

SOUTH KOREA



Population: 51+ million people



Stonewall Global Diversity Champions: 41



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 Korea is classified as a Zone 2 country, which means sexual acts between people of the same sex are legal but no clear national employment protections exist.

Two further zones exist. In Zone 1 countries, sexual acts between people of the same sex are legal and 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

Articles 21 and 37 of the Constitution protect the **rights to freedom of expression, association and assembly**.

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 **not generally criminalised**.
However, **'anal intercourse or other indecent acts' with any person working for the military** are **punishable** with up to **two years' imprisonment** under Article 92-6 of the Korean Military Criminal Act.

There is an **equal age of consent** of 13 years for sexual acts regardless of sexual orientation under Article 305 of the Korean Criminal Act.

In 2011, the Supreme Court ruled that **same-sex marriage is not legal** (2009Seu117).

There is **no legal recognition of same-sex relationships**.

Same-sex couples have **no legal right to adopt children** jointly or through second parent adoption. However, single people can adopt children under Article 10 of the Act on Special Cases Concerning Adoption.

EQUALITY AND EMPLOYMENT

Employment discrimination against LGBT people is **not legally prohibited**.

However, the **National Human Rights Commission can investigate and remedy discriminatory acts based on 'sexual orientation, etc.'** under Article 2 of the National Human Rights Commission of Korea Act. It is **not clear whether 'etc.' includes gender identity**.

Discrimination against prisoners and military inmates based on 'sexual orientation, etc.' is **prohibited** under Article 5 of the Administration and Treatment of Correctional Institution Inmates Act and Article 6 of the Act on the Execution of Criminal Penalties in the Armed Forces. Again, it is **not clear whether 'etc.' includes gender identity**.

Article 11 of the Constitution states that **everyone is equal before the law**, but it does not explicitly refer to sexual orientation and gender identity.

GENDER IDENTITY

Trans people can change their legal gender to female or male on certain identification documents, however this is **subject to obtaining permission from the family court** under Article 104 of the Act on the Registration, Etc. of Family Relationships.

Further **requirements for legal gender change** are a **medical diagnosis, sex-reassignment surgery, sterilisation and parental consent** as outlined in the Guidelines for Application on Change of Legal Gender of Trans People. However, these are **internal agency guidelines** and are not legally binding.

Trans people can change their legal names under Article 8 of the Guidelines for Application on Change of Legal Gender of Trans People.

For both legal name and legal gender change, **birth certificates and official documents that have already been submitted** (e.g. past tax filings) **cannot be amended**.

IMMIGRATION

Dependent visas are available to partners of citizens and those with certain work visas, but it is **not specified whether this applies to same-sex couples**.

A VIEW FROM SOUTH KOREA

HaengSeongIn, also known as Solidarity for LGBT Human Rights of Korea, is a South Korean LGBT human rights advocacy group. HaengSeongIn campaigns for LGBT equality, organises workshops and forums for LGBT communities and runs a resource centre.

Joontae Kim, member of HaengSeongIn's labour rights team, spoke to Stonewall to tell us about the situation for LGBT people in South Korea.



행동하는성소수자인권연대
www.lgbtpride.or.kr

Everyday life

Acceptance of LGBT people has increased in recent years. However, 79 per cent of South Koreans still say there are no LGBT people around them. In general, men show little affection towards each other in public, while women do regardless of sexual orientation. Many LGBT people still feel the need to hide their sexual orientation and gender identity. The media often portrays LGBT people as an issue rather than focusing on their actual lives. One of the biggest issues faced by LGBT people in South Korea is the lack of a law against discrimination based on sexual orientation and gender identity. Also, there is the military criminal code which criminalises same-sex relations between consenting adults even during their time off work. It is particularly problematic because Korea employs mandatory conscription system for men. If you reject to serve the country, you have to go to prison for the same period of time.

LGBT groups and advocacy

LGBT groups have been pushing for a comprehensive law protecting LGBT people from discrimination for almost 10 years. It has been discussed by congress three times but never passed. There is a diverse range of very conservative groups putting a lot of effort into stopping the advancement of LGBT rights. Fortunately, many LGBT groups also exist that press for positive changes. However, with little funding available, too often we have to rely on the devotion and time of volunteer activists.

Healthcare

There are very few hospitals offering specialist services for trans people. Where they do exist, they are not covered by health insurance and need to be paid for by the individual. Further, as same-sex relationships are not recognised in South Korea, LGBT people are not allowed the same access to information and visitation if their same-sex partner or legally unrecognised child is in hospital. Due to widespread treatment refusal, people living with HIV/AIDS have no hospital to go to. Only hospice centres run by Christian groups accept them but they provide poor services and are filled with hatred of homosexuality and AIDS. The Korea Centre for Disease Control is disregarding the cases of treatment refusal and saying there is nothing that they can do.

Workplace

LGBT people rarely come out at work because they fear they will be harassed or lose their job. This is the result of a lack of legal protection, a lack of awareness, and a lack of education of non-LGBT colleagues. Even getting a job is often difficult for LGBT people. There are very strict gender norms in the labour market and if an applicant's gender expression is outside the male-female binary, they are often not hired. They may even be excluded from the hiring process as early as the written application form, as CVs need to include a picture of the applicant.

It's important that employers change their policies and benefits to guarantee LGBT people are treated equally. This includes having anti-discrimination policies that explicitly refer to sexual orientation and gender identity, as well as partner benefits that apply to same-sex couples. Global employers who present themselves as LGBT-inclusive organisations outside of South Korea, do not yet do the same in South Korea. This should change. In addition, it's difficult to enhance the rights of LGBT workers because the rights of workers in general unprotected. Therefore, it's essential to enhance the rights of all workers: the rights to organize, to collectively bargain, and others.

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 Korea:

- | | |
|--|---|
| <ul style="list-style-type: none">  Consult local LGBT organisations to understand the local context for LGBT people  Introduce explicitly LGBT-inclusive anti-discrimination and bullying and harassment policies | <ul style="list-style-type: none">  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:

- | | |
|---|---|
| <ul style="list-style-type: none">  Audit and extend equal benefits to same-sex partners  Establish employee engagement mechanisms like LGBT networks and allies programmes  Carry out LGBT awareness-raising events | <ul style="list-style-type: none">  Work with suppliers and partners to advance LGBT workplace equality  Partner with local LGBT groups to advance LGBT equality beyond the workplace |
|---|---|

Sharing best practice on LGBT workplace inclusion helps other organisations develop and accelerates the pace of change. If your organisation runs any LGBT initiatives in South Korea – however big or small – let Stonewall know and share your work in this briefing.



GET INVOLVED



THE ANNUAL LGBT CALENDAR

July - Pride in Korea (Seoul). www.kqcf.org

July - Korea Queer Film Festival (Seoul). www.kqff.co.kr

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



FIND LGBT GROUPS AND COMMUNITIES

HaengSeongIn – an advocacy group that campaigns for LGBT equality, organises workshops for LGBT communities and runs a resource centre. www.lgbtpride.or.kr

DDing Dong – a crisis support centre for LGBT youth offering mental health support and physical resources. www.ddingdong.kr

Korea Sexual Minority Culture and Rights Centre – an association fighting for the integration of the LGBT population within society and the improvement of living conditions. www.kscrc.org

Ivan Stop HIV/AIDS Project – a group providing information and support on health topics including HIV/AIDS. The group also offers free HIV tests in Busan and Seoul. www.ishap.org

Chingusai – a support organisation and resource centre for gay men. www.chingusai.net

Korea Lesbian Counselling – an advice and information centre for the lesbian community in Korea. It also provides telephone and online counselling. www.lsangdam.org



STONEWALL'S GLOBAL DIVERSITY CHAMPIONS PROGRAMME WORKS WITH 41 ORGANISATIONS OPERATING IN SOUTH KOREA.

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.

Stonewall
192 St John Street, London
EC1V 4JY
United Kingdom

Switchboard: +44 (0) 20 7593 1850
Info Line: +44 (0) 800 050 2020
Email: info@stonewall.org.uk
Website: stonewall.org.uk

Legal Partner



Freshfields Bruckhaus Deringer