



OHIO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed Families
Living in Ohio

October 2019



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INTRODUCTION

This guide was drafted by Family Equality in collaboration with Equality Ohio. It addresses many of the legal rights and issues that affect LGBTQ families currently living in Ohio. As LGBTQ equality advances across the nation, there are still significant gaps in the rights of LGBTQ individuals and their families, especially at the state level. Ohio has very few laws in place to protect LGBTQ families from discrimination and ensure equal access to education, employment, housing, healthcare, and public accommodations. In this environment, it is important to understand what the law is in each area and how best to protect your family.

DISCLAIMER

This handbook is not intended to be legal advice but an overview of the current state of LGBTQ-family law in Ohio. The law is changing quickly and dynamically, so it is important to consult an attorney or contact the authors to discuss the details of your particular situation and to ensure that information provided herein is still accurate.



RELATIONSHIP RECOGNITION

MARRIAGE

Nationwide recognition of marriages of same-sex couples came in June 2015 with the United States Supreme Court's ruling in *Obergefell v. Hodges*.¹ *Obergefell* not only requires all U.S. states to issue marriage licenses to same-sex couples, but also requires them to recognize marriage licenses issued in another state.²

Ohio did not recognize marriages of same-sex couples before *Obergefell*. In 2004, the Ohio legislature passed the Defense of Marriage Act (DOMA), which amended the Ohio Code to state that marriages of same-sex couples would not be recognized in Ohio, even if entered into legally in another state.³ The Ohio DOMA further stated that no statutory benefits afforded to married couples would be extended to same-sex couples.⁴ That same year, 62% of voters voted in favor of "State Issue 1," which amended the Ohio Constitution to define marriage as between a man and a woman.⁵ Despite the fact that these provisions are unconstitutional in light of *Obergefell*, they have not been repealed and remain on the books today. Nonetheless, there are no known cases of a marriage license



being denied to a same-sex couple in Ohio following *Obergefell*, and any such denial would be unconstitutional.

CIVIL UNIONS AND DOMESTIC PARTNERSHIPS

Although the State of Ohio has never had a separate status of civil unions, several cities and counties within the state have established domestic partner registries.⁶ In 2009, such an ordinance in Cleveland was challenged on the basis that it violated "State Issue 1" – the amendment to the state constitution that defined marriage as between a man and woman.⁷ A State Court of Appeals held that establishing such a registry did not violate Ohio law because domestic partnerships do not afford same-sex couples a marriage equivalent and do not provide the same rights, benefits

6 For example, the cities of Columbus and Cincinnati have established registries for domestic partners. City of Cincinnati, Domestic Partnership Registry, <https://www.cincinnati-oh.gov/council/domestic-partners-registry/> (last visited March 22, 2018); City of Columbus, Register a Domestic Partnership, <https://www.columbus.gov/council/How-Do-I/Register-a-Domestic-Partnership/> (last visited March 22, 2018); .

7 *Cleveland Taxpayers for Ohio Constitution v. Cleveland*, 2010-Ohio-4685 (2007).

1 *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

2 *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

3 Ohio Rev. Code § 3101.01(C)(1)-(2).

4 *Id.* at (3).

5 <http://www.cnn.com/ELECTION/2004/pages/results/ballot.measures/>.

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or legal protections of marriage, such as inheritance rights and tax benefits.⁸ Instead, such a registry simply helped private employers identify persons who may be eligible for domestic partnership benefits.⁹

Any civil unions or domestic partnerships entered into are legally recognized relationships and must be legally dissolved in court to be terminated. Not doing so means the relationship remains legally in effect and subsequent marriages will be called into question. It is important to consult with an attorney in Ohio concerning the dissolution of a civil union or domestic partnership.

IMPORTANT:

Any couple who has a civil union or domestic partnership issued from another state and lives in Ohio should consult with an attorney as to their rights under Ohio and federal law. Any such relationship must be dissolved in court even though Ohio state law does not recognize them.

COMMON LAW MARRIAGE

Common law marriages are recognized only for couples who entered into such an arrangement prior to October 10,

⁸ *Id.*

⁹ *Id.*

1991.¹⁰ However, before *Obergefell*, Ohio did not recognize any marriages of same-sex couples. Ohio has not taken up the question as to whether *Obergefell* would be given retroactive effect such that same-sex couples who entered into a common law marriage prior to 1991 would be given legal recognition as such. However, other state courts have ruled that pre-*Obergefell* common law marriages of same-sex couples are legally valid.¹¹ Any couple who believes they may have entered into a common law marriage prior to 1991 should consult with an attorney who has expertise in LGBTQ family law to discuss whether the criteria were met and whether the common law marriage remains legally recognized.

This is important because some benefits (such as Social Security or spousal support benefits) require that a marriage be of a certain length in order for a spouse to access such benefits. Common law marriages come with all of the same rights, benefits and responsibilities of legal marriage, including access to Social Security survivor benefits and access to pensions and other assets. A declaration of common law marriage also allows spouses to take advantage of divorce laws, giving them access to alimony determinations and division of marital property through equitable distribution.

¹⁰ Ohio Rev. Code § 3105.12(B)(1)-(3).

¹¹ Charles W. “Rocky” Rhodes, *Loving Retroactivity*, 45 Fl. State Univ. Law Review 383, 437-42 (2018) (discussing other states that have given retroactive effect to common law marriages of same sex couples, such as Pennsylvania).

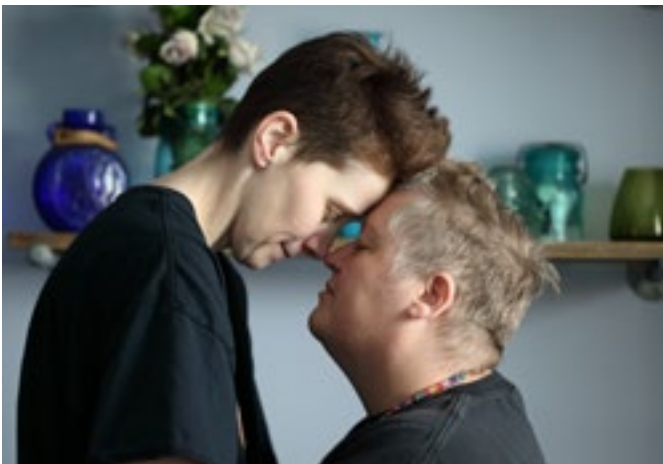


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DIVORCE

In Ohio, except for an annulment, there are two ways to end a marriage: a divorce or a dissolution of marriage. The end result is the same – parties are considered to be divorced (a dissolution of marriage is a no-fault divorce). In a dissolution of marriage, the parties enter into a separation agreement, which divides assets and debts and addresses custody, child support, spousal support, parenting time, and other issues between the parties. The agreement gets filed with the court along with a petition asking the court to set a hearing to dissolve the marriage. The court usually does not change the terms of the parties' agreement and simply orders it into execution, meaning the agreement becomes an Order of the Court. A divorce is a more complicated proceeding requiring grounds and the possibility of multiple hearings. If issues are not resolved between the parties, the case will be resolved after a trial before a Judge or Magistrate.



Before anyone can get married in Ohio or elsewhere in the United States, they must be single and not currently married. A person who fails to end a prior marriage by divorce and re-marries is committing the crime of bigamy, which can be prosecuted in Ohio and elsewhere.

It is important for anyone seeking to end their marriage to a same-sex spouse to consult with a family law attorney who is skilled and knowledgeable about LGBT family law issues. Since marriage equality is relatively new in Ohio, framing the special issues that these divorce cases may bring for Judges and Magistrates will be critical to the advancement of LGBT family law. For instance, in a situation where the marriage itself may have only lasted a short while due to the prior unavailability of marriage but the parties were in a long term relationship prior to marrying, attorneys will need to educate the court in looking beyond the length of the marriage to determine appropriate and equitable spousal support, and asset and debt division, as well as issues involving the parties' children.

FEDERAL BENEFITS AFTER *UNITED STATES V. WINDSOR* AND *OBERGEFELL V. HODGES*

In its 2013 decision in *United States*

For more information on how to access federal marriage benefits visit the post-*Obergefell* factsheets at: marriageequalityfacts.org

IMPORTANT:

Because marriages of same-sex couples are now recognized nationwide, married couples living in Ohio should be able to access all federal benefits that are attendant to marriage. Please alert the authors if you find such benefits have been denied to you as a result of the agency failing to recognize your marriage.

v. Windsor, the U.S. Supreme Court overturned the provision of the federal Defense of Marriage Act (DOMA) that denied federal marriage benefits to married same-sex couples.¹² This case laid the foundation for marriage equality nationwide, which was won two years later.

As discussed above, in 2015, the Supreme Court held in *Obergefell v. Hodges* that same-sex couples have a fundamental right to marry under the Constitution, mandating that same-sex couples be permitted to marry and have their marriages recognized throughout the country.¹³ Following *Obergefell*, all federal marriage benefits have been extended to married same-sex couples nationwide. Such benefits include, but are not limited to, Social Security and Veterans Administration benefits, all federal tax

¹² *United States v. Windsor*, 133 S.Ct. 2675 (2013).

¹³ *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

benefits, health insurance and retirement benefits for same-sex spouses of all federal employees, and spousal benefits for same-sex spouses of military service members.¹⁴

Please consult an attorney experienced in LGBTQ law, or the authors, if you experience discrimination from state agencies in recognizing your family relationships on the basis of marriage. Likewise, if you are an LGBTQ person or same-sex couple considering fostering and/or adopting children either from the public child welfare system or through private adoption, it is critical that you hire an Ohio adoption attorney who has experience working with LGBTQ people and couples.

It is not enough to simply hire an experienced family law attorney. There are issues unique to LGBTQ families that can, and should, only be managed by an attorney with particular experience and expertise in this area of the law. If you are unsure where to find an experienced LGBTQ adoption attorney, please contact Family Equality (familyequality.org), and we will do our best to help you find one.

¹⁴ In June 2017, the Texas Supreme Court held

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CHILDREN AND PARENTAGE

LGBTQ people and same-sex couples have diverse family structures and form families in a variety of ways. Some have children from prior different-sex or same-sex relationships. Some LGBTQ people are single parents by choice. Some same-sex couples adopt or use assisted reproductive technologies to build their families together. While there is much progress to be made in Ohio with regard to parental recognition for LGBTQ individuals and couples, there are some state rules, cases, and statutes in place that recognize and reflect the evolving landscape of modern families and diverse family structures.



that Obergefell “did not address or resolve the specific issue...whether and the extent to which the Constitution requires states or cities to provide tax-funded benefits to same-sex couples.” Pidgeon v. Turner, 538 S.W.3d 73, 87 (S.Ct. Tx 2017). The U.S. Supreme Court refused to hear the case and sent it back to the Texas trial court. The case is pending. This decision is only binding in Texas and is limited to the extension of marriage benefits under state law, but it could have an impact on federal Social Security benefits.

Many of Ohio’s laws dealing with parentage reference married couples in explicitly gendered terms like “husband,” “wife,” “mother,” and “father.” With the arrival of marriage equality for same-sex couples, the state of Ohio should now interpret these statutory provisions in a gender-neutral manner (i.e. “spouse” and “parent”); however, to date, the Ohio courts have not addressed this issue.

All same-sex couples raising LGBTQ children should keep copies of the following documents easily accessible:

- Adoption decree
- Birth certificate
- Standby Guardianship Nomination
- Marriage Certificate
- Medical Powers of Attorney

ADOPTION

Adoption decrees are irrefutable and undeniable proof of parentage. Once an adoption decree is validly issued in one state, it must be recognized and enforced in every state.

Ohio’s adoption law states that any unmarried adult or “a husband and wife together” may adopt.¹⁵ There is no law that prohibits adoption by LGBTQ individuals or couples, but there is no explicit statutory protection against discrimination either. For this and other reasons, it is advisable to contact an adoption attorney experienced in LGBTQ family law in Ohio and to engage with foster and adoption agencies who are

¹⁵ Ohio Rev. Code § 3107.03.

welcoming and affirming to LGBTQ people and couples.

Joint Adoption

As stated above, Ohio law allows for the joint adoption of a child by “a husband and wife.”¹⁶

With the arrival of nationwide marriage equality, same-sex married couples should be permitted to adopt under the same terms and conditions as different-sex married couples. Thus, as long as the couple is married and meets the requirements for petitioning for adoption, a same-sex couple should be eligible to jointly adopt. While there should be no question regarding the right of same-sex couples to adopt jointly, since there are no cases explicitly applying the gendered language of the statute to joint adoptions by married same-sex couples, consultation with an Ohio adoption attorney who has experience working with LGBTQ couples is essential.

Ohio law does not permit unmarried couples to petition to adopt jointly, whether same-sex or different-sex.

Second-Parent Adoption

Second-parent adoption is the adoption of a child by an additional parent who is not married to the legal parent of the child. In a second-parent adoption, the additional parent can be recognized as such without the first parent losing any parental rights, and the child is entitled to the benefits of

¹⁶ Ohio Rev. Code § 3107.3.

two legally recognized parents.

Ohio does not currently allow unmarried couples to obtain a second-parent adoption in Ohio.¹⁷ However, a validly-granted second-parent adoption issued in a different state must be recognized in Ohio and nationwide.¹⁸

Stepparent Adoption

Married same-sex couples can ensure that both parents are legally recognized by obtaining an adoption decree through the stepparent adoption procedure. Stepparent adoption is the legal adoption of a child by the spouse of the child’s legal parent.

This can apply to LGBTQ couples in two scenarios. First, if a married couple plans the pregnancy and conceives the child through the use of assisted reproductive technology, such as sperm, egg, or embryo donation, the biological parent may be considered the sole legal parent. When a woman gives birth through the use of a sperm donor, her same-sex married spouse should be entitled to a marital presumption of parentage regardless of gender (see section below), *but until Ohio law explicitly affords that protection, it is strongly advised that the other spouse obtain an adoption decree recognizing them as a legal parent.* This can be done through the stepparent adoption procedure and is sometimes referred to as a “confirmatory adoption” to confirm the parental rights of the non-genetic parent through adoption. Listing

¹⁷ *In re Adoption of Doe*, 719 N.E.2d 1071 (Ohio App. 1998).

¹⁸ *V.L. v E.L.*, 136 S.Ct. 1017 (2016).

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both parents on the birth certificate does not establish parental rights and does not guarantee parental rights as a stepparent adoption does.

The second scenario arises if one of the spouses already has a child when the couple is married and that parent is the child's only legal parent.¹⁹ In this scenario, after the couple marries, the spouse of the legal parent may adopt the child as a stepparent and share equally in the rights and responsibilities of raising the child.

In Ohio, stepparent adoptions are permitted as long as the other spouse is a parent of the child and he or she supports the adoption.²⁰ Prior to marriage equality in Ohio, same-sex couples could not adopt as stepparents because they were not legally recognized as "spouses" as required by Ohio law.²¹ Since Ohio gained marriage equality through *Obergefell* in 2015, however, a same-sex spouse is entitled to adopt under this provision just as a different-sex spouse would.

Adoption is a complicated proceeding, and many factors must be considered to determine if one is possible. Consultation with an Ohio adoption attorney who has experience working with LGBTQ families is strongly encouraged when proceeding with a stepparent adoption.

¹⁹ If the child may have another legal parent (i.e., the child was from a previous relationship or conceived with a known donor), it is important to consult with an attorney to determine if that individual's parental rights have been terminated.

²⁰ Ohio Rev. Code § 3107.03.

²¹ See *Obergefell v. Wymyslo*, 962 F.Supp.2d 968 (S.D. Ohio 2013).

An adoption decree is the single best irrefutable and undeniable proof of parentage. We strongly recommend that same-sex couples with children ALWAYS get an adoption decree that recognizes both parents as legal parents, even if you are married and appear on the birth certificate.

Marital Presumption

The marital presumption is the idea that, when a married woman gives birth, her spouse is the other legal parent. Historically, this concept has been applied exclusively to different-sex spouses. With nationwide marriage equality, the marital presumption laws should be applied to married same-sex couples on the same basis as it would for opposite-sex couples, but Ohio has yet to do so explicitly.

As with its adoption statutes, Ohio law uses gendered terms regarding the marital presumption and refers to it as a presumption of *paternity*, meaning that the husband of the woman who gives birth is presumed to be the parent of that child.²² While, in light of *Obergefell*, the law should be interpreted to apply to the same-sex spouse of a woman who gives birth, there have been no appellate court decisions in Ohio applying the presumption of paternity in the context of a same-sex married couple.

²² Ohio Rev. Code § 3111.03.

And, under Ohio law, the parental presumption thus far has been interpreted as a biological presumption, which can be rebutted through genetic testing. As such, same-sex couples conceiving a child through assisted reproduction where only one spouse has a genetic connection to the child should consult an LGBTQ family law attorney. While the marital presumption may be applied to same-sex couples, until the state legislature extends the marital presumption to same-sex spouses, the legal risk of relying on this presumption alone is too great, so it is critical for the non-birthing parent to secure parental rights through a confirmatory/stepparent adoption decree or a parentage action to ensure that both spouses are legally recognized as parents.

Some, but not all, Ohio counties have adopted a protocol permitting married same-sex couples to obtain a Parentage Order in Juvenile Court. These actions establish legal parental rights for both spouses and are preferable to relying on the marital presumption to establish parental rights.

Parentage Action

The purpose of a parentage action is to establish the parent-child relationship between the non-biological or non-adoptive parent and the child. In some counties, there may be no other mechanism than these new actions to establish the parent-child relationship. These relatively new actions in Juvenile Court would result in the child's birth certificate being modified to add the

new parent and to create legal rights and responsibilities for that parent.

As stated above, current law does not require the marital presumption to be applied to same-sex spouses and, even if it is, it can be rebutted in divorce court by genetic testing. A parentage action, as with an adoption, would take away the ability of the biological parent to rebut the presumption.

As discussed below, current donor insemination law in Ohio only recognizes a husband's right to parentage and the statute has not been amended to protect the non-biological married parent of the child born as the result of donor insemination. Obtaining a parentage action would protect the same-sex non-biological spouse if parentage is challenged in a divorce proceeding.

SURROGACY, ASSISTED REPRODUCTION, & ARTIFICIAL INSEMINATION

Assisted reproductive technology (ART) is the use of medical technology to assist with pregnancy or childbirth and includes methods such as in vitro fertilization or use of an egg donor, sperm donor, embryo donor, and/or a gestational carrier through surrogacy. Surrogacy is the carrying and delivering of a child by a woman for another person or couple with the intention of transferring all parental rights to the intended parent(s). In "traditional surrogacy," the surrogate contributes her

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own egg, while in “gestational surrogacy,” the surrogate has no genetic relationship with the fetus -- an embryo created from another woman’s egg is transferred to the surrogate’s uterus.

Ohio has laws in place regarding non-spousal artificial insemination. Using gendered language, the statute states that, if a married woman uses donor sperm to conceive a child and her husband consents, the husband shall be treated in law and regarded as the “natural father” of any child conceived. Under Ohio law, the sperm donor is *not* a parent and has no parental rights or obligations to any child conceived using the donated sperm so long as the requirements of the statute are met, including that the conception is initiated under the supervision of a physician and that both spouses consent.²³ Consultation with an attorney is essential because if all of the aspects of the statute are not

followed, the donor cannot relinquish parental rights or obligations. Further, Ohio courts have not clarified whether this statute applies to a same-sex spouse.

Similarly, a woman who receives an embryo donation is treated as the mother of the child. If a married woman gives birth to a child born as a result of an embryo donation to which her husband consented, her “husband” is treated in law as the father.²⁴

There are no state statutes in Ohio that govern surrogacy, but there is case law that has upheld the legality of surrogacy agreements that protect the rights of intended parents who use a surrogate to conceive a child and carry a pregnancy. Surrogacy, and the related use of ART, are common in Ohio. Ohio courts have not yet ruled on the enforceability of traditional surrogacy agreements but

23 Ohio Rev. Code §§ 3111.88 - 3111.95.

24 Ohio Rev. Code § 3111.97.



have held that gestational surrogacy agreements are generally enforceable.²⁵ It is essential to enter into a written surrogacy and/or donor contract with any sperm, egg, or embryo donor to document the expectations, intentions, and responsibilities of all parties involved in a surrogacy and/or donor arrangement and to petition for an adoption to clarify the rights of all parties.

It is imperative that any individual or couple who is considering using surrogacy and/or ART consult with an Ohio attorney who has significant expertise in surrogacy and ART law, has worked with LGBTQ individuals and same-sex couples, and has experience drafting enforceable contracts between intended parents, donors, surrogates, and surrogacy agencies to ensure that the parental rights of the intended parent(s) are recognized. Further, as an adoption decree is irrefutable proof of parentage and is valid throughout the country, it is strongly recommended that same-sex couples consult with an attorney about also petitioning for an adoption decree for a child conceived through ART even if a surrogacy or donor agreement is in place and the name(s) of the intended parent(s) appear on the birth certificate.

BIRTH CERTIFICATES

Ohio law states that, for the purposes of the birth certificate, the mother is deemed to be the woman who gives birth to the child unless otherwise determined by law, and if the mother was married at the time

25 J.F. v. D.B., 116 Ohio St. 3d 363 (Ohio 2007).

of either conception or birth, the name of the “husband” shall be entered on the birth certificate.²⁶ Nonetheless, as discussed above, in light of the Supreme Court’s decision in *Obergefell*, Ohio’s law should be interpreted in a gender neutral fashion to apply equally to all married couples.

Indeed, in June 2017, the U.S. Supreme Court held that states cannot discriminate against same-sex couples when listing both spouses on a birth certificate. In that case, the U.S. Supreme Court expressly reiterated that equal access to birth certificates is one of the many “rights, benefits, and responsibilities” associated with civil marriage.²⁷ Accordingly, states cannot discriminate against same-sex spouses with regard to the naming of each spouse on a child’s birth certificate.

As a birth certificate is not a Court Order but rather is an administrative record, it is still strongly recommended that same-sex couples petition for an adoption decree as soon as possible to ensure that both parents are legally recognized. Unlike an adoption decree, a birth certificate is not given “full faith and credit” and does not have to be recognized by other states.

The law regarding issuance of new birth certificates after an adoption, however, is gender neutral and states that, upon the adoption of a child, a new birth record shall be issued with the names of the “adoptive parents.”²⁸ Therefore, there should be no hurdles to listing two same-sex parents

26 Ohio Rev. Code § 3705.09.

27 Pavan v. Smith, No. 16-992 (June 2017).

28 Ohio Rev. Code § 3705.12.

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once an adoption is finalized. To ensure a child's birth certificate is updated properly after an adoption decree has been entered, contact Ohio's Office of Vital Records. Details on how to do so are available at (<https://www.odh.ohio.gov/vs>).

CHILD CUSTODY & CHILD SUPPORT

An LGBTQ individual who is not a legal parent (i.e., is not a biological parent and has not adopted a child) may be able to petition for custody rights if he or she is co-parenting the legal child of their partner and has the legal parent's consent. If the non-legally recognized parent's relationship with the child began with the consent of the legal parent and the legal parent has discharged parental duties and is found by the court to be "unsuitable," the non-legal parent may be awarded custody, but this is not permanent and is subject to modification by the court.²⁹ The non-legally recognized parent has the burden to establish "parental unsuitability," which is a difficult standard to meet. If met, the non-legally recognized parent has physical care and control of the child and has the right to make decisions regarding the child's health, education, and well-being, but there are certain rights and benefits that are only available to legal parents and their children such as Social Security Survivor Benefits and inheritance rights.

It is recommended that parents of children enter into "shared parenting" agreements

²⁹ In re Hockstock, 98 Ohio St. 3d 238 (Ohio 2002).

in which the parents agree to certain visitation, support, and decision-making rights in regard to their children. However, under Ohio law, these agreements are only valid if both parties are legal parents of the child.³⁰ A non-legal parent who wishes to secure visitation rights may only do so with the legal parent's consent, preferably in writing.³¹ "Shared parenting" agreements are subject to review and will only be enforced if the agreement is in the best interest of the child.³²

Similarly, a custodial parent will only be able to collect child support from the child's legal parent.³³ Therefore, if a same-sex couple never finalized an adoption, it is possible that the child's parent would be unable to collect child support from their former partner, although the law is unsettled on this point.

APPLYING FOR A SOCIAL SECURITY NUMBER AND CARD FOR A CHILD

To apply for a Social Security Number and Card for a child, the Social Security Administration (SSA) requires a number of different documents, including personal information about the parent applying for the Card or Number, the child, and any other legal parent to the child, and a completed SS-5 application form.

³⁰ Ohio Rev. Code § 3109.04.

³¹ In re Mullen, 129 Ohio St. 3d 417 (Ohio 2011);

³² In re G.R.-Z., 2017-Ohio-8393 (Ct. App. Ohio 2019);

³³ Ohio Rev. Code § 3109.05

These documents may be submitted to the SSA via letter or in person at a local SSA office, which can be found through this link (<https://secure.ssa.gov/apps6z/FOLO/fo001.jsp>). Two same-sex parents may be listed on the application for a Social Security Card or Number.

However, only parents listed on the child's birth certificate or on a court-ordered adoption decree are permitted to be included on the application.

For more information on the application process, visit the SSA website at (<https://www.ssa.gov/ssnumber>), or call the SSA at 1-800-722-1213 or 1-800-325-0778. If difficulties arise, please contact Family Equality.

APPLY FOR A PASSPORT FOR A CHILD

To apply for a passport for a child, the State Department requires documentary evidence, a completed DS-11 form, a photograph of the child, and personal information about the parent applying for the passport, the child, and the child's other legal parent, if any. These documents must be submitted to the State Department in person at the nearest accepted facility or regional passport agency, listed here (<https://iafdb.travel.state.gov/>).

The required materials are listed here: (<http://travel.state.gov/content/passports/english/passports/under-16/under-162.html>).

Two same-sex parents may be listed on the application for a child's passport. Only parents listed on the child's birth certificate or on a court-ordered adoption decree are permitted to be included on the application. However, if the adoptive (or legal) parent of the child is unavailable, the Department of State permits a non-adoptive parent who stands *in loco parentis* to the child to complete the DS-11 form and application. *In loco parentis* means an adult with day-to-day responsibilities to care for and financially support a child but with whom the child does not have a biological or legal relationship.

Questions about the application process and acceptable materials can be directed to the National Passport Information Center at 1-877-487-2778. The State Department website also provides helpful information at (<http://travel.state.gov/>).

NONDISCRIMINATION PROTECTIONS

There are currently no federal laws that explicitly prohibit discrimination against LGBTQ people in employment, housing, and public accommodations. Existing federal civil rights laws have been interpreted to provide some limited protections in housing, employment, education and even in health care, but without explicit and fully inclusive federal protections against discrimination based on sexual orientation and gender identity, LGBTQ people and their families remain vulnerable.

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Unfortunately, Ohio state law offers no explicit protections against sexual orientation-based or gender identity-based discrimination in these areas. However, 20 cities -- including the five most populated cities in Ohio -- have nondiscrimination ordinances that prohibit discrimination on the basis of sexual orientation, gender identity, or both.³⁴ Accordingly, LGBTQ individuals in these municipalities who are discriminated against in employment, housing, or public accommodations may file a complaint with the municipality.³⁵

EMPLOYMENT

State Law

Even with the arrival of nationwide marriage equality, LGBTQ people are at risk of being outed at work by simply filing an amended W-4, potentially leading to

³⁴ Equality Ohio, Equality Map, <http://www.equalityohio.org/city-map/> (last viewed November 7, 2018). Additionally, a county-wide ordinance offering protections for LGBTQ people in housing, employment, and public accommodations is under consideration in Cuyahoga County.

³⁵ Because additional municipalities may add protections, it is important to check <http://www.equalityohio.org/city-map/> for the most up-to-date list.

discrimination in the workplace or even the loss of a job. Unfortunately, there is no state law in Ohio that prohibits employers from discriminating against an employee on the basis of sexual orientation and/or gender identity. However, Ohio law does prohibit employment discrimination on the basis of “sex.”³⁶ As discussed in the next section, some federal courts, including the Sixth Circuit Court of Appeals (which includes Ohio) have interpreted federal law barring sex discrimination in employment to include protection for LGBTQ individuals in some circumstances.

Although there is no statutory protection, Ohio has an executive order in place that offers some protections from employment discrimination to LGBTQ individuals employed by the state. In 2007, Governor Ted Strickland signed an executive order that extends employment discrimination protections to the LGBTQ community. This order prohibited discrimination against state employees on the basis of sexual orientation or gender identity in making hiring, layoff, termination, transfer, and other employment-related decisions.³⁷ In 2011, Governor John Kasich signed Executive Order No. 2011-05K to renew the expired 2007 Executive Order, but this Order does not include gender identity as a protected class.³⁸ Thus, employees

³⁶ Ohio Rev. Code § 4112.01.

³⁷ State of Ohio, Office of the Governor, Executive Order No. 2011-10S, Establishing Policy Against Discrimination Based on Sexual Orientation or Gender Identity (May 17, 2007).

³⁸ State of Ohio, Office of the Governor, Executive Order No. 2011-05K, Establishing an Anti-Discrimination Policy in State Government Employment (January 21, 2011).

of the state may report allegations of employment discrimination on the basis of sexual orientation to the agency where the discrimination occurred. Each state agency has its own Equal Employment Officer charged with investigating complaints of discrimination, and the list of agency contacts is available here: <http://hr.ong.ohio.gov/EEOEO.aspx.status>.

Federal Law

While there is no explicit federal law that bars discrimination against LGBTQ people in the workplace, the definition of “sex” in Title VII of the Civil Rights Act of 1964 has been interpreted by some courts to provide employment protections for LGBTQ people. The Equal Employment Opportunity Commission (EEOC) hears and investigates complaints of employment discrimination under Title VII by all private employers, state and local governments, federal government agencies, employment agencies, and labor unions, as long as they have fifteen or more employees or members.

Since 2011, the EEOC has ruled several times that claims of sexual orientation and gender identity discrimination in employment are actionable under Title VII because such discrimination constitutes discrimination based on sex stereotypes.³⁹ These EEOC decisions, while not binding to

39 *Macy v. Holder*, No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012); *Veretto v. US Postal Service*, No. 0120110873 (E.E.O.C. Jul. 1, 2011); *Castello v. US Postal Service*, No. 0120111795 (E.E.O.C. Dec. 20, 2011); *Complainant v. Foxx*, No. 0120133080, 2015 WL 4397641 (E.E.O.C. July 15, 2015).

courts, reflect the EEOC’s view that LGBTQ individuals are protected under Title VII and may file a claim of employment discrimination utilizing the law’s inclusion of “sex” as a protected class.

Prior to the recent EEOC rulings, many federal courts⁴⁰ concluded that Title VII did not prohibit employment discrimination on the basis of sexual orientation, including the U.S. Court of Appeals for the Sixth Circuit (which includes Ohio) in *Vickers v. Fairfield Medical Center*.⁴¹ In *Vickers*, the court held that sexual orientation is not a protected class under Title VII and refused to apply a sex stereotyping theory because the gender non-conforming behavior (his attraction to men) was not observed at work and he did not argue that his appearance or mannerisms on the job were perceived as gender non-conforming.⁴²

Several federal appellate courts have recently revisited their analyses in light of the EEOC’s rulings. Since 2017, the Second and Seventh Circuits have concluded that sexual orientation discrimination is a form of sex discrimination that is prohibited by Title VII.⁴³ In March 2018, the Sixth Circuit ruled that discrimination on the basis of transgender and transitioning status is a violation of Title VII.⁴⁴ Although the court did not revisit the issue of whether sexual

40 E.g., *Evans v. Georgia Reg’l Hosp.*, 850 F.3d 1248 (11th Cir. 2017).

41 453 F.3d 757 (6th Cir. 2006).

42 *Id.* at 762-64.

43 *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018); *Hively v. Ivy Tech Comm. College*, 853 F.3d 339 (7th Cir. 2017).

44 *EEOC v. R.G.*, 884 F.3d 560, 574-81 (6th Cir. 2018).

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orientation discrimination is a violation of Title VII, it distinguished the case from *Vickers* and wrote that “a plaintiff may state a claim under Title VII for discrimination based on gender nonconformance that is expressed outside of work.”⁴⁵

Victims of discrimination on any protected basis, including sexual orientation and gender identity, must file a Charge of Discrimination with a local EEOC office prior to filing a lawsuit in court alleging discrimination. The EEOC offices serving Ohio can be found at (<https://www.eeoc.gov/field>).

Generally, the Charge of Discrimination must be filed within 180 days of each instance of discriminatory treatment. To file a complaint based on sexual orientation or gender identity, the complainant must list the basis for the claim as discrimination on the basis of “sex,” as this is the existing basis that the EEOC and some courts have linked to sexual orientation and gender identity. More about the EEOC process and a claimant’s rights and responsibilities after filing a claim with the EEOC is available at this website: (<http://www.eeoc.gov/employees/charge.cfm>). Federal employees and job applicants are subject to a different timeline for making a claim (typically 45 days) and procedures for filing, which are available here: http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm).

Ohioans working for companies that contract with the federal government have access to additional protections against

⁴⁵ *Id.* at 580.

discrimination in employment. These protections stem from a 2014 Executive Order that prohibits federal contractors from discriminating against current or prospective employees on the basis of sexual orientation or gender identity.⁴⁶ Contractors who do business with the federal government employ 20% of American workers, all of whom are now covered by non-discrimination protections under this Order. LGBTQ individuals who have been the victim of discrimination by an employer that contracts with the federal government, can file a complaint through the U.S. Department of Labor Office of Federal Contract Compliance Programs. Information about the complaint process is available here: (<http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm>).

Company Policies

Many employers, especially those that operate in multiple states, have enacted their own internal non-discrimination policies that prohibit discrimination against LGBTQ employees. While these policies may not be legally binding, they can often give an employee some recourse where there would otherwise be none and, in some cases, may be viewed as a contract between the employer and employee, giving rise to contractual rights as well. A company’s non-discrimination policy should be available in the company’s employee handbook or

⁴⁶ Executive Order 13672 (July 21, 2014). On January 31, 2017, President Trump issued a statement that this Executive Order will remain intact during his presidency. <https://www.whitehouse.gov/the-press-office/2017/01/31/president-donald-j-trump-will-continue-enforce-executive-order>.

through the human resources department, and it is always important to be familiar with it and understand the rights and protections it affords.

Any person who has been or may have been the victim of sexual orientation- or gender identity-based discrimination in the workplace should contact an attorney familiar with LGBTQ employment law.

HOUSING

State Law

Ohio state law offers no protection against discrimination on the basis of sexual orientation or gender identity in housing or financial assistance. There are currently no express prohibitions in the Ohio Housing Code that prohibit discrimination against LGBTQ people. The Code does, however, prohibit discrimination on the basis of sex.⁴⁷ As described above, in employment discrimination cases, there is case law supporting the argument that prohibitions of discrimination based on “sex” includes LGBTQ individuals because such discrimination amounts to “sex-stereotyping,” which is a prohibited form of sex discrimination. However, the Ohio Supreme Court has not yet ruled on the application of this principle to the prohibition against sex discrimination in the Ohio Housing Code. Any person who has been subjected to discrimination in housing based on sexual orientation or gender identity should consult with an attorney.

⁴⁷ Ohio Rev Code § 4112.01.



Further, as previously mentioned, some localities have passed nondiscrimination ordinances that prohibit discrimination in housing on the basis of sexual orientation and/or gender identity, so LGBTQ individuals in those localities may seek recourse through their local government.

Federal Law

The federal Fair Housing Act, which was enacted as Title VIII of the Civil Rights Act of 1968 and is enforced by the Department of Housing and Urban Development (HUD), does not explicitly prohibit discrimination against LGBTQ people and their families. However, an LGBTQ person experiencing discrimination on the basis of sexual orientation or gender identity may still be covered by the Fair Housing Act on the basis of such discrimination constituting discrimination on the basis of “sex,” similar to the employment context.

In 2012, HUD issued the “Equal Access Rule,” which prohibits discrimination on the basis of sexual orientation or gender identity by any housing or service provider that receives funding or insurance from HUD.⁴⁸

⁴⁸ Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender

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It also prohibits lenders from determining a borrower's eligibility for Fair Housing Authority (FHA) insurance on the basis of sexual orientation or gender identity. For example, any landlord receiving funding through HUD is prohibited from refusing to rent, offering unequal and inflated rental prices, or mistreating potential renters based on their sexual orientation, gender identity, or HIV/AIDS status. Further, any lender or operator of HUD-assisted housing is prohibited from inquiring as to the sexual orientation or gender identity of an applicant and barred from using such criteria in assessing an application. A violation of this rule may result in HUD pursuing a number of remedies, including sanctions against the violator.

HUD allows individuals to submit housing discrimination complaints by telephone at 1-800-955-2232, by mail, or online (http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination). The HUD maintains field offices in Cleveland and Columbus, and the contact information for both offices is available at this link: (<https://www.hud.gov/states/ohio/offices>). To learn more about filing a complaint, as well as the process for filing a lawsuit, please read this page: (http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/complaint-process).

PUBLIC ACCOMMODATIONS

State Law

Ohio law offers no explicit protection for

Identity, Final Rule (2012); 24 CFR § 5.106.

LGBTQ people in public accommodations. Public accommodations are generally defined as entities, both public and private, that are open to or offer services for the general public.⁴⁹ Examples include retail stores, hotels, restaurants, educational institutions, hospitals, public parks, libraries, and recreational facilities, but private clubs and houses of worship are generally exempt from this definition.

As noted above, many localities in Ohio have passed local non-discrimination ordinances that prohibit discrimination on the basis of sexual orientation and/or gender identity in public accommodations, but without explicit protection at the state level, many LGBTQ individuals in Ohio have no protection from discrimination. The U.S. Supreme Court recently reaffirmed the importance of state law nondiscrimination protections. In its recent decision in *Masterpiece Cakeshop*, which involved a baker who refused to bake a wedding cake for a same-sex couple's wedding celebration, the Supreme Court underscored that the Constitution protects LGBTQ individuals and families from discrimination.⁵⁰ Further, the Court explained that "it is a general rule that [religious and philosophical] objections do not allow business owners and other actors

49 Under Ohio law, "public accommodation" is defined as "any inn, restaurant, eating house, barbershop, public conveyance by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement of which the accommodations, advantages, facilities, or privileges are available to the public." Ohio Rev. Code § 4112.01(A)(9).

50 *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, No 16-111 (June 4, 2018) at 9.

in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law.”⁵¹ In other words, businesses that are open to the public must be open to all.

Federal Law

Federal public accommodations protection provisions can be found in Title II of the Civil Rights Act of 1964 and Title III of the Americans with Disabilities Act of 1990.⁵² Unfortunately, neither law provides express protections based on sex, sexual orientation, or gender identity. However, in 1998, the Supreme Court ruled that being HIV-positive is a physical disability covered by the Americans with Disabilities Act, even if the infection has not yet progressed to the symptomatic phase.⁵³ Businesses that hold themselves open to the public are therefore prohibited from refusing service or business to individuals because they are HIV-positive.

SCHOOL POLICIES AND ANTI-BULLYING

STATE LAW

As with employment, housing, and public

⁵¹ Id.

⁵² Each federal law has its own definition of “public accommodations,” (42 U.S.C. § 12181 & 42 U.S.C. §2000a(b)). For either federal law to apply, the public accommodation must affect interstate commerce.

⁵³ *Bragdon v. Abbott*, 524 U.S. 624 (1998).

Ultimately, because school district policies are determined at the local level, there can be wide variations on the degree to which a school district is proactive and protective of LGBTQ students, families, and employees. It is important to be familiar with your school district’s policies protecting LGBTQ individuals and to reach out to your school board with questions or concerns.

accommodations, the State of Ohio offers no explicit statutory protections against discrimination, harassment, or bullying on the basis of sexual orientation and gender identity for LGBTQ students and employees in the public education system. School boards of every school district in Ohio are required to develop a policy prohibiting bullying.⁵⁴ The law does not delineate what groups are protected but defines bullying as “[a]ny intentional written, verbal, electronic or physical act that a student has exhibited toward another particular student more than once and the behavior both (i) Causes mental harm to the other student; and (ii) Is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student.”⁵⁵

The Ohio Department of Education has published a model anti-bullying policy that includes the “overt intent to ridicule,

⁵⁴ Ohio Rev. Code § 3313.666.

⁵⁵ Ohio Rev. Code § 3313.666(A)(2).

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humiliate or intimidate another student or school personnel” as an example of bullying behavior.⁵⁶ While the model policy does not specify particular groups that are to be protected, the broad language would likely encompass protections for LGBTQ individuals against bullying based on their sexual orientation or gender identity or expression. This does not take the place of comprehensive legislation, but it offers some recourse for LGBTQ harassment, bullying, and discrimination in education. Further, many individual schools have created fully inclusive enumerated anti-bullying policies that expressly protect LGBTQ students. However, without explicit statutory language or authoritative decisions from the state or appellate courts in Ohio, LGBTQ students and public-school employees remain vulnerable and should consult an attorney if experiencing harassment or discrimination at school.

FEDERAL LAW

Federal law, specifically Title IX of the United States Education Amendments of 1972, also provides some protections and support to students facing bullying or discrimination based on their sexual orientation or gender identity. Title IX prohibits discrimination against students in schools and other educational

⁵⁶ Ohio Department of Education, Anti-Harassment, Anti-Intimidation, or Anti-Bullying Model Policy, October 9, 2012, available at <http://education.ohio.gov/getattachment/Topics/Other-Resources/School-Safety/School-Safety-Resources/Anti-Harassment-Intimidation-and-Bullying-Model-Po/Anti-HIB-Model-Policy-FINAL-update-incl-HB116-100912.pdf.aspx>.



programs that receive federal funding if the discrimination is based on a student’s sex or gender. While Title IX does not explicitly include sexual orientation or gender identity as bases for a claim of discrimination, the law has been applied to prohibit discrimination where a student is mistreated for being sex or gender non-conforming,⁵⁷ meaning the student faces discrimination for not subscribing to the stereotypical notions of femininity or masculinity. In past policy statements, the Department of Education (DOE) included transgender students in those classes protected by Title IX, and lesbian, gay, and bisexual students have successfully filed claims of discrimination under Title IX.

In a May 2016 statement, the DOE and Department of Justice (DOJ) explained that compliance with Title IX requires schools to treat transgender students consistent with their gender identity and does not allow schools to impose a medical diagnosis or treatment requirement.⁵⁸ However, in February 2017, under the

⁵⁷ *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151 (C.D. Cal. 2015).

⁵⁸ United States Dept. of Education Office for Civil Rights, Dear Colleague Letter on Transgender Students (May 2016).

Trump Administration, the DOE and DOJ rescinded this guidance.⁵⁹ Despite the DOE and DOJ's withdrawal of the guidance, the underlining law that the guidance interpreted remains. Since then, the U.S. Court of Appeals for the Seventh Circuit unanimously held that transgender students are protected from discrimination under Title IX and the Equal Protection Clause of the U.S. Constitution.⁶⁰

Federal district courts in Maryland and Virginia have recently reached the same conclusion.⁶¹

The DOE's Office for Civil Rights (OCR) investigates claims of discrimination on the basis of race, sex, national origin, sex, and disability in programs or activities that receive funding from the DOE (such as public elementary or secondary schools, vocational schools, colleges and universities, museums, libraries, and public after-school programming.). To open an OCR investigation, an individual must file a complaint on behalf of himself or herself, a group, or another person facing discrimination within 180 days of the last instance of discrimination. Since Title IX does not list sexual orientation or gender identity as separate bases for a claim, the complaint must indicate "sex" as a basis for the claim.

59 United States Dept. of Education Office for Civil Rights, Dear Colleague Letter on Title IX (Feb 2017): <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.docx>.

60 Whitaker v. Kenosha Unified School District, No. 16-3522 (7th Cir. 2017).

61 Grimm v. Gloucester County School Board, No. 4:15cv54 (E.D. Va May 22, 2018); M.A.B. v. Bd. of Educ. of Talbot Cty., 286 F.Supp. 3d 704 (D. Md. 2018).

More details on drafting a complaint, as well as an electronic complaint form, are available on the OCR website, located here: (<https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>).

HEALTHCARE

STATE LAW

The State of Ohio offers no statutory protections against discrimination in healthcare and health insurance on the basis of sexual orientation or gender identity.

Some State employers cover gender reassignment surgery in their employee healthcare plans.⁶²

FEDERAL LAW

Each year, the federal government opens enrollment for individual and family healthcare coverage under the Affordable Care Act (ACA). Historically, enrollment for the following year opened in November and closed mid-February of the following year. However, beginning in 2017, the open enrollment period was much shorter.

Open enrollment for coverage in 2019 is from November 1 to December 15, 2018. Individuals who experience a major life change, such as moving, getting married, or having a baby, may qualify to enroll

62 Such employers include the public library, Ohio State University, Ohio University, and Franklin County.

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in one of the ACA's Special Enrollment Periods during another part of the year. For detailed information about plans, Special Enrollment Periods, or to find out where and how to enroll, go to (www.healthcare.gov) and select a state of residence.

The ACA prohibits denial of coverage for an individual or family member because of a pre-existing condition. This includes a current illness or a history of chronic illness or disease, HIV status, receiving or having received transgender-related care, or a prior pregnancy. However, it is important to note that, despite the fact that the ACA prohibits insurance providers from discriminating against individuals and families by denying them the ability to obtain healthcare coverage, the ACA does not mandate that insurance plans offer coverage that is inclusive of the many needs of LGBTQ individuals and families. For example, the ACA does not require insurers to cover transgender-related care or treatment for HIV and AIDS. However, insurers are prohibited from categorically denying coverage for transition-related care, nor can they refuse to cover transition-related care if they cover that same treatment for other people. While insurers are not required to cover these treatments, they may offer plans that do so; any person seeking coverage of transition-related care should investigate plans thoroughly to find the best option. Further, when looking for family coverage, keep in mind that definitions of "family" may be too narrow to include many dependents in an LGBTQ family structure, given the myriad LGBTQ family structures that exist.

Section 1557 of the ACA prohibits discrimination based on sex in all health programs and activities receiving federal financial assistance.⁶³ The final agency rule implementing Section 1557 prohibits discrimination based upon gender identity, requiring that any healthcare provider receiving federal funding (i.e. Medicaid or Medicare, any health program administered by the federal government, and any health insurance marketplace) must treat individuals consistent with their gender identity.⁶⁴ The final rule also prohibits discrimination based on sex stereotyping, providing potential protections to lesbian, gay, and bisexual people.⁶⁵ Additionally, an insurance company that offers health coverage to opposite-sex spouses must do the same for same-sex spouses and must treat married same-sex couples the same as married opposite-sex couples when they apply for premium tax credits and lower out-of-pocket costs on private insurance plans.⁶⁶

Anyone who has experienced discrimination on the basis of their sexual orientation or gender identity in a health care setting should immediately file a complaint with the United States Department of Health and Human Services Office for Civil Rights. More details on drafting a complaint, as well as an

63 42 U.S.C § 18116.

64 45 CFR 92 (2016); 81 FR 31375 (2016). In *Franciscan Alliance v. Burwell*, Case No. 7:16-cv-00108-O (N.D. Texas 2016), a district court judge issued an injunction against enforcing this rule, but an appeal is pending.

65 45 CFR 92 (2016); 81 FR 31375 (2016).

66 <https://www.healthcare.gov/married-same-sex-couples-and-the-marketplace/>.

electronic complaint form, are available at the HHS website, located at (<http://www.hhs.gov/civil-rights/filing-a-complaint/index.html>).

For more information on how the Affordable Care Act and the insurance marketplaces benefit LGBTQ-headed families, this is a helpful resource developed by multiple LGBTQ advocacy organizations: [Where to Start, What to Ask: A Guide for LGBTQ People Choosing Health Care Plans.](#)

FAMILY AND/OR PARENTING LEAVE

Ohio does not have a state family or medical leave law requiring employers to provide paid family leave. Ohio employees are entitled to the rights of the federal Family Medical and Leave Act (FMLA). The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Eligible



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employees are entitled to up to 12 unpaid workweeks of leave in a 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- the care of the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

FMLA applies to all public agencies (state, local, and federal) and all local education agencies (schools). The FMLA also applies to private sector employees who employ 50 or more employees for more than 20 workweeks in the current or preceding calendar year.

Further, military caregiver leave entitles eligible employees up to 26 work-weeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin.

In 2010, the Department of Labor issued a clarification of the definition of "son or daughter" to include a child for whom a person provides a certain amount of day-to-day care or financial support, regardless of whether there is a legal or biological

relationship. This clarification ensures the ability of a same-sex parent and/or partner to take time off from work to care for their child without fear of losing their job. The text of the Department of Labor’s clarification is available at: (http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm)

In 2014, following the *Windsor* decision and the repeal of the DOMA, the FMLA’s benefits were extended to married same-sex couples. Because of this, married same-sex couples became entitled to take time off to care for their spouses. This was solidified further in 2015 when the definition of “spouse” in the FMLA was expanded to include all employees in a same-sex marriage regardless of whether their state of residence recognized their marriage. Finally, the *Obergefell* decision led to all federal marriage benefits being extended to all married same-sex couples across the country.

CHANGES OF NAME AND GENDER

A transgender individual in Ohio may submit a petition to a court to obtain a legal name change.⁶⁷ The court will return the scheduling order to the petitioner with a date and time for a hearing. Prior to the hearing, the applicant must publish a notice in two newspapers stating that a name change petition has been filed and providing the date of the court hearing, but publication requirements can be

⁶⁷ Ohio Rev. Code § 2717.01.

waived and records can be sealed for the applicant’s safety.⁶⁸

Ohio statutes do not offer any guidance on updates to the gender marker on a birth certificate, and a 1987 case provides that the gender marker on birth certificates cannot be updated following sexual reassignment surgery.⁶⁹ Thus, as a general matter, Ohio courts will not issue a court order of gender change for transgender individuals born in Ohio; however, this is currently being litigated in Ohio federal court.⁷⁰

Ohio will, however, update names and gender markers on driver’s licenses. Name change requests require a court order documenting the name change.⁷¹ To update the gender marker, an individual must complete a “Declaration of Gender Change” form and have a licensed medical or social service provider complete a portion of the form certifying the applicant’s gender identity.⁷² No court order is required for this form.

⁶⁸ Ohio Rev. Code § 2717.01.

⁶⁹ *In re Ladrach*, 32 Ohio Misc.2d 6 (1987).

⁷⁰ *Ray v. Himes*, Case No. 2:18-cv-00272-MHW-CMV (S.D. Ohio, filed March 29, 2018), <https://www.usnews.com/news/us/articles/2018-03-29/aclu-sues-ohio-to-allow-gender-changes-on-birth-certificates>.

⁷¹ Ohio Bureau of Motor Vehicles, DMV, Driver License & ID Card available at <http://bmv.ohio.gov/dl-renewal-current.aspx> (last visited March 2018).

⁷² National Center for Transgender Equality, ID Documents Center - Ohio, last updated January 2018, <https://transequality.org/documents/state/ohio>.

HATE CRIMES PROTECTIONS

Ohio state law does not currently include protections for LGBTQ people who are targeted by hate crimes; however, several municipalities offer this protection at the local level. The federal government offers some protection, however. In 2009, Congress enacted the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which expands federal

hate crimes to LGBTQ people.⁷³ The law allows federal law enforcement agencies, such as the FBI, to investigate and prosecute hate crimes against LGBTQ individuals when local or state authorities fail to act. Victims of a hate crime should report the crime both to the local authorities and to the FBI. The FBI maintains field offices in Cleveland and Cincinnati, and contact information is available through the following webpage: (<https://www.fbi.gov/contact-us/field-offices>).

⁷³ 18 U.S.C. § 249.



TIPS FOR LEGAL DOCUMENTS

- ✓ Always have copies of these forms with you, we recommend carrying electronic copies on a thumb drive attached to your keychain.
- ✓ Keep several signed original copies of the forms.
- ✓ Write with a blue pen when completing or signing forms so health care providers don't question whether the document is an original.
- ✓ Always have original copies with you when you travel out of state.
- ✓ Keep an extra copy of your forms somewhere easy for a close friend or family member to find.
- ✓ Keep copies online on a secure server.

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RECOMMENDED LEGAL DOCUMENTS FOR SAME-SEX COUPLES

LAST WILL AND TESTAMENT

A Will is a legal document by which a person directs how real estate and personal property will be distributed upon death. Unmarried same-sex couples must have Wills in which their partners are designated beneficiaries, so that the partner will be able to inherit any of the deceased partner's property. Even if married, it is best to have a Will. In addition to deciding property distribution, a Will also provides the opportunity to designate who should become guardian to any minor children. If both parents are not legally recognized as such, and the legal parent dies, a judge will decide who the guardian will be. A legally recognized parent naming the other parent in a Will expresses their wishes and increases the likelihood that a judge will respect those wishes about who should raise the children after the death of the legally recognized parent.

A Will does not affect beneficiaries that have been designated on bank accounts, insurance policies, or retirement accounts. The company that holds those funds will disburse them to the designated beneficiary. It is important to keep such designations up-to-date.

More information is available from the Ohio State Bar Association at: (<https://www.ohiobar.org/ForPublic/Resources/LawFactsPamphlets/Pages/LawFactsPamphlet-19.aspx>).

ADVANCE DIRECTIVE FOR HEALTHCARE

An Advance Directive for Healthcare allows Ohioans to direct whom they want to make medical decisions for them, as well as providing for end-of-life choices in the event they are unable to express that intent at the time that care is required. More information on Advance Directives in Ohio is available at: (<https://www.ohiobar.org/ForLawyers/MemberResources/LegalResources/Pages/StaticPage-269.aspx>).

FINANCIAL POWER OF ATTORNEY

It is important that partners consider providing each other with the power to handle personal finances on their behalf through a “financial power of attorney” in the event that a

partner becomes unable to manage his/her own finances due to sickness or incapacitation. It is advisable to consult an Ohio attorney in drafting this document.

DOMESTIC PARTNERSHIP AGREEMENT & PRE-MARITAL AGREEMENTS

A Domestic Partnership Agreement expresses an unmarried couple's understanding as to how they will share income, expenses, assets and liabilities. It also discusses a plan for division of those things in the event the couple separates.

If a couple contemplating marriage wishes to enter into an agreement as to a future a division of assets or support, they would need to enter into a Pre-Martial or Prenuptial Agreement. This would require separate legal counsel for each party and should be entered into carefully as this type of agreement may alter the statutory scheme related to the financial rights in divorce. A Pre-Martial Agreement may also be a useful tool for a couple who has been together for a long time before legally marrying to agree to treat assets acquired even before the marriage as martial property.

CO-PARENTING AGREEMENT

A Co-Parenting agreement is a document that expresses a couple's understanding of the manner in which they will raise children and what each parent's rights and obligations are with respect to each child while they are together and in the event that the parents separate. They may be useful in multi-parent families, where more than two people will be actively co-parenting together.

Although the Co-Parenting and Partnership agreements are not "standard" and will require the advice of an LGBTQ-aware attorney licensed in Ohio (and could still prove to be not legally binding), they are often useful to have. These documents can establish a clear understanding between the parties and can provide clarification about the intent and wishes of all involved. They may be useful, at some future time, should an issue ever come before a court in the case of death, dissolution of the relationship, or other event causing separation. However, this type of document should never be seen as a substitute for an adoption decree, which is a clear legal establishment of parentage.

Find more information at:

www.familyequality.org
www.equalityohio.org

OHIO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed
Families

This Resource Guide was prepared and distributed by:

Alana Jochum

Executive Director

Equality Ohio

alana@equalityohio.org

www.equalityohio.org

Denise Brogan-Kator

Chief Policy Officer

Family Equality

DeniseBK@FamilyEquality.org

www.familyequality.org



Equality Ohio Legal Clinic provides free legal support to LGBTQ Ohioans who are within 300% of the poverty line and are experiencing legal hardship because of their sexual orientation or gender identity/expression. Our legal team is comprised of practicing attorneys and knowledgeable staff advocates who can provide concrete assistance with legal matters. Contact us at 855-LGBT-LAW. Fill out an intake form at equalityohio.org/intake.

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Joan M. Burda, Esq.,

216.832.8825

lgbtlaw@mac.com

www.lgbtlaw.com

Joy B. Savren, Esq.,

216.771.6597

joy@jbsavrenlaw.com

www.jbsavrenlaw.com

Maria L. Shinn, Esq.,

216.228.4791

maria@shinnlawfirm.com

www.shinnlawfirm.com