

Stonewall

ABOUT THIS RESOURCE

This resource is produced by Stonewall, a UK-based charity that stands for the freedom, equity and potential of all lesbian, gay, bi, trans, queer, questioning and ace (LGBTQ+) people.

At Stonewall, we imagine a world where LGBTQ+ people everywhere can live our lives to the full.

Founded in London in 1989, we now work in each nation of the UK and have established partnerships across the globe. Over the last three decades, we have created transformative change in the lives of LGBTQ+ people in the UK, helping win equal rights around marriage, having children and inclusive education.

Our campaigns drive positive change for our communities, and our sustained change and empowerment programmes ensure that LGBTQ+ people can thrive throughout our lives. We make sure that the world hears and learns from our communities, and our work is grounded in evidence and expertise.

To find out more about our work, visit us at www.stonewall.org.uk

Registered Charity No 1101255 (England and Wales) and SC039681 (Scotland)

Stonewall is proud to provide information, support and guidance on LGBTQ+ inclusion; working towards a world where we're all free to be. This does not constitute legal advice, and is not intended to be a substitute for legal counsel on any subject matter.

SOUTH AFRICA



Population: 54+ million people



Stonewall Global Diversity Champions: 44



THE LEGAL LANDSCAPE

In Stonewall's **Global Workplace Equality Index**, broad legal zoning is used to group the differing challenges faced by organisations across their global operations.

South Africa is classified as a Zone 1 country, which means sexual acts between people of the same sex are legal and clear national employment protections exist for lesbian, gay, and bi people.

Two further zones exist. In Zone 2 countries, sexual acts between people of the same sex are legal but no clear national employment protections exist on grounds of sexual orientation. In Zone 3 countries sexual acts between people of the same sex are illegal.

FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY

The Constitution protects the **rights to freedom of expression, association and assembly** under Sections 16-18.

There are **no LGBT-specific restrictions or additions** to these rights.

FAMILY AND SAME-SEX RELATIONSHIPS

Sexual acts between people of the same sex are **legal**.

There is an **equal age of consent** of 16 years for sexual acts regardless of gender under Sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters), Amendment Act 32 of 2007.

Same-sex marriage is legal under the Civil Union Act 17 of 2006.

Same-sex and different-sex couples can enter a civil union, which has the same legal status as a marriage under the Civil Union Act 17 of 2006.

Same-sex couples have **equal rights to adopt children** under Section 231 of the Children's Act 38 of 2005.

EQUALITY AND EMPLOYMENT

Section 9 of the Constitution states that **everyone is equal before the law** and **prohibits discrimination based on a specified list that includes sexual orientation**. The **list does not explicitly include gender identity**.

Employment discrimination based on sexual orientation is **prohibited** under Section 9 of the Constitution and other legislation such as Section 6 of the Employment Equity Act 55 of 1998.

There is **no non-discrimination legislation explicitly protecting trans people** based on their gender identity.

Hate crimes based on sexual orientation have been **considered as an aggravating circumstance** for the purposes of sentencing in criminal trials as per Case RCB216/06. However, this is not codified in legislation.

GENDER IDENTITY

Trans people can change their **legal gender** to female or male on all identification documents under the Alteration of Sex Description and Sex Status Act 49 of 2003 and the Identification Act 68 of 1997.

Applications need to be made to the Director General of the National Department of Home Affairs.

Legal gender change may be **subject to surgical or medical treatment, a report from the treating medical practitioner** and an **independent medical report** under Section 2 of the Alteration of Sex Description and Sex Status Act.

Trans people can alter their **legal name** under Section 24 read with Regulations 16, 17 and 18 of the Births and Deaths Registration Act 51 of 1992.

Legal name change is **subject to filing a prescribed form**. It **can only be done once** unless exceptional circumstances exist.

IMMIGRATION

Dependent visas are **available to same-sex partners** of citizens, permanent residents or persons holding a valid study, treaty, business, crew, medical treatment, relative's, work, retired person, corporate, exchange or asylum transit visa under Section 11 of the Immigration Act 13 of 2002.

A VIEW FROM SOUTH AFRICA

Dawie Nel is the Director of the LGBT organisation OUT, based in Pretoria, which has supported the physical and mental health of LGBT people throughout South Africa for the last 21 years. OUT offers health and counselling services, a vibrant community centre, community building programmes and support groups.



Have societal attitudes caught up with progressive legal rights for LGBT people?

South Africa's strong legal protections for LGBT people have had, and continue to have, a hugely positive effect on society including in government, where LGBT rights have been firmly enshrined in South Africa's human rights framework. However, the country's overall transition has been slow due to a number of intersecting factors such as poverty, weak governance and a strongly conservative and religious culture. These factors contribute to the higher levels of discrimination and exclusion LGBT people may still suffer from.

How are lesbians, bi women and trans people treated in society?

South Africa is a patriarchal society and women suffer as a result. It's even more difficult when women do not adhere to expected gender roles, for example 'masculine' lesbians. Trans people too are specifically discriminated against and targeted. Research conducted by OUT in 2016 showed that 47 per cent of trans respondents had experienced discrimination within the last 24 months, including verbal insults, sexual harassment, physical violence and threats of physical violence. However, few trans people reported such incidents to the police.

How are LGBT people portrayed in the media?

Mainstream media often tends to only focus on one part of the LGBT community: the flamboyant gay man. This caricature is hard to dispel because the media reinforces the stereotype. Despite negative public media coverage, there is not a strong and organised anti-LGBT voice, however there is a real lack of positive role models for young people, for example, in sport.

What is the workplace like for LGBT people?

It's varied. Some workplaces can be quite open and others not. It's fair to say that directly or indirectly, in the workplace employees are expected to be heterosexual and cisgender. This impacts on LGBT employees when it comes to appointments, promotions, fitting in and other workplace issues. Trans people in particular face barriers due to gender expectations that they do not always fulfil. Many trans people are not able to complete their education and therefore lack opportunities. Often this means that they will have to work within the sex industry.

Do South African or international companies publicly support LGBT equality?

A number of organisations such as Accenture, EY, IBM and KPMG make clear efforts through employee network groups, awareness-raising events and work in universities to improve the inclusion of LGBT people in their offices. Elsewhere however, there has been limited public sponsorship and low-key support for LGBT rights from the private sector. In smaller companies, I'm aware of a number of instances where people have lost their jobs, with the root cause having been indirectly judged to be related to their sexual orientation.

LGBT INCLUSION IN THE WORKPLACE

THE FOUNDATIONS

There are several steps employers can take to start creating a supportive workplace environment for their LGBT employees in South Africa:

- ✓ **Consult local LGBT organisations to understand the local context for LGBT people**
- ✓ **Introduce explicitly LGBT-inclusive anti-discrimination and bullying and harassment policies**
- ✓ **Train HR staff and promote inclusive policies**
- ✓ **Carry out LGBT-inclusive diversity training**
- ✓ **Encourage senior managers to promote their commitment to LGBT inclusion and equality**

NEXT STEPS

Once a foundation has been built, there are further steps employers can take to bring about positive change for LGBT people. For example:

- ✓ **Audit and extend partner benefits to same-sex partners**
- ✓ **Establish employee engagement mechanisms like LGBT networks and allies programmes**
- ✓ **Carry out LGBT awareness-raising events**
- ✓ **Partner with local LGBT groups to advance LGBT equality beyond the workplace**
- ✓ **Work with suppliers and partners to advance LGBT workplace equality**

Employers can improve their initiatives by participating in Stonewall's Global Workplace Equality Index - a free benchmarking tool offering a clear roadmap to LGBT inclusion in the workplace. www.stonewall.org.uk/gwei



LEARN FROM STONEWALL'S GLOBAL DIVERSITY CHAMPIONS

Norton Rose Fulbright

Norton Rose Fulbright started its outreach and development on workplace LGBT inclusion in South Africa through the official launch of its PRIDE employee network group. The network was set up to support a number of important objectives including:

- Engaging allies in the workplace to show support for the LGBT community
- Providing guidance on the implementation of inclusive policies
- Encouraging the recruitment and retention of LGBT talent
- Developing contacts with clients who are members of the LGBT community

PwC

PwC took the progressive measure in 2012 of amending all their adoption and paternity policies in South Africa to be inclusive of same-sex parents. The amendment ensured whoever is assuming the role of primary caregiver to the adopted child may take four months paid leave equivalent to maternity leave. PwC's paternity policy now allows the parent assuming the role of secondary caregiver to make use of the policy. This has placed PwC as an employer of choice because their commitment to inclusion is reflected in tangible measures taken to create equality for their LGBT employees directly.

AIG

AIG requires all new employees in South Africa to attend a two-day workshop called 'Valuing Diversity', which includes content on LGBT inclusion. For underrepresented groups AIG also runs general career-development programmes, such as mentioning and coaching. These groups specifically include LGBT staff.



GET INVOLVED



THE ANNUAL LGBT CALENDAR

March - Cape Town Pride. www.capetownpride.org

May - Pink Loerie Mardi Gras and Arts Festival.
www.pinkloeriefoundation.com

June - Durban Pride. www.durbanpride.org.za

October - Durban Gay and Lesbian Film Festival. www.dglff.org.za

October - Johannesburg Pride. www.johannesburgpride.co.za

November - Nelson Mandela Bay Pride. www.nmbpride.co.za

Check the events websites for the most up-to-date information on dates.



FIND LGBT GROUPS AND COMMUNITIES

Durban Gay and Lesbian Centre - a group working to empower the LGBT community by providing health and other services, support and training.
www.gaycentre.org.za

GALA - a centre for LGBTI history, culture and education in Africa.
www.gala.co.za

Gender Dynamix - a trans community organisation providing resources, information and support to trans people, their partners, family, employers and the public. www.genderdynamix.org.za

Iranti-org - a queer human rights visual media organisation defending the rights of lesbians, transgender and intersex persons in South Africa and across the African continent. www.iranti-org.co.za

OUT - an organisation working for LGBT people's physical and mental health through providing health services and carrying out research and advocacy work.
www.out.org.za

Pietermaritzburg Gay and Lesbian Network - a group working primarily with young, unemployed and marginalized LGBTI people to create a non-discriminatory, supportive and accepting society. www.gaylesbian.org.za

The Triangle Project - a group offering a range of services to the LGBT community, including sexual health clinics, counselling, support groups, a helpline, public education and training services, community outreach and a library. www.thetriangleproject.org

OutRight Action International - a regional branch of OutRight International is based in Johannesburg. They support LGBTIQ organisations in Sub-Saharan Africa and work with mainstream human rights organisations to promote LGBTIQ rights. www.outrightinternational.org/region/africa



GET LOCAL LGBT UPDATES

Mamba Online - a news and lifestyle platform for South Africa's gay community. www.mambaonline.com

GaySA Radio - an online LGBTI internet radio station. www.gaysaradio.co.za



STONEWALL'S GLOBAL DIVERSITY CHAMPIONS PROGRAMME WORKS WITH 44 ORGANISATIONS OPERATING IN SOUTH AFRICA.

Our team of workplace advisors offers tailored one-to-one advice on how to create LGBT-inclusive workplaces globally. If you would like to receive support or want to be featured as a case study in one of our Global Workplace Briefings, contact Stonewall.

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Every effort has been made to ensure that the information contained in this Global Workplace Briefing is correct as of February 2018. Introducing any new initiative requires careful consideration and the safety of staff should always be of paramount importance. This overview is for guidance purposes only and does not constitute, nor should it be interpreted as a substitute for, detailed legal advice. If you have any specific legal concerns, always consult with local legal experts. Stonewall Equality Ltd, Registered Charity No 1101255 (England and Wales) and SC039681 (Scotland)