminations, the employee abandoned the job and filed a complaint against the employer alleging that he was discriminated against in his employment on the basis of sexuality. The Court held that under no circumstances should an employer discriminate against any one on the basis of his or her sexuality and other related forms, and the victim was awarded compensation.

### **Remedies for Discrimination Based on Sexual Orientation in the Workplace**

The internationally accepted norm in claims of sexual orientation is in terms of the UK Em-

ployment Equality Sexual Orientation Regulation (SOR) Reg. 1661 of 2003. The Regulation provides employees with protection against direct and indirect discrimination, and harassment and victimisation on the grounds of their sexual orientation (Stychin 2009). Under this law, there is no need for an individual person to actually be an employee to sue or claim for sexual orientation discrimination, even job applicants may sue as is the case with any form of discrimination based on listed grounds (Opperman 2009).

In South Africa, the EEA provides remedies for disputes concerning unfair discrimination including discrimination on the basis of sexual orientation (Hames 2007). The dispute however must be referred to the CCMA within six months after the act or omission that allegedly constitutes unfair discrimination. If a dispute remains unresolved after conciliation, any of the parties in the dispute may refer it to the Labour Court for adjudication. All the parties may, however, consent to arbitration of the dispute, in which event it may be arbitrated.

The following categories may sue: A job applicant, for example person is turned down for a job because of his/her sexual orientation, an employee, even if in the first day of employment, a contractant and an ex-employee, for example whose ex-employer refused to assist him/her on the grounds of unlawful discrimination whilst he/she was still an employee. However for the purpose of statutory compliance all cases of unfair labour practice such as sexual orientation discrimination should be reported within 90 days in terms of section 191(b)(ii) of the LRA (Chicktay 2010).

A claim for being discriminated against on any of these grounds should be directed to the Employment Tribunal which may award compensation. There is normally compensation for any losses suffered (for example, lost wages if a person has been dismissed) and an award for injury. There is no limit to the amount of compensation that can be awarded for unlawful discrimination including sexual orientation discrimination, (Sexual Orientation Regulation, 2005). If a staff suffers bullying and harassment as a result of sexual orientation at the hands of his/her manager and dismissed thereafter, it will amount to constructively and unfairly dismissal (Hearn and Parkin 2001). In America, in the case of *Golinski v US Office of Personal Management* (1995) 23 C.H.R.R/D/319 (B.C.C.H.R), Golinski was denied

health benefits for her spouse by her employer due to the fact that they were both females. Plaintiff stated that the denial of benefits to her amounts to discrimination based on sexual orientation. Plaintiff was awarded compensation. In circumstances where an employee discloses his/her sexual orientation to an employer and the employer decides to constantly subject him/her to verbal abuses and sometimes threaten with violence which leads the employee to resign the victim will receive compensation if legal actions are taken (Peyton 2003).

### **Anti-Discrimination Laws on Sexual Orientation**

In terms of section 9(4) of the South African Constitution, discrimination of sexual orientation includes discrimination of a protected category (Stychin 1996). The afore-mentioned section provides that no one (person) may unfairly discriminate directly or indirectly against anyone on more grounds including race, gender, sex, pregnancy, marital status, belief, colour, ethnicity, age, disability, religion, conscience, belief, culture, language and sexual orientation (Rojas 2007).

The EEA, corroborates the constitution by providing that no person may unfairly discriminate directly or indirectly against an employee in any employment policy or practice on one or more grounds, including, gender, sex, pregnancy, marital status, ethnicity, social origin, colour, belief, culture, language, political opinion and sexual orientation (Zalesne 2001). Section 185(b) of the LRA, provides the rights of employees not to be subjected to unfair labour practices.

In terms of section 6 of Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), there is provision for prevention and prohibition of unfair discrimination in general (Pityana 2000). Section 8, provides that a person may not be unfairly discriminated against, on the grounds of gender, including gender-based violence, female genital mutilation and preventing females from inheriting family property. Section 10 provides for hate speech as a form of discrimination. Section 11 provides for prohibition of sexual harassment, which in terms of LRA is a form of discrimination (GN 1357 in GG 27865 of 4 August 2005 (Code of Good Practice on handling sexual harassment)).

The alteration of Sex Description and Sex Status Act 49 of 2003 as one of the antidiscrimina-

tion laws allows gender changes operation, provided due procedures have been followed. Section 18(1)(k) of the Employment of Educators Act 76 of 1998, provides that an educator will be charged with misconduct and appear for disciplinary hearing if it is alleged that he/she unfairly discriminated another on the basis of sexual orientation. There is enough evidence of charges of educators for homosexual and sexual assault among most of our boarding school learners in South Africa, particularly in Limpopo and Gauteng girls' schools.

In the USA, employment discrimination is prohibited by a collection of state and federal laws as well as by ordinances of counties and municipalities. The US Constitution, in Article 1 section 7 of 1787, prohibits discrimination by federal and state governments. Discrimination in the private sector is not directly constrained by the Constitution, but has become subject to a growing body of federal and state law. Federal law prohibits discrimination in a number of categories, including recruiting, hiring, job evaluations, promotion policies, training, compensation and disciplinary action. State laws often extend protection to additional categories or employers.

Important anti-discrimination statutes which are more relevant to sexual orientation in the USA are, Defence of marriage Act of 1996 commonly known as (DOMA), Civil Rights Act of 1981, 1964, 1968 and 1991, Equal Pay Act of 1963, Rehabilitation Act of 1973, and Title IX Regulation used by the Department of Education to prohibit sex discrimination in schools. In terms of section 3 of DOMA, marriage is defined as a legal union between one man and one woman. All other unions including same sex relationships were initially outlawed in terms of this section.

In October 2010, federal states challenged the constitutionality of the law in terms of DOMA. In *Baker v Nelson* 291 Minn. 310 (1971), Richard John Baker and James Michael McConnell made an application for a marriage license with the respondent, who was the clerk of Hennepin County District Court. They were denied a license on the grounds that they were not man and woman. This was ultimately cleared by President Barack Obama by declaring Section 3 of DOMA unconstitutional on February 2011. This was good news and reforms to US same sex partners under Barack Obama's administration. United States cities such as, California, Connecticut, Hawaii, Massachusetts, Minnesota, New Jersey, Rhode

Island, Vermont and Wisconsin have passed civil rights laws that include sexual orientation. The US Supreme Court in the case of *Evans v Romer* No. 92-CV-7223, 1993, WL, 19678 had ruled that an amendment to the Colorado State Constitution that would have banned anti-discrimination laws based on sexual orientation violated the equal protection clause of the US Constitution and was, therefore, unlawful (Zamansky 1993). This ruling is a landmark victory for equal rights and may provide an important precedent for future US anti-discrimination cases (Joslin 1997).

In Canada, anti-discrimination laws of sexual orientation such as the Canadian Charter of Rights and Freedom, Canadian Employment Equity Act of 1970 and Canadian Human Rights Act of 1985, are important statutes on discrimination in the workplace (Cohen et al. 1999). The Act forbids discrimination of sexual orientation by federally-regulated employers, landlords and services providers (in the workplace) (Fredman 2011). Federal constitutional protections are provided by the Canadian Charter of Rights and Freedoms. Provincial human rights laws provide protection based on sexual orientation in all Canadian provinces except Alberta, Newfoundland, and Prince Edward Island. Furthermore, in Canada, LGBT are allowed to serve openly in military services (lesbian, gay, bisexual and transsexual). A study of gays and lesbians in the Canadian military has found that after Canada's 1992 decision to allow homosexuals to serve openly in its armed forces, military performance did not decline which implies, that the lifting of restrictions on gay and lesbian service in the Canadian forces has not led to any change in military performance (Restrictions on Gay and Lesbian Service in the Canadian Forces, 1992) (Belkin and McNichol 2000).

According to Adolphe (2003), there is a positive attitude towards the presence of homosexual members in the Canadian Forces because members who are same-sex partners are entitled to the same respect and dignity as heterosexual married couples or common-law partners.

LGBT rights in Canada are more regulated and advanced than in the USA (Smith 2007). Since 2005, Canada has offered civil marriage rights nationwide to same-sex couples. Canada was the third nation in the world where same-sex marriages were legally performed commencing in 2003 in the province of Ontario (Glass et al. 2008). While same-sex sexual activity is not criminalized, the consent age for anal sex is 18 under

section 159 of the Canadian Charter of Rights and Freedoms (Hunt 2009).

## CONCLUSION

It is evident from the literature and cases referred to that the South African Constitution provides ample protection against discrimination on any grounds particularly on the ground of sexual orientation and strictly regulates discrimination tendencies. Employers are enjoined to adhere to the law when dealing with employees otherwise there would be consequences. Due to fair of reprisal, LGBTs are usually afraid to speak out about the harassments they face because they are the minority and they think their voices are mute. However, as a consequence of the constitutional provisions and landmark cases they have protection under the law. But more still need to be done as there is still a huge challenge in providing and enforcing effective protection to the LGBT against homophobic practices as they are, on a daily basis, being harassed, subjected to corrective rape and unlawful killings both in the workplaces and in the society. In South African workplaces, despite the criminalization of homophobia in law, homophobia is still rife.

## RECOMMENDATIONS

One of the means to curb prejudice against perceived so-called non-humans LG BTs is to create awareness and educate the general public that being gay, lesbian, bisexual or transsexual does not make the person less human and as such they must be accorded ample rights and protection enshrined in the law just like any other human being. In the workplace, employers need to create the awareness of equality to all where the sexual rights of employees are respected by bringing perpetrators to disciplinary hearings and face the consequences. Employers also to know that a person's sexual orientation does not affect his/her job functions, except when discriminated. LGBTs except from their sexual orientations are just like other people.

## REFERENCES

- Adja-kwaku C, Addae C, Nkansah J 2013. Workplace Discrimination and its Impact on Employee Performance. From <<http://ir.csuc.edu.gh>> (Retrieved on 6 May 2014).

- Adolphe J 2003. Case against same-sex marriage in Canada: Law and policy considerations. *BYU Journal of Public Law*, 18: 479-488.
- Badgett L, Frank J F 2007. *Sexual Orientation Discrimination: An International Perspective*. New York, USA: Routledge Publishers.
- Bagenstos SR 2006. The structural turn and the limits of antidiscrimination law. *California Law Review*, 94(1): 1-47.
- Barnsley J 2013. Grounding Theology in Quotidian Experiences of Complex Gender: A Feminist Approach. From <[http://scholar.google.co.za/scholar?q=en&as\\_sdt=0%2C5](http://scholar.google.co.za/scholar?q=en&as_sdt=0%2C5)> (Retrieved on 19 April 2014).
- Belkin A, McNichol J 2000. Homosexual personnel policy in the Canadian forces: Did lifting the gay ban undermine military performance? *International Journal*, 55(1): 73-88.
- Blackwell CW 2005. Toward the Protection of Gays and Lesbians in the Workplace: An Examination of Homophobia and Discriminatory Beliefs. From <<http://etd.fcla.edu/CF/CFE0000599/Dissertation.pdf>> (Retrieved on 11 February 2012).
- Califia P 2013. Sex changes: Transgender politics. From <<http://books.google.com/books?sw2zjfy&sig=hszfkryjpnrnf9au9ij8id4#v=onepage&q&f=false>> (Retrieved on 9 May 2014).
- Chicktay MA 2010. Sexual harassment and employer liability: A critical analysis of the South African legal position. *Journal of African Law*, 54(2): 283-297.
- Cohen R, O'Byrne S, Maxwell P 1999. Employment discrimination based on sexual orientation: The American, Canadian and U.K. responses. *Law and Inequality*, 17: 1-12.
- Correia-Hirata N, Kleiner BH 2001. New developments concerning sexual orientation discrimination and harassment. *International Journal of Sociology and Social Policy*, 21(8): 3-19.
- Day NE, Schoenrade P 1997. Staying in the closet versus coming out: Relationships between communication about sexual orientation and work attitudes. *Personnel Psychology*, 50(1): 147-163.
- De Cecco JP 1981. Definition and meaning of sexual orientation. *Journal of Homosexuality*, 6(4): 51-67.
- Deitch EA, Butz RM, Brief AP 2004. *Out of the Closet and Out of a Job? The Nature, Import, and Causes of Sexual Orientation Discrimination in the Workplace*. San Francisco, USA: John Wiley and Sons.
- Drydakis N 2009. Sexual orientation discrimination in the labour market. *Labour Economics*, 16(4): 364-372.
- Dupper O 2001. Justifying Unfair Discrimination: The Development of a General Fairness Defence' in South African (Labour) Law. From <<http://heinonline.org/hol/landingpage?handle=hein.journals/actj2001&div=13&id=&page>> (Retrieved on 14 February 2013).
- Du Toit D 1995. *The Labour Relations Act of 1995*. Durban, South Africa: Butterworth Publishers.
- Fredman S 2011. *Discrimination Law*. London, UK: Oxford University Press.
- Friedman S, Silvestre AJ, Gold MA, Markovic N, Savin-Williams RC, Huggins J, Sell RL 2004. Adolescents define sexual orientation and suggest ways to measure it. *Journal of Adolescence*, 27(3): 303-317.
- Glass CM, Kubasek N 2009. Evolution of same-sex marriage in Canada: Lessons the U.S. can learn from their northern neighbor regarding same-sex marriage rights. *Michigan Journal of Gender and Law*, 15: 143-157.
- Giddens A 2013. *The Transformation of Intimacy: Sexuality, Love and Eroticism in Modern Societies*. Cambridge, UK: Polity Press.
- Gonsiorek JC, Sell RL, Weinrich JD 1995. Definition and measurement of sexual orientation. *Suicide and Life-Threatening Behavior*, 25(1): 40-51.
- Griffith, KH, Hebl MR 2002. The disclosure dilemma for gay men and lesbians: Coming out at work. *Journal of Applied Psychology*, 87(6): 1191-1199.
- Grogan J 2009. *Workplace Law*. Cape Town, South Africa: Juta and Co Ltd.
- Gutto S 2001. *Equality and Non-discrimination in South Africa: The Political Economy of Law and Law Making*. Cape Town, South Africa: Ince (Pty) Ltd.
- Hames M 2007. Sexual identity and transformation at a South African University: Social dynamics. *A Journal of African Studies*, 33(1): 52-77.
- Hearn J, Parkin W 2001. *Gender, Sexuality and Violence in Organizations: The Unspoken Forces of Organization Violations*. London, UK: Sage Publications.
- Hovey JE 2009. Nursing wounds: Why LGBT elders need protection from discrimination and abuse based on sexual orientation and gender identity. *Elder Law Journal*, 17: 95-106.
- Hunt K 2009. Saving the children: (Queer) youth sexuality and the age of consent in Canada. *Sexuality Research and Social Policy*, 6(3): 15-33.
- Hurst CE 2010. Social Inequality, Forms, Causes and Consequences. From <[http://books.google.co.za/books/about/Social\\_Inequality.html?id=M0FVPwAACAAJ&redir\\_esc=y](http://books.google.co.za/books/about/Social_Inequality.html?id=M0FVPwAACAAJ&redir_esc=y)> (Retrieved on 13 September 2013).
- Jones J, Williams ML 2013. Twenty Years On: Lesbian, Gay and Bisexual Police Officers' Experiences of Workplace Discrimination in England and Wales. From <<http://www.tandfonline.com/doi/abs/10.1080/10439463.2013.817998>> (Retrieved on 4 April 2014).
- Joslin C 1997. Equal protection and anti-gay legislation: Dismantling the legacy of Bowers v. Hardwick—Romer v. Evans, 116 S. Ct. 1620 (1996). *Civil Liberties Law Review*, 32: 225-236.
- Morrison DE 2013. You've built the bridge, why don't you cross it - A call for state labor laws prohibiting private employment discrimination on the basis of sexual orientation. *University of Michigan Journal of Law Reform*, 26: 245-256.
- Moshenberg D, Voysey-Braig M, Maoulidi S 2009. Sexual and Gender Based Violence in Africa. From <[http://www.peacewomen.org/assets/file/resources/academic/vaw\\_bulletin83\\_cas\\_fall2009.pdf](http://www.peacewomen.org/assets/file/resources/academic/vaw_bulletin83_cas_fall2009.pdf)> (Retrieved on 4 June 2013).
- Opperman T 2009. An Analysis of the Sexual Orientation Discrimination Framework in the Public Sector: The Case of Stellenbosch Municipality. From <<http://scholar.sun.ac.za/handle/10019.1/2822>> (Retrieved on 6 March 2013).
- Partington J, Van der Walt A 2005. The development of defences in unfair discrimination cases (Part 1). *Obiter*, 26(2): 357-370.



- Peyton PR 2003. *Dignity at Work: Eliminate Bullying and Create a Positive Working Environment*. New York, USA: Brunner Routledge.
- Pincus F L 2006. Understanding Diversity, An Introduction to Class, Race, Gender and Sexual Orientation. From <<http://scholar.google.co.za/scholar?q=Understanding+Diversity%2C+>> (Retrieved on 4 May 2013).
- Pityana B 2000. The promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. *Codicillus*, 44: 2-9.
- Ragins BR 2004. Sexual orientation in the workplace: The unique work and career experiences of gay, lesbian and bisexual workers, *Volume Research in Personnel and Human Resources Management*, 23: 35-120.
- Ragins BR, Miller JS 2003. Heterosexism in the workplace: Do race and gender matter? *Group Organization Management*, 28(1): 45-74.
- Ragins BR, Belle R, Singh R, Cornwell JM 2007. Making the invisible visible: Fear and disclosure of sexual orientation at work. *Journal of Applied Psychology*, 92(4): 1103-1118.
- Rojas H 2007. Legal responses to discriminatory actions: A comparative analysis. *Loyola University Chicago International Law Review*, 5: 127-138.
- Rubio-Aurioles E, Wylie K 2008. Continuing medical education: Sexual orientation matters in sexual medicine (CME). *The Journal of Sexual Medicine*, 5(7): 1521-1533.
- Smith M 2007. Framing same-sex marriage in Canada and the United States: Goodridge, Halpern and the national boundaries of political discourse. *Social Legal Studies*, 16(1): 1 5-26.
- Steingold FS 2013. Employer's Legal Handbook, The: Manage Your Employees & Workplace Effectively. From <[http://books.google.co.za/books?hl=en&lr=&id=e8czmbu1xnoc&oi=fnd&pg=pp2&dq=ndo3dc97wydkm\\_w8madaevrq#v=onepage&q=>](http://books.google.co.za/books?hl=en&lr=&id=e8czmbu1xnoc&oi=fnd&pg=pp2&dq=ndo3dc97wydkm_w8madaevrq#v=onepage&q=>) (Retrieved on February 16, 2014).
- Strossen N 1992. Regulating workplace sexual harassment and upholding the first amendment - avoiding a collision. *Villanova Law Review*, 37: 757-768.
- Stychin CF 1996. Constituting sexuality: The struggle for sexual orientation in the South African Bill of Rights. *Journal of Law and Society*, 23(4): 455-483.
- Stychin CF 2009. Faith in the future: Sexuality, religion and the public sphere. *Oxford Journal of Legal Studies*, 29(4): 729-755.
- Tattie J 2010. Being Gay in the Military. From <<http://metronews.ca/news/ottawa/52239/being-gay-in-the-military/>> (Retrieved on 4 March 2013).
- Veenstra G 2011. Race, gender, class, and sexual orientation: intersecting axes of inequality and self-rated health in Canada. *International Journal for Equity in Health*, 10: 3-21.
- Vettori S 2011. Constructive dismissal and repudiation of contract: What must be proved? *Stellenbosch Law Review*, 22(1): 173-187.
- Wikan U 1997. Man becomes woman: Transsexualism in Oman as a key to gender roles. *New Series*, 12(2): 304-319.
- Wintemute R 1995. *Sexual Orientation and human Rights: The United States Constitution, the European Convention, and The Canadian Charter*. Oxford, UK: Clarendon Press.
- Zalesne D 2001. The effectiveness of the Employment Equity Act and The Code of Good Practice in reducing sexual harassment. *South Africa Journal of Human Rights*, 17: 503-512.
- Zamansky S 1993. Colorado's Amendment 2 and homosexuals' right to Equal Protection of the Law. *Boston College Law Review*, 35: 221-232.