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Access to the Labor Market

KEY FINDINGS

Canada, followed by Costa Rica, has the most advanced legal framework for protecting sexual and gender minorities in the labor market.

Countries tend to have better legal frameworks for protecting employees from sexual orientation and gender identity (SOGI) discrimination in employment in the public sector than in the private sector.

Only Canada and Mozambique have enacted laws that explicitly prohibit employers from discussing sexual orientation, gender identity, or marital status during the recruitment process.

Few countries offer equal benefits and pay for all employees, regardless of their SOGI. Canada and Uruguay have the most advanced reporting mechanisms for filing an employment-related discrimination claim on SOGI grounds in the public and private sectors.

It is advised that countries amend existing laws or create more inclusive and protective legal frameworks in the workplace to explicitly protect people from discrimination on the basis of sexual orientation, gender identity and expression, and sex characteristics.

Importance of the Access to the Labor Market Indicator Set

The elimination of discrimination in employment and occupation is a basic principle of the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work (ILO 1998). The declaration provides that the right to work and the nondiscriminatory access to employment are universal and fundamental rights, regardless of a country's level of economic development. Equal access to the labor market and security in the workplace ensures a sense of belonging, allowing individuals to pursue their dreams and achieve their potential. Conversely, discrimination based solely on a person's identity (rather than skills or performance) decreases productivity and leads to increased unemployment (Panter and others 2017). Equality of opportunity in the labor market also allows individuals to choose their personal and professional paths. But to ensure equal access to the labor market, countries should eliminate legal barriers and adopt protective legislation. Only then will the affected population feel truly free to make economic decisions that increase labor productivity and, ultimately, economic output (Badgett 2014).

Employment discrimination is a very real concern to lesbian, gay, bisexual, transgender, and intersex (LGBTI) people. LGBTI discrimination not only harms LGBTI citizens, but it is also bad for employers and negatively impacts human capital and economies.

—Crosby (2012)

Awareness of the extent of violence and discrimination against sexual and gender minorities has risen in the past decade. Even in countries with more progressive legal frameworks, deep-rooted stigma and negative stereotypes perpetuate discrimination against sexual and gender minorities in the workplace (UN OHCHR 2017). Discrimination and fear of discrimination can negatively affect the wages, job opportunities, mental and physical health, productivity, and job satisfaction of sexual and gender minorities (Sears and Mallory 2011). Furthermore, sexual and gender minority discrimination is also bad for employers (Crosby 2012). Statistically, a diverse workforce boosts ideas and problem-solving approaches; it also increases innovation, potentially appealing to new markets (UN OHCHR 2017).

The current global situation regarding workplace inclusiveness leaves much to be desired. According to a 2017 United Nations report, of the 193 countries reviewed, only 67 had banned discrimination based on sexual orientation in the workplace (UN OHCHR 2017). Similarly, in a World Bank study conducted in Thailand, 77 percent of transgender,

49 percent of gay, and 62.5 percent of lesbian respondents reported that employers rejected their job applications because they were sexual or gender minorities (World Bank 2018). A 2016 study in the United States found that lesbian, bisexual, and transgender women were 30 percent less likely to get a call-back from potential employers after job interviews (Mishel 2016).

Countries that explicitly prohibit discrimination against sexual and gender minorities in the workplace are likely to experience higher LGBTI employee motivation and productivity. According to the theory of “anticipated discrimination,” individuals who have experienced past discrimination due to their identity often expect that others will stigmatize them in the future if their identity is revealed (Ng, Schweitzer, and Lyons 2012). Sexual and gender minorities expect disparate treatment in the workplace because of their SOGI, leading to decreased confidence and self-esteem as well as to potentially diminished socioeconomic opportunities. A study of postsecondary students in Canada found that sexual and gender minorities are less likely to apply for a job, have lower career earnings expectations, and are prone to accepting less-than-ideal jobs (Ng, Schweitzer, and Lyons 2012). A lack of labor market antidiscrimination laws can result in an expectation on the part of sexual and gender minorities that they will experience discrimination in the workplace. Moreover, discriminatory workplace practices have also affected workers who are sexual and gender minorities during the COVID-19 pandemic in a way that reverberates across the community because it affects their ability to take time off work to care for family members; it also leaves them more vulnerable to job loss (box 3.1).

The indicator set on access to the labor market aims to identify the existence (or absence) of national laws, constitutional provisions, and/or regulations that prohibit discrimination based on sexual orientation, gender identity, gender expression, or sex characteristics in accessing the labor market. It examines the existence of laws or regulations prohibiting discrimination when applying for work, interviewing for jobs, and obtaining employment. The indicator set addresses equal remuneration, equal benefits in the pension system for same-sex partners, and employee dismissal based on their perceived or actual SOGI. Finally, the possibilities of redress and the existence of relevant reporting mechanisms, along with the provision of free or reduced legal aid for sexual and gender minorities, are also analyzed in the study.

A Japanese woman sued the Osaka hospital (her employer) in September 2019, alleging that her supervisor, ignoring her wishes and privacy, revealed to colleagues that she is transgender. She claims that she was later harassed by colleagues, with one telling her “it feels gross” to get changed in the same room with her.

—*Japan Times* (2019)

BOX 3.1 Links between Labor Market Access and COVID-19

Because of discriminatory unemployment compensation, as well as paid sick and leave policies that cover only unions between people of the opposite sex, sexual and gender minorities may not be able to take time off from work to care for family members. The Equality of Opportunity for Sexual and Gender Minorities (EQOSOGI) initiative collected data related to the absence or presence of laws that recognize same-sex couples (through registered partnership, civil unions, or legal marriage) and laws providing equal benefits to same-sex spouses as compared with opposite-sex spouses. Many countries leave same-sex spouses without access to health services and pension benefits that opposite-sex spouses enjoy.

The COVID-19 pandemic has triggered one of the worst employment crises in modern times. As the COVID-19 pandemic continues to spread and economies put in place lockdown and slowdown measures, people worldwide are increasingly anxious about their job security. The report found that only 3 of the 16 analyzed countries legally prohibit employers from dismissing employees on the basis of their sexual orientation, and gender identity and expression, leaving sexual and gender minorities more susceptible to job loss during the pandemic. There is a real danger that the crisis will widen inequalities, and sexual and gender minorities could become more vulnerable during the pandemic response. Inclusive laws should protect sexual and gender minorities from being dismissed from their jobs based on their SOGI.

Discrimination in Employment and the Workplace

Sexual and gender minorities face various forms of discrimination in employment.¹ They experience discrimination in recruiting procedures, are denied employment or passed over for promotions, and are often victims of harassment or homophobic and transphobic behavior in the workplace (Sears and Mallory 2014). Inclusive workplace environments allow sexual and gender minorities to access employment and improve their well-being and contribute to growth. More inclusive working environments can also benefit countries, particularly as respect and protection of minorities on a domestic level can influence how countries are perceived globally (Badgett 2014).

People identified as gay or lesbian during the initial stage of the hiring process are more vulnerable to discrimination than heterosexual applicants with comparable skills and experience. This pattern has been observed in various countries, including Austria, Canada, Cyprus, Greece, Sweden, and the United States (Ahmed, Andersson, and Hammarstedt 2013; Drydakis 2019). Discrimination in hiring based on sexual orientation has been found to be a matter of employer preference and not a result of uncertainty regarding gay and lesbian applicants' commitment. That is, non-heterosexual identity is perceived as a devalued characteristic in hiring compared

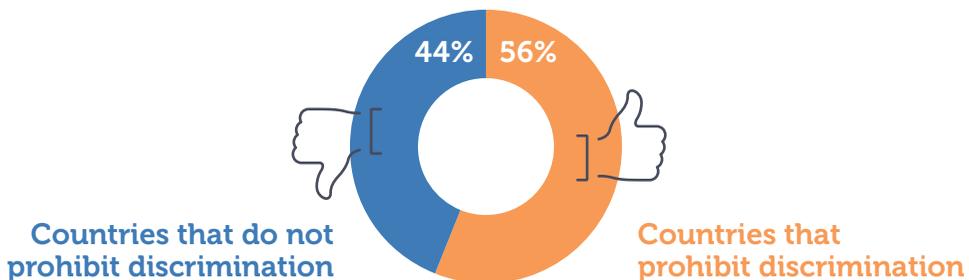
with heterosexual identity (Ahmed, Andersson, and Hammarstedt 2013). An ILO study on sexual and gender minorities in Argentina, Hungary, and Thailand underscores the experience of surveyed individuals in all three countries. Applicants were refused jobs because of sexual orientation—in some cases, in an explicit manner during the job interview. Similarly, many were denied jobs because their gender expression (such as clothing, mannerism, or voice) did not “match” their legal gender identity (ILO 2012).

Protection against workplace and employment discrimination on SOGI grounds varies among the 16 countries analyzed for this *Equality of Opportunity for Sexual and Gender Minorities* (EQOSOGI) report. In general, countries tend to provide more protections in the public than they do in the private sector, with only seven countries (Canada, Costa Rica, Kosovo, Mexico, South Africa, Ukraine, and Uruguay) protecting employees from SOGI discrimination in both sectors. In Ontario, Canada, the Human Rights Code prohibits discrimination in all sectors, including the employment sector.² Similarly, Kosovo explicitly protects sexual and gender minorities from discrimination in employment.³ Ukraine has a more inclusive legal framework, prohibiting all forms of discrimination in employment based on sexual orientation and gender identity.⁴ Uruguay also prohibits discrimination against sexual and gender minorities in the labor market.⁵ Moreover, the country’s Comprehensive Law for Transgender People (Ley Integral Para Personas Trans) prohibits discrimination on the basis of gender identity.⁶ The law also creates quotas (1 percent or more) for transgender people, ensuring access to public sector jobs and providing tax incentives for private sector employers to hire transgender people.

Nine countries (Canada, Costa Rica, India, Jamaica, Kosovo, Mexico, South Africa, Ukraine, and Uruguay) offer protections only in the public sector, and the same number (Canada, Costa Rica, India, Kosovo, Mexico, Mozambique, South Africa, Ukraine, and Uruguay) protect sexual and gender minorities seeking employment in the private sector (figure 3.1). Some countries are starting to apply the rules to both the private and the public sectors. For example, India’s newly adopted Transgender Persons (Protection of Rights) Act also bans discrimination against transgender and intersex people in private employment.⁷ Although India’s Constitution

FIGURE 3.1

Analyzed Countries That Prohibit Workplace SOGI Discrimination in the Public and Private Sectors, 2021



Source: World Bank Group, Equality of Opportunity database.

Note: SOGI = sexual orientation and gender identity.

prohibits discrimination in employment without referring explicitly to SOGI grounds,⁸ the Indian Supreme Court has ruled that sexual orientation and gender identity are protected grounds under the category of “sex.”⁹

None of the countries analyzed explicitly prohibits sexual and gender minorities from obtaining employment in specific industries. Still, three countries (Costa Rica,¹⁰ Kosovo,¹¹ and South Africa¹²) prohibit employers from dismissing employees on the basis of their sexual orientation, gender identity, and/or expression. In all three countries, the law explicitly prohibits the dismissal of employees or termination of contracts on the basis of sexual orientation, gender identity, and/or expression.

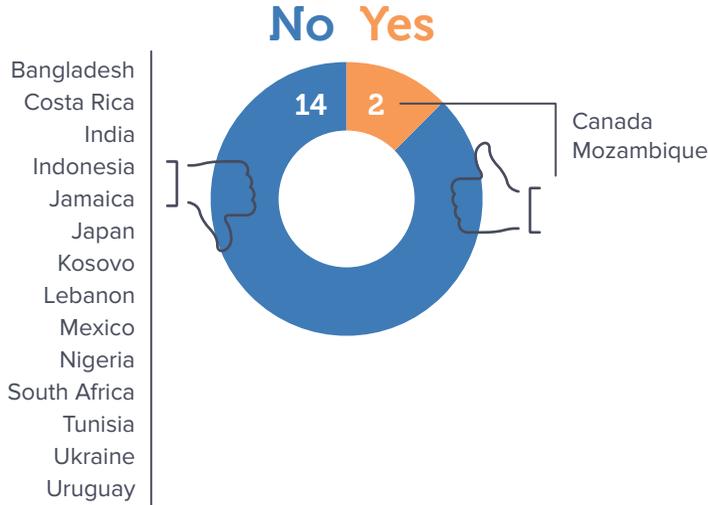
More countries protect against sexual orientation discrimination than they do against gender identity discrimination. Of the 10 countries that protect employees from SOGI discrimination in public or private employment (Canada, Costa Rica, India, Jamaica, Kosovo, Mexico, Mozambique, South Africa, Ukraine, and Uruguay), only Canada, India, Kosovo, Ukraine, and Uruguay protect both sexual orientation and gender identity. The other five (Costa Rica, Jamaica, Mexico, Mozambique, and South Africa) prohibit discrimination on the basis of sexual orientation but not gender identity. Contributors from Costa Rica report that, although sexual minorities are legally protected from discrimination in employment,¹³ gender minorities continue to suffer high levels of workplace discrimination given that gender identity is not included in the legally protected grounds. Similarly, two countries (Jamaica¹⁴ and South Africa¹⁵) have not put in place explicit legal protections for people who experience discrimination because of their gender identity. Although the South African law does not mention gender identity, it explicitly protects intersex people under the category of “sex.”¹⁶ Mexico’s legislation is inclusive of sexual minorities,¹⁷ but contributors report that laws are not always correctly applied because the National Council to Prevent Discrimination (CONAPRED) is underfunded, and many other officials lack knowledge of recent developments pertaining to sexual and gender minorities.

Concerning the right to privacy, only Canada and Mozambique have enacted laws that explicitly prohibit employers from discussing sexual orientation, gender identity, or marital status during the recruitment process.¹⁸ In comparison, in Indonesia, contributors report that civil service employers can ask applicants about their marital status in the recruitment process. One of the requirements to become a civil servant in Indonesia is *to be healthy both physically and spiritually*, a requirement that is open to subjective interpretation and may be used to target sexual and gender minorities (figure 3.2).

The remaining countries have employment-related protections for other groups. Bangladesh, Indonesia, Japan, Lebanon, Nigeria, and Tunisia protect employees from discrimination in employment on several grounds, including sex, race, gender, and religion. But these grounds do not protect sexual and gender minorities from discrimination: even though the laws include these categories, there are (at least) anecdotal reports of discrimination against sexual and gender minorities in those countries. Contributors from Lebanon report that companies often refrain from hiring openly sexual or gender minority candidates; transgender individuals face particular discrimination because their photo IDs usually do not match their appearance. In Indonesia,

FIGURE 3.2

Analyzed Countries That Prohibit Employers From Discussing Sexual Orientation, Gender Identity, or Marital Status during the Recruitment Process: Canada and Mozambique, 2021



Source: World Bank Group, Equality of Opportunity database.

BOX 3.2 Recent Developments in Japan

The government of Japan has recently commenced planning for the enforcement of the revised Labor Policy Comprehensive Promotion Act, including by raising awareness of the contents of the Guidelines for Preventing Power Harassment. The guidelines clarify that insulting speech and behaviors targeting diverse sexual orientation and gender identity fall under the category of power harassment in the workplace. Currently, under the Powa-Hara (Power Harassment) Prevention Act, only large corporations are required to adopt measures against power harassment; this requirement will become mandatory for small to medium-size companies as well beginning April 2022. In addition, Japan has revised NPA Rule 10-10 on prevention of sexual harassment against public sector employees and introduced a rule to ban sexual harassment on the basis of sexual orientation and gender identity. With this rule, lesbian, gay, bisexual, and transgender national public employees will be protected if they are sexually harassed.

contributors report that sexual and gender minorities serving in the military are often dishonorably discharged for immorality and accused of same-sex “adultery,” which is considered a crime under the Indonesian Penal Code.¹⁹

Sexual and gender minorities still face discrimination in employment and the workplace in most countries, even though some governments have undertaken significant measures to ensure equality of sexual and gender minorities in the labor market. By not protecting their fundamental right to work by providing a more inclusive working environment, countries risk harming not only sexual and gender minorities but also society as a whole. Therefore, authorities must continue to expand their efforts to combat discrimination and create a more inclusive workplace for sexual and gender minorities. Sexual and gender minorities should have equal opportunities to access the labor market and participate in the workplace without facing discrimination because of their identity.

It is advised that countries adopt the following good practice policy actions:

- Amend existing laws or create more inclusive and protective legal frameworks in the workplace that explicitly protect people from discrimination on the basis of sexual orientation, gender identity and expression, and sex characteristics.
- Introduce inclusive legislation to protect the rights of sexual and gender minorities, provide more effective legal protections from discrimination in the labor market, and raise awareness of SOGI issues within the labor market.
- Amend laws prohibiting discrimination on the basis of sexual orientation to include gender identity and expression, and sex characteristics.
- Legally require employers to respect the privacy of their employees and job candidates, prohibiting questions related to sexual orientation, gender identity, or marital status.
- Encourage employers to respect the needs, wishes, and privacy of transgender employees regarding their transition by facilitating changes in internal personnel systems (such as name changes) and providing health insurance and paid leave for medical procedures.
- Introduce antidiscrimination training in the workplace to educate all employees about SOGI issues and implement antidiscrimination regulations to create a more inclusive environment for sexual and gender minorities.
- Conduct additional studies in the area of employment discrimination against sexual and gender minorities and provide adequate reporting mechanisms for sexual and gender minorities experiencing discrimination in the labor market.

Equal Pay and Benefits

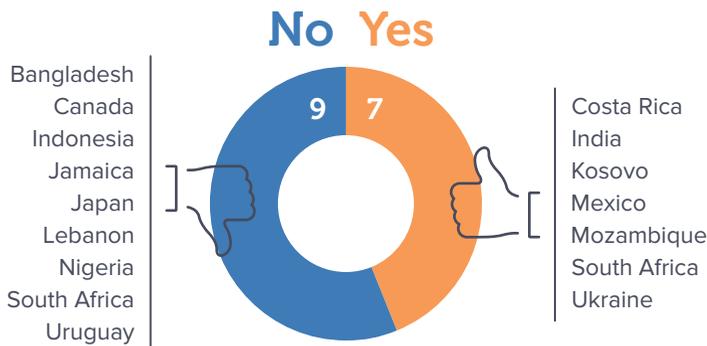
Sexual and gender minorities are often paid less than their colleagues who are not sexual and gender minorities (figure 3.3).²⁰ These pay gaps cannot be objectively explained by factors such as differences in education, training and work experience, part-time versus full-time work, or company size, suggesting that they can be attributed to direct or implicit bias against sexual and gender minorities (Sears and Mallory 2014). In addition, sexual and gender minorities are frequently refused certain benefits—such as family-related leave and pension arrangements—usually granted to people in opposite-sex marriages (Pizer and others 2012). In countries in which same-sex civil unions or marriages are not legal, same-sex couples can experience discrimination regarding the benefits offered to different-sex spouses. This unequal treatment can have adverse effects on employees’ mental and physical health, productivity, and job satisfaction, leading to economic losses for the employer.

Nine of the 16 countries reviewed condone unequal pay. Only Costa Rica, India, Kosovo, Mexico, Mozambique, South Africa, and Ukraine legally require equal remuneration for employees that belong to sexual and gender minorities. In Kosovo²¹ and Costa Rica,²² the law prohibits discrimination in working conditions, including salary. In South Africa²³ and Mexico,²⁴ the law prevents employers from varying the terms and conditions of employment for employees responsible for substantially the same work on the basis of their sexual orientation. While South Africa, Costa Rica, Mexico, and Mozambique prohibit pay discrimination only on the basis of sexual orientation, Ukraine and Kosovo prohibit discrimination based on both sexual orientation and gender identity.²⁵ India recently enacted a new law that prohibits discrimination in wages for all genders, including transgender people.²⁶

Pension benefits are usually not available to sexual and gender minorities (figure 3.4). Only Canada, Costa Rica, Mexico, South Africa, and Uruguay grant civil servants’ same-sex partners the same

FIGURE 3.3

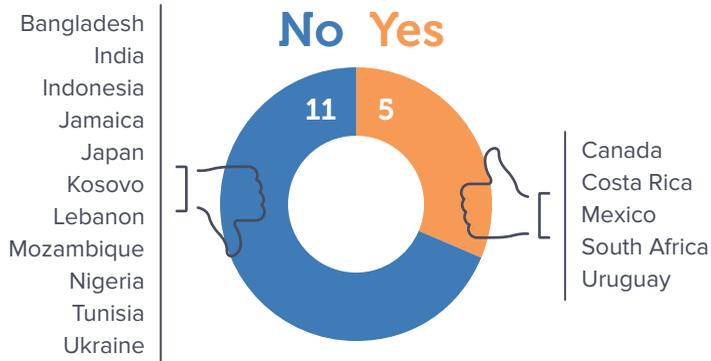
Analyzed Countries That Do Not Require Equal Pay for Sexual and Gender Minorities, 2021



Source: World Bank Group, Equality of Opportunity database.

FIGURE 3.4

Analyzed Countries That Provide Equal Pension Benefits for Same-Sex and Different-Sex Spouses, 2021



Source: World Bank Group, Equality of Opportunity database.

pension benefits as different-sex partners. In Canada, following the 1999 decision of the Supreme Court in *M. v. H.*,²⁷ the Canadian federal government amended the Canada Pension Plan,²⁸ so that it now extends survivor benefits to same-sex partners by changing the definition of “spouse” to conform to the equal rights provisions of Section 15(1) of the Canadian Charter of Rights and Freedoms.²⁹ In 2018, Costa Rica also instructed its National Pensions Directorate to provide identical benefits to same-sex partners.³⁰ In South Africa, same-sex civil unions are treated like different-sex marriages. The law prohibits discrimination with regard to pension benefits for civil servants.³¹ In Mexico, same-sex civil unions and same-sex marriages are not recognized at the federal level. Most Mexican states, however, have considered legislation on these issues, and the federal law extends its antidiscrimination protections to the pension system as well.³² However, contributors reported that same-sex couples in Mexico face hurdles in registering their spouses. In Uruguay, the marriage equality law for same-sex partners also establishes equal rights in the pension system for civil servants.³³ The remaining analyzed countries do not allow same-sex partnerships, and thus no benefits are available for these couples (figure 3.4). However, India has taken important steps in this direction. States including Kerala, Tamil Nadu, Odisha Karnataka, Andhra Pradesh, and Himachal Pradesh have introduced schemes that provide pension benefits to transgender persons (*Business Standard* 2017; ILGA 2014; Sharma 2016).

It is advised that countries adopt the following good practice policy actions:

- Establish transparent and equal benefits and pay for all employees, regardless of their SOGI.
- Facilitate the registration of same-sex partnerships to ensure that benefits are available to all individuals.

Filing Employment-Related Discrimination Complaints

Effective reporting mechanisms are necessary to provide adequate legal protections for sexual and gender minorities experiencing discrimination in the labor market.³⁴ Victims of SOGI discrimination should also receive free or reduced-cost legal representation if they are unable to cover the costs of an employment-related discrimination claim. Moreover, they should have access to relevant national human rights or equality institutions specializing in handling charges of employment discrimination against sexual and gender minorities. Authorities should establish a holistic redress system that encourages reporting. Reporting and remedying discrimination is as important as prohibiting discrimination, and it offers a greater scope of protection to affected minorities.

Most of the countries studied legally enforce employees’ right to bring employment-related claims in the public sector. However, that number decreases in the private sector. Specifically, Canada, Costa Rica, India, Jamaica, Kosovo, Mexico, South Africa, Ukraine, and Uruguay legally protect employees’ right to bring claims for employment discrimination on SOGI grounds in the public sector. However, only Canada, Costa Rica, India, Kosovo, Mexico, South Africa, Ukraine, and Uruguay also have similar provisions for discrimination claims in the private sector (figure 3.5).

Many countries offer free or reduced-cost legal aid to discrimination victims who are unable to cover legal fees. However, laws in most countries fail to explicitly identify discrimination grounds eligible for subsidized legal aid, such as sexual orientation, gender identity and expression, or sex characteristics. Only Canada and Uruguay explicitly grant victims of sexual

FIGURE 3.5

Analyzed Countries That Allow Employees to Bring Claims for Employment Discrimination on SOGI Grounds: Public Sector Compared with Private Sector, 2021



Source: World Bank Group, Equality of Opportunity database.

Note: SOGI = sexual orientation and gender identity.

and gender minority employment discrimination the right to free or reduced-cost legal assistance if victims lack the means to cover the costs of claims. In Canada, access to legal aid in Ontario is governed by the Legal Aid Services Act,³⁵ which acknowledges the diverse legal needs of low-income individuals and disadvantaged communities in Ontario and offers legal aid in a cost-effective and efficient manner. Community legal clinics, such as Legal Aid Ontario,³⁶ provide services to address the needs of low-income people and communities. In Uruguay, the law on violence against women explicitly protects women from discrimination on the basis of sexual orientation and gender identity in any area of life and guarantees their right to free legal assistance (table 3.1).³⁷

TABLE 3.1
Legal Methods Available to Employees Filing an Employment-Related Discrimination Claim on SOGI Grounds

Country	Allow employee claims for employment discrimination on SOGI grounds in public sector	Allow employee claims for employment discrimination on SOGI grounds in private sector	National human rights or equality institutions/bodies that handle charges of employment discrimination against sexual and gender minorities	Laws/regulations explicitly granting victims of sexual and gender minority employment discrimination the right to free or reduced-cost legal assistance
Bangladesh				
Canada	✓	✓	✓	✓
Costa Rica	✓	✓		
India	✓	✓	✓	
Indonesia				
Jamaica	✓			
Japan				
Kosovo	✓	✓	✓	
Lebanon				
Mexico	✓	✓	✓	
Mozambique				
Nigeria				
South Africa	✓	✓	✓	
Tunisia				
Ukraine	✓	✓		
Uruguay	✓	✓	✓	✓

Source: World Bank Group, Equality of Opportunity database.

Note: SOGI = sexual orientation and gender identity.

It is advised that countries adopt the following good practice policy actions:

- Establish legal frameworks allowing victims of SOGI-related employment discrimination to report discrimination and harassment cases in the public and private sectors and pursue available remedies.
- Ensure that free or reduced-cost legal aid is available to employment discrimination victims if necessary.

Notes

1. Questions addressing discrimination in employment and the workplace in the indicator set on access to the labor market include: Are there any laws, constitutional provisions, and/or regulations prohibiting discrimination based on sexual orientation, gender identity, gender expression, and sex characteristics in public and private sector workplaces at the national level? Are there any laws and/or regulations prohibiting discrimination in recruitment in the public sector based on SOGI? Are there any laws and/or regulations prohibiting discrimination in recruitment in the private sector based on SOGI? Are there any laws and/or regulations prohibiting sexual and gender minorities from obtaining employment in specific industries? Are there any laws and/or regulations prohibiting an employer from asking an individual's SOGI and/or marital status during the recruitment process? Are there any laws and/or regulations prohibiting the dismissal of employees on the basis of their perceived or actual SOGI?
2. Ontario's Human Rights Code of 1990. 2019 (amended). Article 5: "(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. (2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability."
3. Kosovo, Law No.05/L-021 on Protection from Discrimination. Article 1, Section 1: "The purpose of this law is to establish a general framework for prevention and combating discrimination based on nationality, or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds, in order to implement the principle of equal treatment." Article 2, Section 1: "This law applies to all acts or omissions, of all state and local institutions, natural and legal persons, public and private sector, who violate, violated or may violate the rights of any person or natural and legal entities in all areas of life, especially related to: 1.1. conditions for access to employment, self-employment and occupation, including employment conditions and selection criteria, regardless of activity and at all levels of the professional hierarchy, including promotions; ... 1.3. conditions of employment and working conditions, including discharge or termination of the contract and salary; 1.4. membership and involvement in organizations of workers or employers or any organization whose members exercise a particular profession, including the benefits provided for by such organizations."

4. Ukraine, Labor Code 1971. Article 2-1: “All forms of discrimination in the field of work are forbidden, including the violation of the principle of equality of rights and opportunities, direct or indirect restriction of the rights of workers, depending on race, color, political, religious and other beliefs, sex, sexual orientation and gender identity, ethnicity, social and foreign origin, age, health, pregnancy, disability, suspicion or presence of a HIV/AIDS, family and property status, family responsibilities, residence, membership in a trade union or other CSO’s, participating in a strike, addressing or intent to apply to a court or other bodies for the protection of their rights or to provide support to other workers in the protection of their rights, in linguistic or other grounds, not related to the nature of the work or the conditions for its implementation.”
5. Uruguay, Ley 17.817. Lucha contra el racismo, la xenofobia y la discriminación. 2004. Article 2: “A los efectos de la presente ley se entenderá por discriminación toda distinción, exclusión, restricción, preferencia o ejercicio de violencia física y moral, basada en motivos de raza, color de piel, religión, origen nacional o étnico, discapacidad, aspecto estético, género, orientación e identidad sexual, que tenga por objeto o por resultado anular o menoscabar el reconocimiento, goce o ejercicio, en condiciones de igualdad, de los derechos humanos y libertades fundamentales en las esferas política, económica, social, cultural o en cualquier otra esfera de la vida pública.” Article 5(K): “Informar a la opinión pública sobre actitudes y conductas racistas, xenofóbicas y discriminatorias o que pudieren manifestarse en cualquier ámbito de la vida nacional, especialmente en las áreas de educación, salud, acción social y empleo; provengan ellas de autoridades públicas o entidades o personas privadas.”
6. Uruguay, Ley Integral Para Personas Trans. 2018 de Uruguay. Article 3 : “La presente ley tiene como objeto asegurar el derecho de las personas trans residentes de la República a una vida libre de discriminación y estigmatización, para lo cual se establecen mecanismos, medidas y políticas integrales de prevención, atención, protección, promoción y reparación.” Article 13: “Encomiéndase al Instituto Nacional de Empleo y Formación Profesional la determinación de un cupo no inferior al 1% (uno por ciento) destinado a las personas trans, en los diversos programas de capacitación y calificación que implemente.”
7. India, Transgender Persons (Protection of Rights) Act. 2019. Section 2: “In this Act, unless the context otherwise requires, ... (b) ‘establishment’ means (i) any body or authority established by or under a Central Act or a State Act or an authority or a body owned or controlled or aided by the Government or a local authority, or a Government company as defined in section 2 of the Companies Act, 2013, and includes a Department of the Government; or (ii) any company or body corporate or association or body of individuals, firm, cooperative or other society, association, trust, agency, institution; ... (k) ‘transgender person’ means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.” Section 3: “No person or establishment shall discriminate against a transgender person on any of the following grounds, namely: ... (b) the unfair treatment in, or in relation to, employment or occupation; (c) the denial of, or termination from, employment or occupation.” Section 9: “No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.”
8. Constitution of India. Article 15: “(1): The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 16. (1): There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”
9. In 2014, the Supreme Court of India directed the central government and state governments to ensure treatment of “hijras”/ “eunuchs” (transgenders) as third gender when opposed to male or female so as to afford them the same protections of fundamental rights, including those under Article 14

- (Right to Equality) and Article 15 (Prohibition of Discrimination). In 2017, the Supreme Court of India declared that sexual autonomy is inherent in the Right to Privacy protected under Article 21 of the Constitution of India (“Right to Life and Liberty”). Therefore, the protection of the rights and interests of sexual and gender minorities is ensured by the constitution. Affirming the principles upheld earlier, the court in a 2018 judgment stated that the word “sex” under Article 15 (Prohibition of Discrimination) and Article 16 (Equality of Opportunities) of the constitution has to be read widely to include gender and sexual minorities.
10. Costa Rica, Código de Trabajo de Costa Rica. 1934 (Amended in 2016). Article 406: “Se prohíbe el despido de los trabajadores o las trabajadoras por las razones señaladas en el artículo 404.” Article 404: “Se prohíbe toda discriminación en el trabajo por razones de edad, etnia, sexo, religión, raza, orientación sexual, estado civil, opinión política, ascendencia nacional, origen social, filiación, condición de salud, discapacidad, afiliación sindical, situación económica o cualquier otra forma análoga de discriminación.”
 11. Kosovo, Law No.05/L-021 on Protection from Discrimination: see note 3 for the applicable text.
 12. South Africa, Promotion of Equality and Prevention of Unfair Discrimination Act. 2000. Article 1: “In this Act, unless the context indicates otherwise – ‘prohibited grounds’ are (a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; ‘sex’ includes intersex.” Section 29: “Illustrative list of unfair practices in certain sectors, 1. ‘Labour and employment: (a) Creating artificial barriers to equal access to employment opportunities by using certain recruitment and selection procedures. (b) Applying human resource utilisation, development, promotion and retention practices which unfairly discriminate against persons from groups identified by the prohibited grounds. (c) Failing to respect the principle of equal pay for equal work. (d) Perpetuating disproportionate income differentials deriving from past unfair discrimination.”
 13. Costa Rica, Código de Trabajo. 1934 (Amended in 2016). Article 404: “Se prohíbe toda discriminación en el trabajo por razones de edad, etnia, sexo, religión, raza, orientación sexual, estado civil, opinión política, ascendencia nacional, origen social, filiación, condición de salud, discapacidad, afiliación sindical, situación económica o cualquier otra forma análoga de discriminación.”
 14. Jamaica, Public Sector Staff Orders. 2004. Article 13(1): “Employees shall be treated fairly and equitably without discrimination based on any of the following grounds: 1. Age 2. Gender 3. National Origin. 4. Race 5. Colour 6. Religious Beliefs 7. Political Affiliation 8. Disability 9. Sexual Orientation.”
 15. South Africa, Employment Equity Act 55. 1998. Article 6 (1): “No person may unfairly discriminate, directly or indirectly, against an employee in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.” South Africa, Promotion of Equality and Prevention of Unfair Discrimination Act. 2000. Article 1: “In this Act, unless the context indicates otherwise - ‘prohibited grounds’ are (a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; ‘sex’ includes intersex.” Section 29 provides an illustrative list of unfair practices in certain sectors: 1. “Labour and employment: (a) Creating artificial barriers to equal access to employment opportunities by using certain recruitment and selection procedures. (b) Applying human resource utilisation, development, promotion and retention practices which unfairly discriminate against persons from groups identified by the prohibited grounds. (c) Failing to respect the principle of equal pay for equal work. (d) Perpetuating disproportionate income differentials deriving from past unfair discrimination.”
 16. South Africa, Employment Equity Act 55. 1998.
 17. Mexico, Constitución Política de los Estados Unidos Mexicanos. 1917. Article 1: “Queda prohibida toda discriminación motivada por origen étnico o nacional, el género, la edad, las discapacidades, la condición social, las condiciones de salud, la religión, las opiniones, las preferencias sexuales, el estado civil o cualquier otra que atente contra la dignidad humana y tenga por objeto anular o menoscabar los

- derechos y libertades de las personas.” Mexico, Ley Federal para Prevenir y Eliminar la Discriminación. Federal Labor Law of 2003, Article 2: “Las disposiciones de esta Ley son de orden público y de interés social. El objeto de la misma es prevenir y eliminar todas las formas de discriminación que se ejerzan contra cualquier persona en los términos del Artículo 1 de la Constitución Política de los Estados Unidos Mexicanos, así como promover la igualdad de oportunidades y de trato. Para los efectos de esta ley se entenderá por: III. Discriminación: Para los efectos de esta ley se entenderá por discriminación toda distinción, exclusión, restricción o preferencia que, por acción u omisión, con intención o sin ella, no sea objetiva, racional ni proporcional y tenga por objeto o resultado obstaculizar, restringir, impedir, menoscabar o anular el reconocimiento, goce o ejercicio de los derechos humanos y libertades, cuando se base en uno o más de los siguientes motivos: el origen étnico o nacional, el color de piel, la cultura, el sexo, el género, la edad, las discapacidades, la condición social, económica, de salud o jurídica, la religión, la apariencia física, las características genéticas, la situación migratoria, el embarazo, la lengua, las opiniones, las preferencias sexuales, la identidad o filiación política, el estado civil, la situación familiar, las responsabilidades familiares, el idioma, los antecedentes penales o cualquier otro motivo;” Article 9: “ Con base en lo establecido en el artículo primero constitucional y el artículo 1, párrafo segundo, fracción III de esta Ley se consideran como discriminación, entre otras: III. Prohibir la libre elección de empleo, o restringir las oportunidades de acceso, permanencia y ascenso en el mismo.”
18. Ontario’s Human Rights Code. 1962. Section 5(1): “Every person has a right to equal treatment with respect to employment without discrimination because of . . . sexual orientation, gender identity, gender expression.” Section 23: “The right under section 5 to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.”
Mozambique: Article 6 Labor Law Nr. 23/2007: 1. “Employers cannot, when appointing an employee or during the course of an employment contract, require the employee to provide information about his or her private life, except where, by virtue of the law or the practices of the occupation, the particular nature of the occupational activity so demands, and provided the reasons for the requirement are stated in writing beforehand.”
 19. Same-sex relations are not *per se* criminalized in Indonesia. The Criminal Code (Article 284) only criminalizes adultery for both opposite-sex and same-sex relationships. See also Peraturan Kepala Staf TNI AD (Perkasad) Nomor 34/XII/2008 pada angka 10 huruf H (Indonesian Army Chief of Staff Regulation No. 34/XII/2008 No. 10 Letter H. However, in Sharia law, offenses against decency and law against pornography (Pornography Act) are often used to target sexual and gender minorities.
 20. Questions addressing equal pay and benefits in this indicator set are: Are there any laws and/or regulations prescribing equal remuneration for work of equal value for sexual and gender minorities? Does the pension system for civil servants provide the same benefits to same-sex partners provided to different spouses?
 21. Kosovo, Law No.05/L-021 on Protection from Discrimination; see note 3 for the applicable text.
 22. Costa Rica, Código de Trabajo de Costa Rica. 1934 (Amended in 2016). Article 405: “Todas las personas trabajadoras que desempeñen en iguales condiciones subjetivas y objetivas un trabajo igual gozarán de los mismos derechos, en cuanto a jornada laboral y remuneración, sin discriminación alguna.”
 23. South Africa, Promotion of Equality and Prevention of Unfair Discrimination Act of South Africa. 2000. The act prohibits discrimination; section 6(4) of the Employment Equity Act No. 55, 1998, states: “A difference in terms and conditions of employment of employees with the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in Subsection (1) is unfair discrimination.” This is often referred to as the “same work, same pay” principle.

24. Mexico, Constitución Política de los Estados Unidos Mexicanos. 1917. See note 17 for the applicable text. See also Mexico, Constitución Política de los Estados Unidos Mexicanos. 1917. Article 9: “Con base en lo establecido en el artículo primero constitucional y el artículo 1, párrafo segundo, fracción III de esta Ley se consideran como discriminación, entre otras: IV. Establecer diferencias en la remuneración, las prestaciones y las condiciones laborales para trabajos iguales.”
25. Ukraine, Labor Code. 1971. Article 2-1: “All forms of discrimination in the field of work are forbidden, including the violation of the principle of equality of rights and opportunities, direct or indirect restriction of the rights of workers, depending on race, color, political, religious and other beliefs, sex, sexual orientation and gender identity, ethnicity, social and foreign origin, age, health, pregnancy, disability, suspicion or presence of a HIV/AIDS, family and property status, family responsibilities, residence, membership in a trade union or other CSOs, participating in a strike, addressing or intent to apply to a court or other bodies for the protection of their rights or to provide support to other workers in the protection of their rights, in linguistic or other grounds, not related to the nature of the work or the conditions for its implementation.”
26. India, Code on Wages. No 29 of 209 (enter into force on August 8, 2019). Section 2.(y): “(k). . . Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in clauses (d), (f), (g) and (h) shall be taken for computation of wage.” Section 3: “(1) There shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee.”
27. M. v. H., [1999] 2 S.C.R. 3. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1702/index.do>.
28. Details of the Canada Pension Plan, R.S.C. 1985, can be found at <https://qweri.lexum.com/w/calegis/rsc-1985-c-c-8-en#!fragment/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBplfTCIBFRQ3AT0otojlzYANkIDCSNNACEyPoTC4EbDtypyFCAMp5SAIW4AIAKIAZIwDUAggDIRR2qTAAjaKWxxq1IA>.
29. Canada, Constitution Act, Section 15(1). 1982. <https://qweri.lexum.com/calegis/schedule-b-to-the-canada-act-1982-uk-1982-c-11-en#!fragment/sec15subsec1>.
30. Costa Rica, Directive No. MTSS-DMT-DR-5-2018. 2018.
31. South Africa, Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (PEPUDA or the Equality Act, Act No. 4 of 2000). 2000.
32. Mexico, Constitución Política de la República Mexicana. Article 1. Ley Federal para Prevenir la Discriminación Article 9, paragraphs IV and XX affirm that work conditions and pensions should not differ. Article 9, Section IV: “Establecer diferencias en la remuneración, las prestaciones y las condiciones laborales para trabajos iguales.” Article 9, Section XX: “Impedir el acceso a la seguridad social y a sus beneficios o establecer limitaciones para la contratación de seguros médicos, salvo en los casos que la ley así lo disponga.”
33. Uruguay. Ley número 19075 de Matrimonio Igualitario. 2013.
34. Questions related to filing employment-related discrimination complaints in this indicator set include: Are there any laws and/or regulations that allow an employee to bring a claim for employment discrimination on SOGI grounds in the public sector? Are there any laws and/or regulations that allow an employee to bring a claim for employment discrimination on SOGI grounds in the private sector? Do victims of employment discrimination based on SOGI grounds have a right to free or reduced legal assistance (if proven they do not have the necessary means to cover the cost of the claim)? Is there a national equality body or national human rights institution responsible for handling charges of employment discrimination related to SOGI?
35. Ontario Legal Aid Services Act. 1998. Article 1: “The purpose of this Act is to promote access to justice throughout Ontario for low-income individuals by means of, (a) providing consistently high quality legal aid services in a cost-effective and efficient manner to low-income individuals throughout Ontario;

(b) encouraging and facilitating flexibility and innovation in the provision of legal aid services, while recognizing the private bar as the foundation for the provision of legal aid services in the areas of criminal law and family law and clinics as the foundation for the provision of legal aid services in the area of clinic law; (c) identifying, assessing and recognizing the diverse legal needs of low-income individuals and of disadvantaged communities in Ontario; and (d) providing legal aid services to low-income individuals through a corporation that will operate independently from the Government of Ontario but within a framework of accountability to the Government of Ontario for the expenditure of public funds.”

36. For details about Legal Aid Ontario, see <https://www.legalaid.on.ca>.
37. Uruguay, Law 19580 on Violence against Women. 2017. Article 1: “Esta ley tiene como objeto garantizar el efectivo goce del derecho de las mujeres a una vida libre de violencia basada en género. Comprende a mujeres de todas las edades, mujeres trans, de las diversas orientaciones sexuales, condición socio-económica, pertenencia territorial, creencia, origen cultural y étnico-racial o situación de discapacidad, sin distinción ni discriminación alguna. Se establecen mecanismos, medidas y políticas integrales de prevención, atención, protección, sanción y reparación.” Article 7, Section G: “A recibir orientación, asesoramiento y patrocinio jurídico gratuito, dependiendo de la posición socioeconómica de la mujer. Dicha asistencia deberá ser inmediata, especializada e integral, debiendo comprender las diversas materias y procesos que requiera su situación.”

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