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When Laws Are Not Enough: A Study of the Economic Health of Transgender People and the Need for a Multidisciplinary Approach to Economic Justice

Masen Davis & Kristina Wertz

INTRODUCTION

Local and national reports have documented disproportionately high levels of discrimination facing transgender¹ people in the United States.² Thanks to many years of advocacy, California has adopted numerous legal protections to prohibit discrimination based on gender identity and gender expression.³ California's antidiscrimination provisions covering employment, housing, public accommodations, government programs, and education are frequently cited as a national model for the legal protection of transgender and gender-nonconforming people.⁴

The passage of legislation, however, is not the same as its application. The purpose of social legislation is more than mere enforcement: it is a social contract intended to improve the lives of individuals who may otherwise face discrimination due to social and cultural factors. To fulfill this contract, legislation must be strengthened to increase access to workforce opportunities, stable housing, and safe education, as well as enhance public and private investment in programs and services to support and develop the affected community.

California's Transgender Law Center (TLC) provides legal services for individuals and advocates for the enforcement of laws and policies that support the state's transgender communities.⁵ TLC has been a lead advocate for the creation and enforcement of transgender antidiscrimination legislation in California.⁶

As part of its work, TLC conducted a 2008 survey to assess the economic health of transgender Californians under existing antidiscrimination legislation.⁷ The results of this survey—including high rates of unemployment, poverty, and homelessness in the transgender community—reveal a stark economic reality despite California’s antidiscrimination laws. The results suggest that legislation alone cannot fulfill the social contract promised by antidiscrimination laws.

Legislation is a critical step, but it must be accompanied by integrated enforcement strategies that make the law come to life. To substantively improve the economic status of transgender people, advocates should consider enforcement and implementation strategies that complement nondiscrimination laws. These strategies include legal services, administrative advocacy, public education, and publicly funded programs that increase access to jobs and services for transgender people. Based on the California experience, we recommend the following:

1. Enacting and enforcing antidiscrimination laws (for both employment and housing discrimination) that explicitly protect transgender people;
2. Promoting support for transgender people in the workplace by creating transgender-inclusive workforce development programs;
3. Increasing the quantity and quality of legal support for transgender communities;
4. Promoting housing stability programs for transgender people; and
5. Improving the internal policies and practices of housing services to support transgender people.

Part I of this article explores federal laws regarding transgender and gender-nonconforming people and suggests that a national outlook for transgender legal protections is needed. Part II describes the current transgender protection laws in California, which are among some of the most comprehensive in the country. Part III gives an overview of TLC’s recent study on the economic health of transgender people within California

and how its results reveal continued problems among transgender and gender-nonconforming people, particularly with regard to employment and housing. Part IV argues that the law alone is not enough; instead, community knowledge and empowerment, as well as the education of the legal community, are needed to effectively enforce these laws. Finally, Parts V and VI offer multidisciplinary recommendations for combating transgender discrimination in employment and housing.

I. NATIONAL LANDSCAPE

First, a look at federal law regarding transgender and gender-nonconforming people will provide a basis for comparison between the economic health of the nation as a whole (where legal protection is relatively sparse) and California's transgender community (which boasts the nation's most comprehensive legal protection for transgender individuals).

On the federal level, explicit statutory protections to ameliorate the high rates of gender identity discrimination are within reach, but they are not yet a reality. Efforts to pass the federal Employment Non-Discrimination Act appear promising;⁸ as of this writing, however, there are no federal laws explicitly protecting transgender people in the workplace. In lieu of explicit transgender protections, many circuit courts have held that Title VII's prohibition of discrimination based on sex applies to transgender people.⁹ This legal strategy is promising and increasing in its effectiveness; however, the success of this approach has varied by circuit.¹⁰

In the area of housing, Housing and Urban Development (HUD) Secretary, Shaun Donovan, announced a series of proposals in October 2009 that included transgender people in HUD's core programs including equal access to public housing and equal treatment for FHA-insured mortgage programs.¹¹ These regulatory changes are still in progress and have not yet been tested for efficacy.¹²

Because of the lack of explicit federal protections, advocates in states across the country have prioritized the passage of protective legislation on

the state level.¹³ Jurisdictions across the United States vary widely in their legal protections for transgender people. As of this writing, employment discrimination against transgender people is prohibited in only twelve states and the District of Columbia.¹⁴ With the subtraction of Colorado and the addition of Hawaii, these same thirteen bodies also prohibit discrimination in housing and public accommodation.¹⁵

In 2008, the National Center for Transgender Equality (NCTE) and the National Gay and Lesbian Task Force (NGLTF) conducted a survey to assess the prevalence of discrimination impacting transgender and gender-nonconforming people in the United States.¹⁶ Their survey of 6,450 transgender people indicated rampant economic marginalization within transgender communities, including high rates of poverty, unemployment, and discrimination on the job.¹⁷

The NCTE/NGLTF national study found that transgender people are twice as likely to be unemployed as non-transgender people.¹⁸ Ninety-seven percent of respondents to the NCTE/NGLTF survey experienced harassment or mistreatment at work;¹⁹ nearly half (47 percent) faced an adverse employment action due to their gender identity or expression; and 15 percent earned \$10,000 or less.²⁰

II. THE STATE OF TRANSGENDER LAW IN CALIFORNIA

California enjoys the most comprehensive collection of transgender-specific nondiscrimination provisions in the country. Within the last ten years, California's lesbian, gay, bisexual, and transgender (LGBT) civil rights organizations—including Equality California, the National Center for Lesbian Rights, and TLC—have successfully and consistently advocated for antidiscrimination laws for transgender Californians. Key LGBT and allied state leaders have championed transgender civil rights and worked tirelessly to extend legal protections to people whose gender identity or expression differs from what is stereotypically associated with their assigned sex. California's expansive statutory definition of gender has helped ensure that

transgender Californians are legally protected from discrimination in employment, housing, educational settings, government programs, and insurance.²¹

A. Employment and Housing

Since 2004, California's Fair Employment and Housing Act (FEHA) has explicitly protected transgender Californians from discrimination and harassment by employers who employ five or more persons, as well as landlords.²² The Gender Nondiscrimination Bill (AB 196), authored by Mark Leno, an openly gay state lawmaker, redefined "gender" in FEHA using the definition from California's Hate Crimes statute: "'Gender' means sex, and includes a person's gender identity and gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth."²³ As a result of these solid laws, Californians are clearly protected from discrimination and harassment by qualifying employers and landlords on the basis of assigned sex at birth, gender identity, and gender expression.²⁴

B. Government Programs

Since 2007, California law has prohibited discrimination against transgender people in "any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state."²⁵ Like FEHA, this law uses the California Penal Code definition of gender, which includes gender identity and expression regardless of assigned sex at birth.²⁶ This far-reaching law is the result of legislation brought by lesbian California State Senator Sheila Kuehl in 2006.²⁷ This is an example of the strides made in California's transgender rights movement by LGBT lawmakers who couple gender identity with sexual orientation in legislation. By protecting transgender people from discrimination in government programs, this law has the potential to increase access to homeless shelters, workforce

development programs, drop-in centers, public insurance programs, child support services, and many other programs often used by people with little to no income. Transgender individuals are often excluded from these programs through both explicit and subtextual discrimination.

Achieved through grassroots organizing, public education and leadership by strong LGBT and allied leaders in state and local government,²⁸ these laws undoubtedly impact the physical, financial, and emotional wellbeing of transgender Californians. As a result, many advocates across the country look to California as a model for protective legislation.²⁹ Unfortunately, as information from TLC's report, *State of Transgender California*, indicates, the existence of protective legislation does not necessarily guarantee equality or equal access.

III. ECONOMIC REALITIES FOR TRANSGENDER CALIFORNIANS

In 2008, TLC conducted the first statewide survey assessing the economic health of transgender Californians under existing nondiscrimination laws. The resulting *State of Transgender California* report documented findings from 646 transgender Californians.³⁰ This research, released five years after the state passed transgender-inclusive employment protections, provides a glimpse into the potential benefits and limitations of protective legislation on the economic status of transgender people. Although this legislation is a major leap forward, the transgender community continues to suffer from poverty, unemployment, workplace discrimination, undercompensation (despite high levels of education), and homelessness.

A. Poverty

With California's existing nondiscrimination legislation in effect for over five years, one would hope that transgender Californians have increased their access to jobs and education and would have a similar rate of poverty

to non-transgender Californians. However, the TLC survey results show that such a positive correlation has not materialized.

The research conducted by TLC found disproportionately high poverty levels among transgender Californians. For example, 25 percent of transgender Californians reported incomes under \$10,400, compared to 15 percent of respondents to the NCTE/NGLTF national survey, and 11.7 percent of working-age Californians.³¹ These statistics are especially startling given the fact that the transgender Californians surveyed were more likely than the general population to have high levels of education, which is typically positively correlated with higher earnings.³² In fact, the average annual income for transgender respondents with a bachelor's degree was below \$30,000³³—40 percent less than the \$50,000 average income earned by California college graduates.³⁴

Significant numbers of transgender Californians reported receiving government benefits and income support, such as TANF, WIC, SSI, or general assistance (8 percent); social security, disability, VA benefits, or pensions (14 percent); and unemployment insurance (4 percent).³⁵ Five percent reported no income.³⁶ One in four transgender Californians reported turning to the street economy (sex work and narcotic sales) to increase their income.³⁷

B. Unemployment

TLC's survey also found that transgender Californians experienced disproportionately high rates of unemployment. Fewer than half of the respondents (46 percent) were employed full time.³⁸ In addition, the unemployment rate among transgender Californians was twice as high as the general population—14 percent,³⁹ compared to the state unemployment rate of 7 percent.⁴⁰ Significant gender disparities were also identified. Female-identified/male-to-female transgender people were twice as likely to be unemployed than male-identified/female-to-male transgender people (17 percent versus 19 percent).⁴¹

Even after five years of inclusive state employment protections, nearly half of the transgender Californians surveyed reported some loss of employment linked to their gender identity (48 percent).⁴² More than half of the respondents who lost their jobs due to their gender identity are now employed in a different field,⁴³ and nearly half (47 percent) reported changing their field of work since coming out as transgender or gender nonconforming.⁴⁴ One in three respondents reported making a conscious decision to move job sectors as part of their transition process.⁴⁵

Respondents also reported denials of promotions (13 percent) and being reorganized out of a job (10 percent).⁴⁶ While 15 percent were unsure whether they were unemployed as a direct result of their gender identity, 14 percent reported being fired for this very reason.⁴⁷ This data suggests that employers are losing talented and trained professionals due to direct discrimination or discomfort with transgender employees coming out at work.⁴⁸

It is no surprise that people who have lost a job due to their gender identity are more likely to have a lower income. However, the numbers are extraordinary: one of every three transgender workers who lost a job due to gender identity discrimination earned less than \$10,000, as opposed to one in every five who had experienced job loss not due to gender identity.⁴⁹

C. Workplace Discrimination

The second contributing factor to economic hardship among transgender people is workplace discrimination. Employment discrimination and harassment can lead to high levels of distress, impaired decisionmaking, poor concentration, loss of self-confidence and self-esteem, feelings of social isolation at work, panic attacks, anxiety disorders, depression, social phobia (withdrawal from usual social interaction), deteriorating relationships with family and friends, reduced output and performance, incapacity to work, loss of employment, and sleep disturbances.⁵⁰ All of

these factors significantly impact an individual's ability to succeed at work and earn a competitive income.

Discrimination occurs when an employee suffers unequal or unfair treatment due to his or her legally protected characteristics.⁵¹ As discussed earlier, currently, transgender identity is not expressly protected by federal law, and the extent to which transgender people are protected varies widely from state to state. Even in states with relatively robust antidiscrimination laws, such as California, studies have shown that workplace discrimination and harassment continue to be pervasive.

Significantly, discrimination rates do not vary significantly by job sector,⁵² suggesting that economic disparities for transgender people are systemic and are not constrained to certain social or economic strata. For instance, in the *State of Transgender California* report, two-thirds of respondents (67 percent) reported some form of harassment or discrimination, with the highest reported forms of harassment being verbal, unfair scrutiny or discipline, harassment by coworkers and supervisors, sexual harassment, and lack of access to the appropriate bathroom.⁵³ These forms of discrimination make the workplace an unwelcoming and hostile environment, which affects the transgender individual's ability to be financially stable and undermines their ability to make a living.

Individuals who experienced workplace discrimination reported that they were unable or reluctant to file a complaint. Even in California, despite the high rate of employment discrimination, only 15 percent of those who reported some form of discrimination or harassment filed a complaint.⁵⁴ Lack of awareness regarding existing laws may be a factor: nearly one in three did not know what, if any, protections he or she may have as a transgender person.⁵⁵ Over a quarter of the respondents (26 percent) were afraid they would lose their jobs if they filed a complaint.⁵⁶ Consequently, incidents of transgender-related workplace discrimination are severely underreported, and transgender people rarely access the legal remedies that

are designed to protect them from the loss of income associated with a hostile work environment.

D. Low Earnings Despite High Education Levels

Respondents to TLC's survey have remarkably high education levels;⁵⁷ however, such accomplishment does not uniformly correlate to higher earnings for transgender Californians. For example, even though transgender respondents were almost twice as likely to hold a bachelor's degree as the general population in California, respondents were twice as likely to live below the poverty line. Thirteen percent of those who held bachelor's degrees or higher earned below \$10,400.

High rates of education among the transgender community can be explained by universities' and colleges' relatively safe environment for individuals in transition.⁵⁸ In the same survey, many respondents reported that they felt it was safer to transition at school, indicating both that student health insurance covered their transition and that transitioning from one gender to another at school eased entering or reentering the workforce with their redefined gender identity.⁵⁹

Even though the level of education was generally high among respondents, race and gender did play a role in educational levels. For instance, twice as many respondents who identified as male/female-to-male had a graduate degree than those who identified as female/male-to-female.⁶⁰ Race and gender also play a significant role in the economic wellbeing of black and Latino transgender women, who are less likely to be deemed qualified for jobs requiring college degrees. The survey found that only 16 percent of black and Latino respondents indicated having a bachelor's degree, while over half of the white, Asian, Pacific Islander, and Native American respondents had completed an undergraduate program.⁶¹

Despite relatively high education rates, transgender and gender nonconforming individuals are unable to fully profit from their skills and

abilities due to workplace discrimination and harassment. This, too, affects the ability of transgender people to earn a living-wage income.

E. Housing and Homelessness

Housing is another key factor in the economic health of a community because housing instability is associated with low income.⁶² *The State of Transgender California* report unveiled staggeringly high rates of homelessness: one in five respondents indicated that they have been homeless since they first identified as transgender.⁶³

When transgender people become homeless, they are more likely to remain homeless because many do not have access to safe and accessible homeless shelters, the most important social safety net for helping people back into stable housing.

One in three of the transgender respondents who have been homeless reported being denied access to a shelter.⁶⁴ Of those respondents who did gain access to a shelter, nearly half reported being harassed by other shelter residents, with one in three reporting harassment by the shelter staff.⁶⁵ Such harassment might include acts such as being called by the wrong name and pronoun, being denied access to adequate bathroom and shower facilities, being called derogatory names, or being put in unsafe situations. Ultimately, one in three transgender homeless people decided to leave the shelter system.⁶⁶ These statistics suggest that a class of people who need shelter are being denied shelter at an alarming rate because of their gender identity. This is especially troubling because the shelter system is one of the last safety nets for people facing economic hardship.

Transgender people in California are protected from housing discrimination by state law. Between state protections and federal regulatory proposals, one might expect that housing discrimination and homelessness rates for transgender Californians mirror the general California population, but they do not. Rather, one in five respondents reported facing housing discrimination because of their gender identity or

presentation.⁶⁷ Consequently, obstacles to safe, affordable housing become considerable barriers to the economic stability of the transgender community.

The California report teaches one principle concept: robust antidiscrimination laws are essential to achieving economic justice for transgender individuals, but antidiscrimination laws are not enough. Antidiscrimination laws alone do not get people jobs or housing, and they do not pull people out of poverty. Antidiscrimination laws alone do not educate the general public about gender-identity discrimination, nor do they educate transgender people about their rights. In order to be effective, antidiscrimination laws need to be strengthened with better enforcement, as well as coupled with better education, health, and job training and placement programs.

IV. WHEN THE LAW IS NOT ENOUGH

Explicit antidiscrimination laws protecting transgender people are relatively new across the country, and many advocates look to California as a model for the types of protections they would like to see in other states.⁶⁸ It is important, however, to identify what else needs to be in place beyond the law to ensure that the social legislation does what it is intended to do: improve the lives of transgender people. Only now are we beginning to see the impact of California's legislative framework in the lives of transgender Californians. This new information can help national advocates better assess where to expend precious resources in their home states and on a federal level.

State-level legislation prohibiting discrimination based on gender identity and expression is only useful if it is enforced and supplemented by programs that ameliorate institutionalized bias. The law can only be enforced if (1) transgender people are aware of the law and feel empowered to take advantage of it, and (2) lawyers, judges, and juries are sufficiently educated about the law as well as the purpose it serves.

A. Community Knowledge and Empowerment

A law that few people know about or are unable to access is barren. Nearly one-third (30 percent) of *2008 California Transgender Economic Health Survey* respondents who experienced discrimination or harassment in the workplace did not know that such discrimination is illegal under California law.⁶⁹ Additionally, 27 percent of respondents did not know how or where to file a complaint.⁷⁰ Consequently, transgender people in precarious situations did not access or benefit from the legal protections in place for them. Without community knowledge of legal protections, even well-intentioned laws cannot be enforced.

Even when transgender people were aware of their rights in the workforce, many did not feel empowered to report incidents of employment discrimination. Thirteen percent of those persons were afraid to file a complaint,⁷¹ 26 percent were afraid of losing their jobs,⁷² and 44 percent did not think they would be able to get the assistance they needed.⁷³ This lack of confidence in internal, governmental, and legal complaint processes again illustrates that the impact of protective laws is limited when the law's intended beneficiaries are afraid to use it.

B. Limits of Litigation: Educating Lawyers, Judges, and Juries

In addition to the transgender community, lawyers, judges, and the general public (which forms the jury pool) must be well educated about transgender issues in order for protective laws to truly work. Unfortunately, formal education for the private bar on transgender issues is scarce.⁷⁴ Classes on transgender legal issues, or even LGBT legal issues broadly, are rare in law schools.⁷⁵ Continuing education courses on transgender issues do exist, but are generally conducted by nonprofit organizations with limited resources.⁷⁶

Even if a lawyer is well versed in transgender cultural and legal issues to bring a case on behalf of a transgender client, institutional bias as to who makes a "good" plaintiff may limit a lawyer's willingness to represent many

members of the transgender community. Hesitancy to represent someone with a criminal record (data shows one in four transgender Californians have resorted to sex or narcotic sales for survival⁷⁷), someone with mental health challenges from surviving a trauma (data shows transgender people are thirteen times more likely to be sexually assaulted in prison⁷⁸), or someone experiencing housing instability (data shows that one in five transgender Californians have been homeless⁷⁹) may lead attorneys to turn down someone with a legitimate complaint.

Furthermore, the dire economic status of the transgender community itself might be a barrier to finding legal representation, since extreme poverty decreases the likelihood that someone would be able to hire an attorney and present himself or herself in a “professional manner,” as expected of an “ideal plaintiff.” Given their low rates of employment and income, it is unlikely that many potential transgender litigants would be so gainfully employed that they could take the necessary time off work to appear at depositions, mediations, and trial. All of these factors could feasibly limit a lawyer’s willingness to represent a transgender client.

A lack of education on transgender issues, both within the legal arena and in the general public, is another barrier faced by transgender litigants. Cases involving workplace discrimination against transgender people often involve plaintiffs with complex and shifting identities, as well as complicated perceptions of gender on the part of employers. Because California’s expansive definition of gender is relatively new in the employment law context, judges have not yet had the opportunity to apply this definition. Also, there is no formal education for judges who will ultimately be responsible for adjudicating transgender discrimination cases. Without education about transgender identities and common issues that arise for transgender people in the workplace, judges may lack the tools necessary to fairly decide such cases.

Additionally, a lack of education about transgender identities for the general public has a negative effect on transgender people’s access to the

courts. Without positive and accurate messages about transgender people in the media, jurors may not have a starting point for understanding transgender identities and the barriers faced by transgender people in the workplace. Unfortunately, this is likely to affect the jurors' ability to focus on the discrimination at hand.

In light of these institutional barriers to the legal system, comprehensive, interdisciplinary strategies that engage community members, advocates, organizers, politicians, lawyers, and social service providers are often required to ensure transgender people achieve economic justice. A successful movement for transgender equality integrates legislative advocacy, litigation, policy advocacy, community and movement building, and public education. Each of these strategies has its strengths, and each has its limitations. But, when combined in a multidisciplinary approach, these strategies can work together to support economically marginalized transgender communities.

Multidisciplinary recommendations are essential to address the stark economic reality for transgender communities. These recommendations are based on TLC's contact with over one thousand transgender people per year, as well as the information found in *The State of Transgender California* report. We recognize that transgender issues comprise an emerging area of law and policy and we certainly do not purport to have all the answers to the injustices and inequalities facing transgender people. The common sense recommendations below represent our best thinking as to how to improve the lives of transgender people.

V. MULTIDISCIPLINARY RECOMMENDATIONS TO COMBAT EMPLOYMENT DISCRIMINATION AND UNEMPLOYMENT

According to *The State of Transgender California* report, fewer than half of transgender Californians are employed full time, indicating a significant rate of underemployment and unemployment.⁸⁰ Contrary to the usual correlation between education and income, relatively high levels of

education do not necessarily translate to higher earnings for transgender people. Instead, such workers are facing significant barriers to employment, even under antidiscrimination laws.

These barriers not only affect transgender individuals in their quest for financial security, but impact workforce development. Many transgender workers leave their jobs during or after their transition,⁸¹ taking essential job skills with them. Many of these workers cite harassment or discrimination as a factor in their decision to leave.⁸² While such a job change significantly impacts a transgender individual's earning potential, it also impacts workplaces and businesses. Better enforcement of antidiscrimination laws ultimately will economically benefit employers, who otherwise need to spend money on workforce development to replace these skilled workers.

Based on findings from the 2008 survey as well as direct experience with thousands of transgender Californians, a four-pronged approach will substantively improve the economic status of transgender people in the workplace. We recommend that lawmakers, advocates, employers, and social service providers:

1. Enact and enforce antidiscrimination laws that explicitly protect transgender people;
2. Educate transgender workers, the mainstream workforce, and attorneys about antidiscrimination laws, including educational programs in the workplace;
3. Foster the creation of transgender-friendly policies within the public and private sectors so that workplaces will recruit and retain transgender employees; and
4. Prepare workforce development programs to address the unique barriers faced by transgender jobseekers.

A. Enact and Enforce Antidiscrimination Laws that Explicitly Protect Transgender People

The U.S. Congress as well as state legislative bodies should enact workplace antidiscrimination laws that include gender identity and gender expression. Antidiscrimination laws have a far-reaching effect in transforming the culture of workplaces into supportive environments for protected workers.⁸³ We see the clear benefit of such laws in comparing the national rate of discrimination (97 percent⁸⁴) to the rate in California (67 percent⁸⁵), a state with inclusive legislation. Furthermore, antidiscrimination laws have been shown to improve the economic status of protected groups throughout the twentieth century.⁸⁶

As discussed at length above, however, antidiscrimination laws alone do not appear to solve rampant unemployment in transgender communities without adequate enforcement. Therefore, after such laws are passed, federal and state agencies charged with enforcement must be trained and well-funded. Typically, administrative government employees are responsible for receiving, investigating, and substantiating claims of discrimination. When these administrative agencies have the training and the resources necessary to serve transgender complainants, it is far more likely that staff will understand claims based on gender identity and expression and process them in a competent manner.

B. Educate the Legal Community and the Transgender Workforce About Antidiscrimination Laws

Private attorneys and judges are critical in the enforcement of nondiscrimination laws. In order to effectively litigate and decide cases involving transgender plaintiffs, lawyers and judges must be educated on transgender issues, with particular emphasis on the common issues that arise in the workplace such as name and pronoun usage, restroom access, violations of privacy, and harassment. Advocates can create materials and conduct trainings explaining the legal concepts of gender identity and

expression in order to better equip attorneys to assess cases brought by transgender employees. With these materials in hand, attorneys can better litigate cases without taking positions that may inadvertently limit the rights of other litigants.

Furthermore, low numbers of transgender people are reporting discrimination even where protective laws exist—an unlikely correlation leading us to believe that discriminatory acts frequently go unreported. Therefore, we suggest that transgender workers be educated about their rights to be free from discrimination and harassment on the job. By equipping transgender workers with information about the law and the common issues that arise in the workplace, as well as how to address discrimination, transgender community members are more likely to be empowered to bring complaints when discrimination occurs.

C. Foster the Creation of Transgender-Friendly Policies that Recruit and Retain Transgender Employees

Policy change in the workplace is a critical step to achieving economic justice for transgender people. In addition to externally enacted protective legislation, internal corporate policies create a culture of support for transgender workers and people transitioning on the job.

The State of Transgender California report and other studies show that high percentages of transgender workers experience discrimination and harassment, such as sexual harassment, lack of appropriate restroom access, restricted interaction with customers or clients, and verbal harassment by coworkers. Based on this data and interaction with transgender workers who have experienced workplace discrimination, we know these are common issues that arise for transgender workers. To address these common issues, we suggest that workplaces create and maintain written antidiscrimination policies regarding name and pronoun usage, restroom access, dress codes, sex segregated job assignments, addressing discrimination by other coworkers and clients, and other common issues. By posting these

antidiscrimination policies in a manner that is visible to all staff and applicants and periodically distributing the policies to all staff and new hires, employers inform employees of their rights and obligations and are more likely to create a culture of support for transgender employees. Additionally, transgender workers would more likely be hired and retained if all staff and management, including recruiters and human resource employees, are well-trained on laws and policies designed to eliminate gender identity bias in the workplace.

Because job loss has a lasting effect on income levels for years to come,⁸⁷ it is critical that workplace policies and employment programs support transgender people in retaining their employment. In order to help transgender workers achieve higher levels of income, workforce services should increase employment counseling to help transgender jobseekers to stay in the same field after a gender transition and provide support to jobseekers who have previously experienced workplace discrimination. Human resources personnel, antidiscrimination investigators, and private attorneys educated on the legal rights of transgender and gender nonconforming workers are best equipped to assist with complaints brought by transgender workers.

D. Prepare Workforce Development Programs to Address the Unique Barriers Faced by Transgender Jobseekers

Transgender jobseekers and workers have unique needs when it comes to job searches and job retention support. For example, many respondents indicated that they have identity documents and references that do not match their current gender identity and name, creating a barrier to employment.⁸⁸ Additionally, many face issues such as having licenses, degrees, and work histories in former names, as well as criminal records or resumes showing long periods of unemployment due to discrimination. Perhaps recognizing these barriers, more than 75 percent of respondents to the *2008 California Transgender Economic Health Survey* stated they were

interested in workplace assistance.⁸⁹ Because of the unique issues facing transgender jobseekers and the high levels of interest in job search support, we suggest that state and local governments prioritize transgender-specific or transgender-inclusive employment programs.

State and local governments can increase transgender community members' access to critical workforce development services and help ameliorate unemployment by ensuring that policymakers in workforce development fields are educated about the need for transgender-inclusive employment programs.⁹⁰ Also, state and local governments can invest in workforce development programs that address specific barriers facing transgender workers and jobseekers, especially transgender women, youth, and people of color who have higher levels of poverty.⁹¹

Competent legal service programs that offer transgender workers and jobseekers help in reporting discrimination and harassment, and that offer assistance with changing identity documents, are critical to helping transgender people find and maintain employment. By working to educate private attorneys on the legal rights of transgender and gender nonconforming workers and offering resources for technical assistance when serving transgender clients, advocates can expand transgender people's ability to take advantage of protective legislation.

Therefore, existing workforce development agencies and programs should enact and enforce transgender-friendly policies, including training for staff that addresses the unique needs of transgender jobseekers, explicit and visible nondiscrimination policies, and competent legal service programs.

VI. MULTIDISCIPLINARY RECOMMENDATIONS TO COMBAT HOMELESSNESS AND DISCRIMINATION IN HOUSING

The *State of Transgender California* report indicates a correlation between low rates of home ownership and high levels of housing discrimination, despite existing antidiscrimination legislation.⁹² Even more

alarming is the statistic that 25 percent of transgender people report that they are or have been homeless.⁹³ Furthermore, those who reported homelessness also reported high levels of discrimination and violence in the shelter system,⁹⁴ which serves as society's most important safety net for economically vulnerable people. These numbers indicate an urgent need to train shelter staff on existing law and enforce antidiscrimination policies in order to increase the safety of transgender homeless people. Rampant homelessness and unstable housing must be addressed in order for the transgender community to achieve economic justice.

Like the field of employment discrimination, protective legislation is a critical starting point, but it is not the end. Legal enforcement, comprehensive policy change, and programmatic services are crucial components to reducing economic and social marginalization. By educating attorneys and community members alike about the state of the law, advocates can help equip homeless shelters to serve transgender clients. Additionally, the more housing programs that are welcoming to transgender clients, the more willing transgender people will be to take advantage of these vital support systems.

A. Enact and Enforce Laws and Policies to Reduce Discrimination in Housing and Homeless Services

As in the employment context, federal and state governments must pass legislation prohibiting discrimination and harassment based on gender identity and expression in housing and public accommodations. Legislation that explicitly prohibits homeless shelters from denying services based on gender identity would be a great starting point to ensuring equal access.

Once protective legislation is passed, active enforcement by competent staff at federal and state agencies, as well as competent private attorneys, can help give the laws meaning. As in the employment context, staff and management at government enforcement agencies have the authority to receive, investigate, and substantiate claims of discrimination based on

gender identity and expression. If these government employees are educated about the realities of housing discrimination and harassment against transgender people, and providing culturally competent assistance to transgender complainants, they will be better equipped to enforce protective laws and help ameliorate discrimination against transgender people in homeless shelters.

B. Foster the Creation of Transgender-Friendly Policies Within Homeless Shelters in Order to Improve Services to Transgender Clients

In addition to protective legislation, internal policies at housing services can support transgender people in need of housing. Homeless shelters and other social services can enact inclusive policies to address the unique needs of transgender clients. For example, a homeless shelter can enact policies regarding appropriate name and pronoun usage, restroom access, access to women's shelters by transgender women, harassment by other shelter residents, and other common concerns in order to show they are a safe and welcoming shelter for transgender people.⁹⁵ Additionally, if shelter staff members are trained on common issues that arise for transgender shelter residents, they can help reduce barriers to transgender people accessing their services. Finally, social services (particularly homeless and risk-reduction programs) should be well funded to address the unique needs of homeless and near-homeless transgender people living in poverty.

C. Promote Housing Programs to Address the Unique Barriers Faced by Transgender People in Seeking Stability

Because of the high rate of poverty among transgender communities, stable housing should be consistently addressed by advocates working with transgender people through the promotion of accessible public housing programs. In order to address low rates of housing stability, advocates and social service providers can reach out to transgender people about home ownership programs, banking support services, and other programs that

support economic stability. Furthermore, by giving transgender people access to comprehensive “know your housing rights” training and written materials, we can help address persistent discrimination, as well as empower transgender people to take advantage of the legal support they do have. Finally, private attorneys and housing advocates who are educated about the legal rights of transgender and gender-nonconforming tenants can work to increase enforcement of protective housing laws.

CONCLUSION

As advocates look to legal models that improve the lives of transgender individuals, California’s comprehensive legislation is seen as an important example. However, enacting social policy legislation is only one step. Methods of enforcement and implementation are also extremely necessary.

Economic equality for transgender and gender-nonconforming people involves a number of key factors including equal employment opportunities, housing access, educational opportunities, and a supportive safety net. TLC’s review of the law’s impact on transgender Californians reveals the need to comprehensively integrate legislation with service development, education, and legal enforcement. If social services are equipped to provide transgender people with resources to address issues like workplace discrimination, identity documentation, housing discrimination, and criminal justice support, they can begin to help their transgender clients obtain the economic benefits they deserve and justice demands.

¹ This article uses the term “transgender” as an umbrella term describing people whose gender expression is nonconforming or whose gender identity is different from their birth assigned gender. “Gender identity” is one’s internal, deeply felt sense of being male, female, something other, or in between. “Gender expression” is an individual’s behavior and characteristics, such as his or her appearance, dress, mannerisms, speech patterns, and social interactions, all of which are generally perceived as masculine or feminine. In this article, we also use the term “gender nonconforming” to describe people who have, or are perceived to have, gender characteristics or behaviors that do not conform to

traditional or societal expectations. Gender-nonconforming people also fall under the transgender umbrella for purposes of this article.

² It can be difficult to assess the wellbeing of transgender and gender-nonconforming people. Transgender activists and allies have long expressed concerns about high rates of discrimination, unemployment, and poverty in the United States; however, without inclusion in national data collection vehicles, such as the U.S. Census and state population surveys, we lack the objective data needed to document the economic status of transgender and gender-nonconforming people. Advocacy organizations have attempted to bridge this gap by conducting independent research to understand the legal and policy needs of this community. Two key reports—one at the national level, and one within California—are referred to throughout this article and are referenced here. See E. HARTZELL, M.S. FRAZER, K. WERTZ, & M. DAVIS, *THE STATE OF TRANSGENDER CALIFORNIA: RESULTS FROM THE 2008 CALIFORNIA TRANSGENDER ECONOMIC HEALTH SURVEY* (Transgender Law Center, 2009), available at http://www.transgenderlawcenter.org/pdf/StateTransCA_report_2009Print.pdf [hereinafter *STATE OF TRANSGENDER CA REPORT*]; NAT'L CENTER FOR TRANSGENDER EQUALITY AND NAT'L GAY AND LESBIAN TASK FORCE, *PRELIMINARY FINDINGS, NAT'L TRANSGENDER DISCRIMINATION SURVEY* (2009), available at http://www.thetaskforce.org/downloads/release_materials/tf_enda_fact_sheet.pdf [hereinafter *NAT'L TRANSGENDER DISCRIMINATION REPORT*]; SAN FRANCISCO BAY GUARDIAN & TRANSGENDER LAW CENTER, *GOOD JOBS NOW! SAN FRANCISCO: A SNAPSHOT OF THE ECONOMIC HEALTH OF THE SAN FRANCISCO'S TRANSGENDER COMMUNITIES* (2006), available at <http://www.transgenderlawcenter.org/pdf/Good%20Jobs%20NOW%20report.pdf>; CHRISTOPHER DALEY & SHANNON MINTER, *TRANS REALITIES: A LEGAL NEEDS ASSESSMENT OF SAN FRANCISCO'S TRANSGENDER COMMUNITIES* (2003).

³ **Employment:** CAL. GOV'T CODE § 12949 (2005), CAL. GOV'T CODE § 12926(p) (2005), CAL. GOV'T CODE § 12940(a) (2005); **Housing:** GOV'T. CODE § 12955(a), CAL. GOV'T CODE § 12926(p); **Public accommodations:** CAL. CIV. CODE § 51(b) (2007), CAL. CIV. CODE § 51(e)(4) (2007); **Insurance:** CAL. HEALTH AND SAFETY CODE § 1365.5(a), CAL. HEALTH AND SAFETY CODE § 1365.5(b), CAL. HEALTH AND SAFETY CODE § 1365.5(e); **Schools:** CAL. EDUC. CODE § 210.7 (2007), CAL. EDUC. CODE § 200 (2007); **Hate crimes:** CAL. PENAL CODE § 422.55(a)(2) (2005). Many of these protections stem from the state's expansive definition of "gender" which "means sex and includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth." CAL. PENAL CODE § 422.56(c).

⁴ PAISLEY CURRAH & SHANNON MINTER, *TRANSGENDER EQUALITY: A HANDBOOK FOR ACTIVISTS AND POLICY MAKERS* 44 (2000).

⁵ Transgender Law Center, *Mission/History*, www.transgenderlawcenter.org/mission_history.html (last visited Apr. 4, 2010).

⁶ *Id.*

⁷ *STATE OF TRANSGENDER CA REPORT*, *supra* note 2.

⁸ Lisa Keen, *Leaders: ENDA Will Get House Vote This Month*, BAY AREA REPORTER, March 4, 2010, available at <http://ebar.com/news/article.php?sec=news&article=4590>.

⁹ See, e.g., *Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir. 2005); *Smith v. City of Salem*, 378 F.3d 566, 573 (6th Cir. 2004); *Rene v. MGM Grand Hotel, Inc.*, 305 F.3d 1061, 1069 (9th Cir. 2002); *Bibby v. Phila. Coca Cola Bottling Co.*, 260 F.3d 257, 262–63 (3d Cir. 2001); *Schmedding v. Tnemec Co., Inc.*, 187 F.3d 862, 865 (8th Cir. 1999); *Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 261 n.4 (1st Cir. 1999); *contra Hamm v. Weyauwega Milk Prods., Inc.*, 332 F.3d 1058, 1062 (7th Cir. 2003); *Simonton v. Runyon*, 232 F.3d 33, 38 (2d Cir. 2000).

¹⁰ For a comprehensive list of U.S. Supreme Court, circuit courts, district courts, and secondary sources, see National Center for Lesbian Rights, *Federal Cases Addressing Whether Discrimination on the Basis of Gender Non-Conformity and/or Transgender Status is a Form of Discrimination on the Basis of Sex*, Sept. 2009, available at http://www.nclrights.org/site/DocServer/Federal_Cases_Addressing_Whether_Discrimination_on_the_B.pdf?docID=3661.

¹¹ Brian Sullivan, *Obama Administration to Ensure Inclusion of the LGBT Community in HUD Programs*, HUD.GOV, Oct. 21, 2009, http://portal.hud.gov/portal/page/portal/HUD/press/press_releases_media_advisories/2009/HUDNo.09-206 (last visited Apr. 10, 2010).

¹² *Id.*

¹³ See, e.g., Equality Federation, www.equalityfederation.org (last visited Apr. 10, 2010). Equality Federation is a national alliance of state-level organizations working toward LGBT equality on a state-by-state basis.

¹⁴ California, Colorado, District of Columbia, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington. NATIONAL GAY AND LESBIAN TASK FORCE, STATE NON-DISCRIMINATION LAWS IN THE U.S. (2009) available at http://www.thetaskforce.org/downloads/reports/issue_maps/non_discrimination_7_09_color.pdf [hereinafter NAT'L GAY & LESBIAN TASK FORCE] (listing federal cases addressing whether discrimination on the basis of gender nonconformity or transgender status is a form of discrimination on the basis of sex).

¹⁵ **California:** CAL. GOV'T CODE. § 12940 (West 2010) (employment), CAL. GOV'T CODE. § 12955 (West 2010) (housing), CAL. CIV. CODE § 51 (West 2010) (public accommodation), COLO. REV. STAT. § 24–34–402 (2010) (employment); COLO. REV. STAT. § 24–34–502 (2010) (housing); **Hawaii:** HAW. REV. STAT. § 489 (2010) (public accommodation), HAW. REV. STAT. § 515 (2010) (housing); **Illinois:** 775 ILL. COMP. STAT. 5/1-103 (2010) (employment, housing, public accommodation, and financial credit); **Iowa:** IOWA CODE § 216 (2010) (employment, housing, public accommodation, and education); **Maine:** ME. REV. STAT. ANN. HUMAN RIGHTS ACT 5, § 4551 (West 2010) (employment, housing, and public accommodation); **Minnesota:** MINN. STAT. § 363A (2010) (employment, housing, public accommodation, public service, and education); **New Jersey:** N.J. STAT. ANN. § 10:5–12 (West 2010) (employment and public accommodation), N.J. STAT. ANN. § 10:5–4 (West 2010) (housing); **New Mexico:** N.M. STAT. ANN. § 28–1–7 (2010) (employment, housing, and public accommodation); **Oregon:** OR. REV. STAT. § 659A.030 (2010) (employment), OR. REV. STAT. § 659A.421 (2010) (housing), OR. REV. STAT. § 659A.403 (2010) (public accommodation); **Rhode Island:** R.I. GEN. LAWS § 28–5–7 (2010) (employment), R.I. GEN. LAWS § 34–37–4

(2010) (housing), R.I. GEN. LAWS § 11–24–2 (2010) (public accommodation); **Vermont:** VT. STAT. ANN. tit. 9 § 495 (2010) (employment), VT. STAT. ANN. tit. 9 § 4503 (2010) (housing), VT. STAT. ANN. tit. 9 § 4502 (2010) (public accommodation); **Washington:** WASH. REV. CODE § 49.60.180 (2010) (employment), WASH. REV. CODE § 49.60.222–24 (2010) (housing), WASH. REV. CODE § 49.60.215 (2010) (public accommodation); **District of Columbia:** D.C. CODE ANN. § 2–1402.11 (2010) (employment), D.C. CODE ANN. § 2–1402.21 (2010) (housing), D.C. CODE ANN. § 2–1402.31 (2010) (public accommodation), D.C. CODE ANN. § 2–1402.41 (2010) (education).

¹⁶ NAT'L TRANSGENDER DISCRIMINATION REPORT, *supra* note 2, at 1.

¹⁷ *Id.*

¹⁸ *See id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ CAL. GOV'T CODE § 12940 (West 2010) (employment); CAL. GOV'T CODE § 12955 (West 2010) (housing); CAL. CIV. CODE § 51 (West 2010) (public accommodation); CAL. GOV'T CODE § 11135(a) (2010) (government program); CAL. HEALTH & SAFETY CODE § 1365.5(a), CAL. HEALTH & SAFETY CODE § 1365.5(b) (insurance), CAL. HEALTH & SAFETY CODE § 1365.5(e) (insurance). In the interest of maintaining a focus on employment and housing, this article does not take on legal protections in education and insurance in detail.

²² CAL. GOV'T CODE § 12926(p).

²³ CAL. PENAL CODE § 422.56(c); CAL. GOV'T CODE § 12926(p).

²⁴ CAL. GOV'T CODE § 12926(p).

²⁵ CAL. GOV'T CODE § 11135(a).

²⁶ *Id.*

²⁷ Sheila Kuehl, Legislative Accomplishments (2010), <http://www.sheilakuehl.org/about-sheila-2/legislative-accomplishments> (last visited Apr. 10, 2010).

²⁸ Transgender Law and Policy Institute, *California Becomes Fourth State to Enact Anti-Discrimination Protections for Transgender People*, Aug. 3, 2003, <http://www.transgenderlaw.org/carelease.htm>; Equality California, *Governor Signs Bill Prohibiting Discrimination in California State Programs*, Aug. 29, 2006, <http://www.eqca.org/site/apps/nl/content2.asp?c=9oINKWMCF&b=1716333&ct=2904117>.

²⁹ *See* CURRAH & MINTER, *supra* note 4.

³⁰ STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 4.

³¹ STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 7; NAT'L TRANSGENDER DISCRIMINATION REPORT, *supra* note 2, at 2.

³² STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 6.

³³ *Id.* at 7.

³⁴ American Community Survey, *2007 American Community Survey 1-Year Estimates, California Table S1501. Educational Attainment*, available at http://factfinder.census.gov/servlet/STTable?ds_name=ACS_2007_1YR_G00_&q_r_name=ACS_2007_1YR_G00_S1501&_lang=en. (last visited May 07, 2010).

³⁵ STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 8.

³⁶ *Id.*

³⁷ *Id.*

³⁸ STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 9.

³⁹ *Id.*

⁴⁰ CALIFORNIA DEPT. OF FINANCE, FINANCE BULLETIN, JULY 2008 (July 2008), http://www.dof.ca.gov/finance_bulletins/2008/july/.

⁴¹ STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 9.

⁴² *See id.*

⁴³ This is compared to the 31 percent of those persons who have never been unemployed due to their gender identity. *Id.* at n.17.

⁴⁴ *See id.* at 9.

⁴⁵ *See id.*

⁴⁶ *See id.*

⁴⁷ *See id.*

⁴⁸ It is possible that the data above does not represent all transgender people because some people identified as gender nonconforming or transgender before entering the workforce and have not had to change fields.

⁴⁹ STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 9.

⁵⁰ EQUAL EMPLOYMENT OPPORTUNITIES TRUST, HARASSMENT AND BULLYING IN THE WORKPLACE TOOLKIT (2007), <http://www.eeotrust.org.nz/toolkits/harassment.cfm>.

⁵¹ *See* U.S. Equal Employment Opportunity Commission, *Prohibited Employment Policies/Practices*, <http://www.allbusiness.com/human-resources/workplace-health-safety-employment/1317-1.html> (last visited May 24, 2010); CA Dep't. of Fair Employment & Housing, *Discrimination is Against the Law* (Apr. 2004), <http://www.dfeh.ca.gov/DFEH/Publications/PublicationDocs/DFEH-151.pdf>.

⁵² STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 10. There is an exception for government workers, who are less likely to experience verbal harassment or be reorganized out of a job.

⁵³ *See id.* at 9–10.

⁵⁴ *See id.*

⁵⁵ *See id.*

⁵⁶ *See id.*

⁵⁷ *Id.* at 6.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *See id.*

⁶² *See* National Coalition for the Homeless, *Access to Workforce Services*, http://www.nationalhomeless.org/advocacy/access_workforce.html (last visited Apr. 4, 2010).

⁶³ *See* STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 13.

⁶⁴ *See id.*

⁶⁵ *See id.*

⁶⁶ *See id.*

⁶⁷ *Id.*

⁶⁸ See CURRAH & MINTER *supra* note 4, at 44; NAT'L GAY & LESBIAN TASK FORCE *supra* note 14.

⁶⁹ STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 10.

⁷⁰ *See id.*

⁷¹ *See id.*

⁷² *See id.*

⁷³ *See id.*

⁷⁴ See State Bar of California, Online Catalogue, www.legalspan.com/calbar/onlinecle.asp (last visited May 7, 2010). A search of the CLE courses available online through the California State Bar on May 7, 2010 yielded only one course that touches upon transgender legal issues of the 1,025 courses available.

⁷⁵ See Law School Admission's Counsel, <http://www.lsac.org/SpecialInterests/lgbt-chart.asp#> (last visited May 07, 2010) (listing law schools offering LGBT-specific courses). A comprehensive search revealed no source listing transgender-specific law school courses. The only transgender-specific law school course that the authors are aware of is "Critical Perspectives on Transgender Law" at the Seattle University School of Law taught by Dean Spade. See Seattle University School of Law, Faculty Profile of Dean Spade, <http://www.law.seattleu.edu/x3006.xml> (last visited May 07, 2010). See also Dean Spade, *Be Professional!*, 33 HARV. J.L. & GENDER 71 (2010).

⁷⁶ See, e.g., Transgender Law Center, *Transitioning the Bar*, <http://transgenderlawcenter.org/transitioning-the-bar.html> (last visited Apr. 4, 2010) (describing program created in response to a lack of resources on transgender law for private practitioners).

⁷⁷ STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 8.

⁷⁸ VALERIE JENNESS ET AL., VIOLENCE IN CALIFORNIA CORRECTIONAL FACILITIES: AN EMPIRICAL EXAMINATION OF SEXUAL ASSAULT, CENTER FOR EVIDENCE-BASED CORRECTIONS 8 (University of California 2007).

⁷⁹ STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 13.

⁸⁰ *Id.* at 8–9.

⁸¹ *See id.* at 9. Forty-seven percent of respondents reported having changed the type of job or field in which they were employed since they have come out as transgender or gender nonconforming.

⁸² *Id.* at 9–10.

⁸³ Scott Burris & Kathryn Moss, *The Employment Discrimination Provisions of the Americans with Disabilities Act: Implementation and Impact*, 25 HOFSTRA LAB. & EMP. L.J. 1, 4 (2007) (citing Susanne M. Bruyere et al., *The Impact of Business Size on Employer ADA Response*, 49 REHABILITATION COUNSELING BULL. 194, 195, 199–200, 202 tbl.4 (2006); SCOTT BURRIS & KATHRYN MOSS, A ROAD MAP FOR ADA TITLE I RESEARCH, IN EMPLOYMENT, DISABILITY, AND THE AMERICANS WITH DISABILITIES ACT: ISSUES IN LAW, PUBLIC POLICY, AND RESEARCH 19, 36 (Peter David Blanck ed., 2000)); Susan Bisom-Rapp, *An Ounce of Prevention Is a Poor Substitute for a Pound of Cure: Confronting the Developing Jurisprudence of Education and Prevention in Employment Discrimination Law*, 22 BERKELEY J. EMP. & LAB. L. 1, 12 (2001) (citing

Kolstad v. ADA, 527 U.S. 534, 545 (1999); Albemarle Paper Co. v. Moody, 422 U.S. 405, 417 (1975)).

⁸⁴ NAT'L TRANSGENDER DISCRIMINATION REPORT, *supra* note 2.

⁸⁵ STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 9.

⁸⁶ Philip Harvey, *Combating Joblessness: An Analysis of the Principal Strategies that Have Influenced the Development of American Employment and Social Welfare Law During the 20th Century*, 21 BERKELEY J. EMP. & LAB. L. 677, 755 (2000) (citing John J. Donohue III & James Heckman, *Continuous Versus Episodic Change: The Impact of Civil Rights Policy on the Economic Status of Blacks*, 29 J. ECON. LIT. 1603 (1991)).

⁸⁷ *Id.* at 10.

⁸⁸ *See id.*

⁸⁹ STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 10.

⁹⁰ *See, e.g.*, Transgender Economic Empowerment Initiative, www.teeisf.org (last visited Apr. 10, 2010).

⁹¹ *Id.* at 7.

⁹² STATE OF TRANSGENDER CA REPORT, *supra* note 2, at 13.

⁹³ *See id.*

⁹⁴ *See id.*

⁹⁵ Lisa Mottet & John M. Ohle, *Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People* (The National Coalition for the Homeless and the National Gay and Lesbian Task Force Policy Institute 2003).